WV PUBLIC EMPLOYEES INSURANCE AGENCY

PURCHASING POLICY

FOR GOODS AND SERVICES PROCURED THROUGH LEGISLATIVE EXEMPTION

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ISSUED: 08/27/2020

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SECTION 1: GENERAL INTRODUCTION

1.1 INTRODUCTION

The West Virginia Public Employees Insurance Agency contracts with vendors for goods and/or services to manage the provision of health insurance, life insurance, and flexible benefits for State Employees and Participating Agencies. PEIA is subject to the policies of the Purchasing Division of the Department of Administration in most cases. However, there are instances where purchasing exemptions are appropriate to ensure ongoing, effective operation of PEIA programs for the benefit of its members.

The purpose of this Purchasing Policy is to provide PEIA employees with a framework for standardized agency procurement of goods and/or services procured through Legislative Exemption. Although PEIA has limited exemption from direct Purchasing Division oversight on a specific range of procurements, the Agency maintains a responsibility to ensure that tax-payer money is spent responsibly. PEIA follows Purchasing Division policy where possible on exempt purchases, and any differences are for the express purpose of ensuring effective and uninterrupted coverage for PEIA members.

PEIA employees are required to work with PEIA procurement staff to procure exempt goods and services contracts.

1.2 AUTHORITY TO PROCURE GOODS AND/OR SERVICES

For many procurements, PEIA is required to follow the policies put in place by the West Virginia Purchasing Division, which operates under W. Va. Code §5A-3-1 *et seq* and Legislative Rule W. Va. 148 C.S.R. 1). These policies include, but are not limited to, the reimbursement of employee travel expenses, the use of State-Wide Contracts and Mandatory resources, the use of WV Oasis for Agency procurements, and adherence to Purchasing Division regulations where PEIA exemption does not apply.

<u>PEIA has a partial exemption from Purchasing Authority for commodities or services that directly relate to the operation of the Plan, as established by West Virginia Code §5A-3-10b.</u> The rules contained in this handbook refer only to procurements that PEIA determines will fall under its Legislative exemption and should not be used by PEIA employees to circumvent Purchasing Division authority where it exists.

1.3 REQUIRED USE OF HANDBOOK

PEIA staff are required to use this handbook to perform procurement and other activities relating to the Legislative exemption.

1.4 ROLE OF THE PROCUREMENT OFFICER

The procurement officer is responsible for the following:

- Keep apprised of the current statutory and regulatory requirements for state purchasing through training opportunities offered by the Purchasing Division, in accordance with the West Virginia Code of State Rules;
- Serve as the first point of contact to provide guidance to internal agency staff regarding purchasing issues;
- Review and approve specifications prior to solicitation issuance;
- Managing PEIA procurement processes in the wvOasis system;
- Review bids and concur with agency recommendation prior to award;
- Maintain proper documentation and files for public record;
- Update internal procurement templates and standardized forms as necessary;
- Maintain the PEIA Purchasing policy and update it as needed; and
- Perform other related procurement duties as needed.

1.5 DISCLAIMER

The PEIA Purchasing Policy may be amended or changed at any time to ensure compliance with the laws, rules, and procedures of PEIA, the Purchasing Division, and the State of West Virginia. Exceptions to the guidelines require written requests to and approval of the PEIA Director. Employees are responsible for ensuring that they are using the most recent version of the policy for purchasing activities. In the event of a conflict between the PEIA Purchasing Policy and current State laws or regulations, employees should defer to current State laws or regulations.

1.7 ETHICS

PEIA employees have the responsibility of purchasing commodities used in the operation of public programs and services in the most effective and efficient method available. In performing this task, certain guidelines based on West Virginia Code must be followed. Our ethical standards must be of the highest degree since public funds are being used.

1.8 wvOASIS ENTERPRISE RESOURCE PLANNING (ERP) SYSTEM

The state's enterprise resource planning (ERP) system, which is referred to as *wv*OASIS, is a comprehensive suite of software modules that provide for statewide administrative functions, including financial management, procurement, asset management, personnel administration, payroll, time reporting and benefits administration. This system is used for advertising solicitations of $10,000 and more and awarding all procurements exceeding $2,500.

SECTION 2: DEFINITIONS, ABBREVIATIONS, & ACRONYMS

The following definitions apply and/or relate to the PEIA Purchasing Policy:

Agency – For the purpose of this policy, "agency" is synonymous with "spending unit.". This definition includes any department, bureau, division, office, board, commission, authority, agency, or institution of state government for which an appropriation is requested by the Governor, or to which an appropriation is made by the Legislature, unless a specific exemption from W. Va. Code §5A-1 is provided.

