

Purchasing Policy & Procedure

Harrison County Commission · Clarksburg, West Virginia

It is the intent of the Harrison County Commission to maintain open and fair purchasing procedures for equipment, materials, supplies, commodities, products, construction projects, and architectural and engineering services utilized by or for the county. Such purchasing procedures will adhere to and be in compliance with state statutes as referenced and outlined in this document, in particular but not limited to the following: §7-1-11; §5A-1-1; §5-22-1; §5-22-2; §5G-1-3 and §5G-1-4, copies of which are included for reference. The Harrison County Commission encourages and directs departments to follow this procedure unless a waiver is required for a purchase due to an emergency situation. Professional services and utilities are not govern by said statutes nor this purchasing policy – procedure document.

Commodities - Products - Materials - Supplies - Equipment

As noted and referenced in §7-1-11(a), the Harrison County Commission may make purchases of commodities and products of \$15,000 or less in the open market. If at all possible, any such purchase shall be based on at least three quotes presented for approval by the Harrison County Commission during a regular or special meeting. If the purchase is \$5,000 or less and approval is necessary or required before the said meeting of the Harrison County Commission, the County Administrator shall be authorized to grant such purchasing approval with the Harrison County Commission to review and approve the invoice during a regular or special meeting. If less than three quotes are presented, such purchase request shall include an adequate explanation and/or documentation for review and consideration.

As required by §7-1-11(a), any purchase of and/or contract for commodities and products over \$15,000 shall be based on competitive bids. Competitive bids shall be obtained and presented to the Harrison County Commission for consideration and approval during any regular or special meeting. Any notice or solicitation for competitive bids shall, at a minimum, be listed on the county website so that qualified vendors may obtain bid specifications and other bid information. In addition, administrative staff may place the notice for bids as a Class I legal ad in a newspaper of general circulation for the county and/or utilize other such measures so as to provide an open and fair bidding process. If certain grant or other funding programs require more stringent purchasing procedures, administrative staff is directed to follow and comply with said procedures.

The Harrison County Commission authorizes county personnel to purchase commodities and products if a competitive bid process has previously been completed, including but not limited to, purchase contracts issued by the State of West Virginia; purchase contracts issued by the General

Services Administration (GSA); purchase contracts issued by other units of state or local government; other purchase contracts issued in compliance with a competitive bidding process. Documentation for any such purchase shall include a copy of the authorizing contract and/or contract number so that proper verification can be noted for review by the Harrison County Commission during any regular or special meeting.

Construction Projects

Bidding requirements for construction contracts are govern by certain statutes, in particular but not limited to §5-22-1 and §5-22-2. As noted in §5-22-1(c) any construction project in excess of \$25,000 shall be based upon competitive bids. Any notice or solicitation for competitive bids shall, at a minimum, be listed on the county website so that qualified vendors may obtain bid specifications and/or other bid information and a notice placed as a Class II legal ad in a newspaper of general circulation in the county. In addition, such projects may require staff to solicit for architectural and/or engineering services in compliance with the governing statutes as outlined below.

Any construction project of less than \$25,000 that requires action, for whatever reason, before the next regular or special meeting of the Harrison County Commission may proceed based upon the approval of the Director of Building Maintenance & Grounds and the County Administrator.

Architectural & Engineering Service

The procurement of architectural and engineering services for construction projects is based upon the submission of an expression of interest by qualified firms to the Harrison County Commission. The Harrison County Commission will solicit or comply with the governing statute in the procurement of such services. The selection process where total project costs are estimated to cost \$250,000 or more is controlled by §5G-1-3 and projects where total costs are estimated to cost less than \$250,000 are controlled by §5G-1-4. The Harrison County Commission will comply with the applicable statute for projects requiring such services.

Approved and adopted by the Harrison County Commission on the 6th day of March, 2019.

Ronald R. Watson

President

Patsy S. Trecoast, II

Commissioner

David L. Hinkle

Commissioner

Original executed copy on file with the Harrison County Commission.

Appendix - Statutory References

The following sections of the West Virginia Code are reproduced for reference, as cited in the purchasing policy above: §7-1-11, §5A-1-1, §5-22-1, §5-22-2, §5G-1-3, and §5G-1-4.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-11. Purchasing in open market or competitive bids; debarment.