Agency Delegated Open-End Contract – A legal and binding instrument between the state agency and a vendor to exclusively provide a commodity which was competitively bid, evaluated, awarded, and maintained by the state agency. This contract is for purchases under $25,000 annually for commodities and services that are on-going and/or frequently purchased.

Agency Delegated Purchase Order – A transaction which may be used by an agency to procure items within its delegated small purchase authority.

Agency Open-End Contract – A legal and binding instrument between the state agency and a vendor to exclusively provide a service or commodity which was competitively bid, evaluated, and awarded by PEIA and maintained by the state agency.

Award Date – The award date is the date of encumbrance in wvOasis.

Best Value Procurement – Purchasing methods used in awarding a contract based on evaluating and comparing all established quality criteria where cost is not the sole determining factor in the award. This includes Request for Proposals (RFP) and Expressions of Interest (EOI).

Bid – Anything that a vendor submits in response to a solicitation that constitutes an offer to the State and includes, but is not limited to, documents submitted in response to a request for quotation (RFQ), proposals submitted in response to a request for proposal, or proposals submitted in response to an expression of interest.

Bid Bond – A bond in which a third party agrees to be liable to pay a certain amount of money in the event a selected bidder fails to accept the contract as bid. This bond is usually five percent (5%) of the total bid amount.

Bid Opening – A firmly established date and time for the public opening of responses to a solicitation.

Business Associate - a person or entity that performs certain functions or activities that involve the use or disclosure of protected health information on behalf of, or provides services to, a covered entity as defined in 45 CFR 164.502(e), 164.504(e), 164.532(d) and (e)

Buyer – An employee of PEIA; the designated primary or back-up purchaser of commodities or services on behalf of the Agency.

Change Order – A document which is used when it becomes necessary to amend, clarify, change, or cancel purchasing documents issued by PEIA.

Commodity – Supplies, materials, equipment, and any other articles or things used by or furnished to a department, agency, or institution of state government.

Competitive Bidding – 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.

Contract – An agreement between a state spending unit and a vendor relating to the procurement of commodities or services, or both.

Delivery Order – A written order to the contractor authorizing quantities of commodities and/or services to be delivered all in accordance with the terms, conditions, and prices stipulated in the original contract.

Electronic Transmission – Any process of communication not directly involving the physical transfer of paper that is suitable for retention, retrieval, and reproduction of information by the recipient.

Emergency – A purchase made when unforeseen circumstances arise, including delays by contractors, delays in transportation and unanticipated volumes of work. A report of any such purchase, together with a record of competitive bids upon which it was based, is to be submitted to the Purchasing Director. Emergency purchases are not used for hardship resulting from neglect, poor planning, or lack of organization by the spending unit. Failure to plan does not make it an emergency.

Encumbrance – A process which ensures that funding is available for payments relating to a specific purchase order or contract.

Evaluation of Bids – After bids are opened, the process of examining all offers to determine the bidder's responsibility, responsiveness to requirements, conformance to specifications and other characteristics important to the recommendation or selection for award.

Expendable Commodities – Commodities which, when used in the ordinary course of business, will become consumed or of no market value within the period of one year or less.

Fixed Assets – Reportable property with an acquisition cost of $1,000 or more **and** has a life of one (1) year or more.

HIPAA – The Health Insurance Portability and Accountability Act of 1996, Public Law 104-191

HITECH Act - The Health Information Technology for Economic and Clinical Health Act, abbreviated HITECH Act, was enacted under Title XIII of the American Recovery and Reinvestment Act of 2009 (Pub.L. 111–5).

Lease – A written agreement between the owner of equipment (lessor) and a state agency (lessee) by which the owner agrees to give the agency permission to use the equipment for a predetermined fee (rental) for a period exceeding thirty (30) days. Title does not pass from the lessor to the lessee.

Lease Purchase – A written agreement in which the lease payments are applied, in whole or in part, as installment payments for equity or ownership upon completion of the agreement. Title transfers with the last installment payment to the lessee.

Mandatory Terms – All terms and conditions in the written specification which are absolute and the compliance with cannot be waived. Failure to comply with mandatory terms shall require the vendor to be disqualified. Mandatory terms are indicated using the terms *shall, will* or *must.*

Non-Mandatory Terms – All terms and conditions in the written specification which are not absolute. Non-mandatory terms are indicated using the terms *may, should, preferred* or *could*, and are understood to be permissive and shall not be used to disqualify any vendor.

Notice to Proceed – A formal written communication used to establish the date for work to commence and determines the date for completion.

Open-End Contract – A generic term used for a contract that covers a period in which all terms, conditions and prices are specified except for quantity.

Piggybacking – Utilizing any existing open-end contract of the federal government, agencies of other states, other public bodies, or other state agencies to which the requesting agency was not an original party. Piggybacking requires prior approval by the Purchasing Director.

Pre-bid Conference – 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.

Procurement – The buying, purchasing, renting, leasing or otherwise obtaining of commodities or services.

Protest – A formal, written complaint filed by a vendor regarding specifications or an award.

Public funds – Funds of any character, including federal monies, belonging to or in the custody of any state spending unit.

Purchase Order – A document issued by the Agency used to execute a purchase transaction with a vendor. It serves as notice to a vendor that an award has been made.

Purchasing Affidavit – A form required to be completed by all vendors prior to the award of a contract. The Purchasing Division's handbook available at http://www.state.wv.us/admin/purchase/Handbook/default.html should be consulted for the current requirements regarding when spending units must acquire an affidavit from a Vendor.

Reciprocal Preference – The state of West Virginia applies a reciprocal preference to all solicitations for commodities and printing, in accordance with W. Va. Code §5A-3-37(b). In effect, non-resident vendors receiving a preference in their home state will see that same preference granted to West Virginia resident vendors bidding against them in West Virginia.

Removable Property – Any personal property not permanently affixed to or forming a part of real estate.

Renewal – When an existing contract is renewed for an additional period in accordance with the terms and conditions of the original contract.

Rental – Temporary compensation or fee paid for the use of any equipment usually for a period of less than 30 days.

Request for Information (RFI) – A document used to solicit information to assist in preparing specifications for a Request for Quotation (RFQ) or Request for Proposal (RFP). No award can be made from an RFI.

Request for Quotation (RFQ) – A document, containing the specifications or scope of work and all contractual terms and conditions, which is used to solicit written bids. Conformity to specifications and price are the only factors used in the evaluation process.

Request for Proposals (RFP) – 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 not the sole factor in determining the award. All criteria by which the bidders will be evaluated must be contained within the bid document.

Requisition – An electronic request in wvOasis by an agency for the purchase of commodities and services.

Services – The furnishing of labor, time, expertise, or effort, not involving the delivery of a specific end commodity or product other than one that may be incidental to the required performance.

Solicitation – A written or oral attempt made by the state to obtain bids or proposals for the purpose of entering into a contract. Requests for Quotation (RFQ), Requests for Proposal (RFP), telephone calls or other documents may be used.

Spending Unit – A department, bureau, division, office, board, commission, authority, agency or institution of state government for which an appropriation is requested by the Governor, or to which an appropriation is made by the Legislature, unless a specific exemption from W. Va. Code 5A-1 is provided.

Standardization – A process established by W. Va. Code §5A-3-61 that allows the agency to specify a brand of product for competitive bidding or other appropriate procurement method without the need to consider other brands.

Statewide Contract – An open-end contract issued by the Purchasing Division and made available to all state agencies to purchase frequently used commodities and services.

Stringing – Issuing a series of requisitions or dividing or planning procurements to circumvent the $25,000 threshold or otherwise avoid the use of sealed bids.

Terms and Conditions – Standard clauses and requirements developed and incorporated into solicitations and resulting contracts. PEIA uses Purchasing's standard General Terms and Conditions for solicitations procured under Purchasing Division oversight and PEIA General Terms and Conditions for solicitations procured through legislative exemption.

Tie Bid – When two or more bids of equal terms and amount or score are received in response to a solicitation.

Unit Price – The cost per unit of the commodity or service.

Vendor – Any person or entity that may, through contract or other means, supply the state or its subdivisions with commodities and services, and lessors of real property.

Vendor Assurances – the process whereby a covered entity such as PEIA confirms that a Business Associate is compliant with applicable provisions of the HIPAA Privacy and Security Rule(s).

Vendor Self-Service (VSS) Portal – This feature incorporates the vendor registration function as well as the *West Virginia Purchasing Bulletin*, which includes commodities and services currently out for bid. The VSS portal also allows vendors to receive solicitation notifications by email based on commodities and services noted at the time of registration; review awarded contracts; perform inquiries pertaining to awards; view payment status; and update company contact information, including mail and email addresses.

wvOasis – An enterprise resource planning (ERP) system used by the state of West Virginia to process all financial transactions, including procurement.

SECTION 3: PROCUREMENT METHODS

Prior to the procurement process, PEIA staff must ensure that they are pursuing the most appropriate procurement method. Below are the methods that PEIA uses to procure products/services. PEIA staff must make sure, prior to using one of the below methods, that the service/commodity is not available through a Purchasing Division Mandatory Resource.

3.1 Request for Quotation

The RFQ should be used to acquire all tangible property (i.e. equipment, supplies, etc.). An RFQ consists of:

(a) A detailed description of, or specification for, the item(s) being purchased;

(b) Delivery date, if required;

(c) Commodity units vendors will bid on (per job, per hundred, etc.)

(d) Any applicable maintenance; and

(e) Quantities of all items

Each item should be identified by a model number or some other specific identification. Award will be made to the vendor with the lowest bid meeting specifications.

3.2 Request for Proposal

RFP's should be used when the method of achieving an objective are not well known, making the development of mandatory requirements difficult. Using this method, lowest price is not the sole determining factor. The time required to process an RFP is longer than other procurement methods, and may require additional personnel, time, and resources to complete.

RFP Awards are made to the highest scoring responsive and responsible bidder. The award is based upon a subjective technical evaluation, where the agency first determines that all mandatory requirements have been met. It then assigns a subjective point value to the vendor's responses to the specifications, followed by an objective point value based on the vendor's cost proposal and the cost score valuation formula.

3.2.1 Mandatory Requirements: RFP requirements should be evaluated carefully, as they cannot be waived. A vendor's failure to meet a mandatory requirement results in disqualification. Before including any mandatory requirement in an RFP, the agency must decide whether it is willing to disqualify any one vendor, or all vendors, if the requirement is not met. If the agency is not willing to disqualify a vendor, then the requirement should not be mandated.

3.2.2 Evaluation Criteria: All evaluation criteria must be clearly defined in the specifications section of the RFP and based on a 100-point total score. This score is usually comprised of a technical score of 70 points possible and a cost score of 30 points possible, but the point allocation may be adjusted as appropriate for an individual solicitation.

3.2.3 Proposal Format and Content: Proposals from vendors must be requested and received in two distinct parts: technical and cost. All cost information must be contained in the cost proposal, which must be sealed and submitted separately from the technical proposal. Vendors must not include cost information in the technical proposal, which ensures that the technical proposal can be evaluated purely on its own merit.

3.3 Memorandum of Understanding

PEIA may engage in agreements with other state agencies through a Memorandum of Understanding (MoU). Although MoU's are not a purchase agreement, they are an important tool used by Agency to clarify working relationships with other state agencies. A Memorandum of Understanding (MoU) is a written agreement that clarifies relationships and responsibilities between two or more organizations, usually government agencies that share services, clients, and/or resources. PEIA contracts may prove advantageous for other State Agencies that manage healthcare related items, and a MoU can facilitate a relationship between the Agency and other agencies. The MoU serves to define the on-going consultation and communication between the two agencies and documents the recognition of the working relationship. The Agency enters into MoU's at the discretion of the PEIA Director or designee.

3.4 Direct Award

A direct award is a procurement method that provides a contract to a vendor without competitive bidding when circumstances allow. Competition should be solicited where possible, but a direct award may be made when the PEIA

Director and/or designee determines it to be the best option for the Plan. Direct awards are at the sole discretion of the PEIA Director and/or designee.

Although direct awards are not bid, all other procurement rules apply.

3.5 Emergency Purchase

Purchases may be necessary when unforeseen causes arise; however, emergency purchases are not used for hardship resulting from neglect, poor planning, or lack of organization. Emergency Purchase also cannot be used to circumvent Purchasing Division rules where Purchasing Division rules apply.

An emergency purchase can only be made if the PEIA Director, exercising sound judgment and discretion, concludes in good faith and upon reasonable and sufficient grounds that some unforeseen or unexpected circumstance has suddenly created a situation requiring that commodities or services be immediately purchased. A request for an emergency purchase must be made in writing to the Director, providing the scope of the purchase to alleviate the emergency situation. If approved, the Director will request that the PEIA Procurement Officer or backup facilitate the purchase and gather/maintain all appropriate records.

SECTION 4: PROCUREMENT PROCESS

4.1 Procurement Planning

PEIA staff should consider the following when planning a procurement:

4.2.1 Internal State Resources – Review Internal State resources to determine if an internal source exists that may fulfill procurement needs (i.e. WV Correctional Industries).

4.2.2 Statewide Contracts – Review Statewide Contracts to see if an agreement is already in place between a vendor and the State for the service or commodity sought.

4.2.3 Authority to Procure – PEIA staff must evaluate the procurement to determine whether it should be purchased entirely under the authority of the Purchasing Division or through the PEIA Legislative Exemption.

<u>PEIA's Legislative Exemption does *not* exempt PEIA from Purchasing regulations regarding file documentation or vendor registration and may not be used to circumvent any State Law under any circumstance.</u>

4.2.4 Third Party Approval - Solicitations may require approval outside of PEIA. This includes approval from the Secretary of Administration, the Governor's Office, the Office of Technology, and any other required entities that may need to approve a solicitation at some point during the process. Any employee writing specifications for the purpose of issuing a solicitation is responsible for working with the PEIA Procurement Officer to ensure that any necessary approvals are obtained at the times they are required (before issuance, before award, etc.).

4.2 PEIA Specification Templates

Specification templates related to in-house procurement transactions are available and recommended for use by employees to standardize and streamline the procurement processes. These templates have been designed to ensure that PEIA solicitations and the resulting contracts meet all rules and regulations of State of West Virginia. Other than adding information directly related to a current solicitation, changes to the templates should be reviewed by the PEIA Procurement Officer.

4.3 Design Services/Consultant

Any individual, corporation or firm (except as provided by a statewide contract) paid to custom design or write specifications for any PEIA solicitation shall not be permitted to competitively bid to provide the product or service that was designed. This removes the possibility of the designer developing specifications that only the designer can meet or restrict another vendor from meeting. This also prevents the appearance of any impropriety, thereby protecting the integrity of the competitive bid process.

4.4 Spending Thresholds

4.4.1 Purchases $2,500 and Less: Competitive bids are not required but are encouraged when possible.

4.4.2 Purchases $2,500.01 to $10,000: A minimum of three verbal bids are required, when possible, and the lowest bidder meeting specifications must be awarded the purchase order/contract. All bids must be present in the file.

PEIA may solicit bids within this threshold using the *West Virginia Purchasing Bulletin*; however, it is not required.

Bids shall be documented and recorded for public record using the *Verbal Bid Quotation Summary* form provided by the WV Purchasing Division. A wvOASIS procurement award document is required for purchases exceeding $2,500. Awards are to be made only to vendors who are properly registered with the Purchasing Division. Signed faxed bids or electronic bids are acceptable. Screen prints from Internet sites in which the commodity or service is for sale and may be procured can substitute for a verbal bid. A “no bid” is not considered a bid.

4.4.3 Purchases $10,000.01 and higher: A minimum of three written bids are required, when possible, and the lowest bidder meeting specifications must be awarded the purchase order/contract. All bids must be present in the file.

A Request for Quotation or a Request for Purchase should be used for documenting and making these requests. In all cases, the agency must attempt to obtain at least three written bids for a product or service. A “no bid” is not considered a bid. The date and time of the bid opening shall be published on the RFQ or RFP and the solicitation must be advertised in wvOasis. A wvOasis procurement award document is required.

4.4 Bid Submissions / Openings

4.5.1 Submissions - Bids shall be accepted as follows

(a) Request for Quotations: PEIA will accept RFQ bids via:

1. wvOasis
2. Physical mail
3. Fax
4. Secure e-mail

(b) Request for Proposal: Most RFP bids must be accepted via physical mail. In the event of an unforeseen scenario that precludes vendors from submitting physical mail bids or a specific solicitation would make physical bids unreasonably unwieldy and complicated, PEIA may allow digital submission of bids. Bid requirements must be clearly stated within the Solicitation.

(c) Sealed bids: Bids sent directly to PEIA are considered sealed if they are unopened and untampered with as initially sent, whether physically or digitally. If PEIA is working with a third party bid consultant for the solicitation, a bid is considered sealed so long as it stays within the purview of the bid consultant; no part of the bid may be shared with the solicitation committee prior to the appropriate bid opening date and time.

(d) PEIA assumes no liability or responsibility for late, incomplete, and/or otherwise non-compliant submissions

4.3.2 Openings - All solicitations shall have an established date and time for the bid opening, after which bids will no longer be accepted. Bids arriving late will be marked "Bid Received Late" and maintained with the rest of the Solicitation file but will not be considered for award.

(a) Request for Quotations: Bids shall be sealed until the date and time set for the bid opening. After the bid opening, bids will be examined by the agency to ensure compliance with all specifications and to determine the lowest responsible bidder. All bidders will be notified of the results.

(b) Request for Proposal: RFP bids shall be opened in two parts. Bids shall be sealed until the date and time set for the technical bid opening, which shall be open to the public. At the technical bid opening, the agency will verify that cost proposals were sent separately. Technical proposals will be reviewed by committee members after the bid opening.

Once technical scoring is complete, agency will schedule a time to open cost proposals. Cost proposals will be reviewed by committee members after the bid opening.

SECTION 5: EVALUATION AND AWARD

5.1 Evaluation

5.1.1 Request for Quotation: Bids will be evaluated solely to ensure all mandatory specifications are met. Award will be given to the lowest bidder meeting specifications.

5.1.2 Request for Proposal: RFP bids will be evaluated in two parts: Technical Proposal and Cost Proposal. Bids will be reviewed by an Evaluation Committee, who will then make a recommendation to the PEIA Director for BAFO and/or final award.

5.1.2.1 Evaluation Committee – The evaluation committee is responsible for evaluating the vendor bids and making a recommendation to the PEIA Director and/or designee for contract award. The Committee shall be comprised of the following:

(a) Committee Chair – The Committee Chair must be a PEIA employee knowledgeable about the subject matter. The Committee Chair will be a full voting member and is responsible for mediating all discussions related to the evaluation and assisting with time management. The Committee Chair must also prepare the consensus of the committee and submit the recommendation for award to the PEIA Director or his/her designee.

(b) PEIA Procurement Officer - The Procurement Officer is a voting member and will be a PEIA employee knowledgeable about purchasing techniques and procedures. The Procurement Officer will be responsible for advising the committee regarding procurement regulations pertaining to the solicitation process. The Procurement Officer must also create and maintain the solicitation file and manage all documentation related to the solicitation. The Procurement Officer may serve as the Committee Chair when appropriate.

(c) Members-at-Large – Members-at-Large are voting members and must be PEIA employees or PEIA Finance Board Members and should be somewhat knowledgeable about the subject matter. Members-at-Large will be required to attend bid openings and meetings related to bid evaluation.

(d) **Subject Matter Experts (Optional)** – PEIA may invite individuals to serve as non-voting members who are subject matter experts to assist in the evaluation process and advise the voting members as needed.

5.1.2.2 **Proposal Evaluations** – The evaluation committee shall review the technical proposals, assign appropriate points, and make a final written consensus recommendation to the PEIA Director or designee.

The evaluation committee initially determines if the technical proposals meet the mandatory requirements. Proposals that fail to meet the mandatory requirements may be rejected without further review.

The committee will then evaluate all technical proposals that met mandatory requirements to assign appropriate scores to the bids. During this evaluation, all proposals begin with the maximum score. The evaluation committee then deducts points for any identified deficiencies in each proposal. Technical proposals may be compared against one another to determine the best in class solution. Those proposals that exceed the mandatory requirements or the non-mandatory desirables should be assigned the maximum points in that category, with lesser solutions assigned an appropriately lower score. All deductions issued for each proposal must include justification, with fairness and consistency.

Proposals must obtain a Minimum Acceptable Score (MAS) of the total technical points possible to be considered for the award. The appropriate MAS will be determined at the time the specifications are created. Standard MAS is typically 60% or 70% but should be set to reflect the relative importance of cost vs technical scoring based on the commodity and/or service sought. Vendors not attaining the MAS will be disqualified and removed from further consideration. Once the evaluation committee reaches a consensus on the technical scores, the cost proposals will be opened. The evaluation committee will review the cost proposals and using the cost formula, assign appropriate cost scores to each proposal not disqualified.

Once both a technical and cost score have been assigned to all qualifying bids, the Committee Chair will prepare a final recommendation for contract award, to be signed by all committee members, to be given to the PEIA Director. Assuming the PEIA Director concurs with the recommendation, the contract will be processed for award.

5.1.2.2.1 **Oral Presentations** – The evaluation committee may, at their discretion, request oral presentations from the top scoring vendors after the technical and cost proposals have been opened and preliminary scores have been assigned. The Oral Presentation will allow the vendors to further explain and/or clarify their bid in part or in whole. The Oral Presentation may not be scored. After the Oral Presentations, the evaluation committee may alter vendor technical scores based on the presentations prior to giving their recommendation to the PEIA Director.

5.1.2.2.2 **Best and Final Offer (BAFO)** – The PEIA Director or designee may, at his/her discretion, request BAFO's from finalist in the solicitation process, or enter into BAFO negotiations with the winning vendor to further negotiate pricing and/or contract terms.

5.2 Bid Rejection

Vendor bids may be rejected for the following reasons

(a) **Late submission:** Bids must be received by the time and date of the bid opening detailed in the solicitation.

(b) **Failure to meet mandatory requirements:** Bids must meet all mandatory requirements detailed in the solicitation. Non-mandatory requirements are not required to be met, and do not merit disqualification.

(c) **Failure of vendor to meet vendor requirements:** Vendor must meet both State vendor requirements and PEIA specific requirements, which will be detailed in the solicitation. Any vendor who fails to meet a requirement by the date requested will be disqualified. A vendor may be disqualified even after being chosen for failing to meet vendor requirements. If that happens, the next lowest bidder or highest scorer will be given the award.

(d) **Erroneous bids:** If an error in a bid is found, request for relief must be made in writing by the vendor and should be received by PEIA within five days from the bid opening date. The PEIA Director may allow rejection of an erroneous bid if:

1. An error was made;
2. The error materially affected the bid;
3. Rejection of the bid would not cause a hardship to PEIA other than losing an opportunity to receive commodities and/or service at a reduced cost; and
4. Enforcement of the bid in error would be unconscionable

The vendor must specifically identify the error(s) and provide documentation to substantiate that the above criteria are met. The solicitation file must contain all documented evidence and rejection justification.

5.3 Tie Bid

When purchasing commodities and services, occasionally two or more bids of equal terms and amount are received in response to a solicitation, thus, resulting in a tie bid. If multiple awards are not made, the tie bid(s) must be resolved. When tie bids are received, the PEIA Director or designee shall break the tie by allowing the tied vendors to make a best and final offer, flip of a coin, draw of the cards, or any other impartial method considered prudent. A witness must be present when resolving the tie and documentation of the method and results, with signatures of all witnesses, must also be included in the file.

5.4 Award

Bids shall be awarded to the lowest bidding vendor meeting specifications (RFQ) or the most responsive and responsible bidder (RFP). Bid evaluation documentation shall be saved in the solicitation file. In the event that an award is made to other than the lowest biding or highest scoring vendor, documentation justifying the award shall be kept in the contract file.

SECTION 6: CONTRACT CANCELLATION & VENDOR REMEDIES

6.1 Contract Cancellation

The agency may cancel a contract or purchase order obtained through the agency delegated process upon written notice to the vendor under any one of the following conditions including, but not limited to:

(a) The vendor agrees to the cancellation;

(b) The vendor has obtained the contract by fraud, collusion, conspiracy or in conflict with any statutory or constitutional provision of the state of West Virginia;

(c) Failure to conform to contract requirements or standard commercial practices;

(d) The existence of an organizational conflict of interest is identified;

(e) Funds are not appropriated, or an appropriation is discontinued by the legislature for the acquisition;

(f) Violation of any federal, state, or local law, regulation, or ordinance; or

(g) The contract was awarded in error.

The agency may also cancel a purchase order or contract for any reason, upon 30 days' written notice to the vendor.

6.2 Vendor Remedies

In the event that a vendor fails to honor any contractual term or condition, or violate any provision of federal, state, or local law, regulation or ordinance, the agency may request the vendor remedy the contract breach or legal violation within a time frame the agency determines to be appropriate. If the vendor fails to remedy the contract breach or legal violation, then the agency may cancel immediately without providing the vendor an opportunity to perform a remedy.

SECTION 7: VENDOR REQUIREMENTS AND PROTEST

Vendors have the right to submit a formal protest to PEIA based on bid specifications or contract award.

7.1 Vendor Requirements

PEIA's Legislative Authority does not negate any Purchasing Division vendor requirements except the vendor registration fee. In addition, due to PEIA's status as a Healthcare Agency, vendors for some contracts may have additional requirements that must be met. Vendor requirements must be detailed in the Solicitation. No contract can be awarded until all Vendor requirements have been met. This includes, but is not limited to:

(a) Purchasing Affidavit
(b) Secretary of State Registration
(c) WV Tax Department Registration
(d) WV-96 Form (for all Legislative Exempt Contracts, regardless of HIPAA requirements)
(e) Signed Business Associate Addendum and corresponding Appendix A – if applicable
(f) Signed Data Exchange – Data Management Addendum – if State data is to be exchanged and/or released as part of the contract or bid award
(g) West Virginia Office of Technology Vendor Confidentiality form – if any member of the vendor's workforce will require access to State systems and/or platforms as part of the scope of work on an Agreement
(h) West Virginia Public Employees Insurance Agency HIPAA Vendor Assurance Forms – if applicable

7.2 Submission of Protest

Protests based on bid specifications must be submitted to the PEIA Director no later than five business days prior to bid opening. Protest of purchase orders or contract awards must be submitted no later than five business days after the award. Protest of proposed Direct Awards must be submitted no later than five business days after the award. 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 PEIA Director.

All protests shall be submitted in writing to PEIA and contain the following information:

(a) The name and address of the protestor;
(b) The requisition, purchase order or contract numbers;
(c) A statement of the grounds of protest;
(d) Supporting documentation (if necessary); and
(e) The resolution or relief sought

Failure to submit this information shall be grounds for rejection of the protest by the PEIA Director.

7.3 Protest Review

The PEIA Director and/or his/her designee shall review the matter of protest and issue a written decision. A hearing may be conducted at the option of the PEIA Director or assigned designee.

Continuation or delay of the purchase order or contract award while the protest is considered is at the discretion of the PEIA Director.

PEIA may refuse to review any protests when the matter involved is the subject of litigation before a court of competent jurisdiction; if the merits have previously been decided by a court of competent jurisdiction; or if it has been decided in a previous protest by the PEIA Director or assigned designee.

Responsibility for delivery of the protest to the PEIA Director shall remain with the protesting vendor. A failure by a third party to forward the protest to the Director shall not be grounds for extending the time for receipt of protests.

SECTION 8: RECORDS

8.1 Solicitation Files

The Procurement Officer will maintain a digital folder for all ongoing solicitations in the PEIA Procurement Shared Drive folder. All information relating to a solicitation must be placed in this folder including, but not limited to: solicitation documents, vendor bids, committee scoring, third-party approvals, and other documents relating to the solicitation and subsequent award.

The physical copy of the winning vendor bid will be incorporated into the resulting contract. If there is no physical copy of the winning vendor bid (i.e. a large and complex RFP for a Third-Party Administrator for which electronic bids and bid documents were accepted), the file will be noted as such. The bid will still be considered part of the contract file and must be maintained in the digital contract file.

Physical copies of all other vendor bids should be maintained for up to 2 years in case of post-award vendor disqualification requiring a re-award to the next lowest bidding or highest scoring vendor. After 2 years, physical copies of bids may be disposed of securely. Digital copies should be maintained for as long as the contract is active.

The PEIA Procurement Officer shall be responsible for the organization of the Procurement folder, including the archiving of solicitation files after a solicitation is complete.

8.2 Contract Files

The Procurement Officer, with the PEIA's Administrative Secretary, will maintain physical and digital contract files for all active contracts. The Procurement Officer is responsible for assembling and organizing the digital and physical folders and sending them for review by his/her supervisor and the General Counsel.

Contract files will be reviewed annually, regardless of renewal status, to ensure continued compliance with the appropriate Purchasing regulations including, but not limited to: Purchasing Affidavits (renewed annually), wvOasis vendor registration requirements, compliance with WV SOS (checked annually), wvOasis document information, and renewal documentation if necessary.

8.3 Access to PEIA Records

All records maintained by PEIA related to purchase orders and contracts are considered public records and may be made available upon request. Other information relating to the evaluation and eventual award will not be made public until after an award has been made. Contract award information released prior to a contract award may be incorrect, premature, or erroneous; negotiations of pricing and contract terms may still be on-going. An award is considered complete only if the contract has been signed by the PEIA Director or Designee, approved as to form by any third parties where required, encumbered, and either placed in the U.S. mail or sent digitally to the vendor to a previously confirmed e-mail address.

A vendor's submission of any information to PEIA puts the risk of disclosure on the vendor. A vendor may request (as described in the General Terms and Conditions) that certain information be exempted from disclosure under W. Va. Code § 29B-1-4, but PEIA makes no guarantee that such a request will be honored. The vendor is solely responsible for the defense against the release of any information in a bid submission.

Copies of records are available upon written request from the vendor. An electronic copy of imaged documentation may be obtained.

PEIA contracts and supporting documentation are maintained until the agency obtains permission to destroy the documents from the Legislative Auditor's office pursuant to W. Va. Code § 5A-3-11(h). PEIA reviews bids for the inadvertent inclusion of social security numbers or other protected health information. Questions regarding the redaction of information, if any, should be directed to the agency's privacy officer.