(a) County commissions may make a purchase of commodities and printing of \$15,000 or less in amount in the open market, but a purchase of and contract for commodities and printing over \$15,000 shall be based on competitive bids, except in case of emergency.

(b) The county commission of any county is authorized and empowered to promulgate rules governing the procedure of competitive bids: Provided, That a vendor who has been debarred pursuant to the provisions of sections thirty-three-a through thirty-three-f, article three, chapter five-a of this code, may not bid on or be awarded a contract under this section.

(c) As used in this section, the terms “commodities” and “printing” shall have the same meaning as those terms are defined in section one, article one, chapter five-a of this code.

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 1. DEPARTMENT OF ADMINISTRATION.

§5A-1-1. Definitions.

For the purpose of this chapter:

(1) “Commodities” means supplies, material, equipment and any other articles or things used by or furnished to a department, agency or institution of state government.

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

(3) “Debarment” means the exclusion of a vendor from the right to bid on contracts to sell goods or supply services to the state or its subdivisions for a specified period of time.

(4) “Director” means the director of the division referred to in the heading of the article in which the word appears.

(5) “Electronic” means electrical, digital, magnetic, optical, electromagnetic or any other similar technology.

(6) “Electronic transmission” or “electronically transmitted” means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval and reproduction of information by the recipient.

- (7) “Expendable commodities” means those 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.
- (8) “Grant” means the furnishing of assistance, financial or otherwise, to any person or entity to support a program authorized by law.
- (9) “Nonprofit workshops” means an establishment: (A) Where any manufacture or handiwork is carried on; (B) which is operated either by a public agency or by a cooperative or by a nonprofit private corporation or nonprofit association in which no part of the net earnings thereof inures, or may lawfully inure, to the benefit of any private shareholder or individual; (C) which is operated for the primary purpose of providing remunerative employment to blind or severely disabled persons who cannot be absorbed into the competitive labor market; and (D) which shall be approved, as evidenced by a certificate of approval, by the State Board of Vocational Education, Division of Vocational Rehabilitation.
- (10) “Printing” means printing, binding, ruling, lithographing, engraving and other similar services.
- (11) “Procurement” means the buying, purchasing, renting, leasing or otherwise obtaining of commodities or services.
- (12) “Public funds” means funds of any character, including federal moneys, belonging to or in the custody of any state spending unit.
- (13) “Record” means information that is inscribed on a read-only tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (14) “Removable property” means any personal property not permanently affixed to or forming a part of real estate.
- (15) “Request for quotations” means a solicitation for a bid where cost is the primary factor in determining the award.
- (16) “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.
- (17) “Responsive bidder” means a vendor who has submitted a bid which conforms in all material respects to the bid solicitation.
- (18) “Secretary” means the Secretary of Administration.
- (19) “Services” means 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.
- (20) “Spending officer” means the executive head of a spending unit, or a person designated by him or her.
- (21) “Spending unit” means a department, bureau, department, division, office, board commission, authority, agency or institution of the state government for which an appropriation is requested of the Governor, or to which an appropriation is made by the Legislature, unless a specific exemption from this chapter is provided in this code.
- (22) “The state and its subdivisions” means the State of West Virginia, every political subdivision thereof, every administrative entity that includes such a subdivision, all municipalities and all county boards of education.
- (23) “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.

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 22. GOVERNMENT CONSTRUCTION CONTRACTS.

§5-22-1. Bidding required; government construction contracts to go to lowest qualified responsible bidder; procedures to be followed in awarding government construction projects; penalties for violation of procedures and requirements debarment; exceptions.

(a) This section and the requirements in this section may be referred to as the West Virginia Fairness in Competitive Bidding Act.

(b) As used in this section:

(1) "Lowest qualified responsible bidder" means the bidder that bids the lowest price and that meets, at a minimum, all the following requirements in connection with the bidder's response to the bid solicitation. The bidder shall certify that it:

(A) Is ready, able, and willing to timely furnish the labor and materials required to complete the contract;

(B) Is in compliance with all applicable laws of the State of West Virginia; and

(C) Has supplied a valid bid bond or other surety authorized or approved by the contracting public entity.

(2) "The state and its subdivisions" means the State of West Virginia, every political subdivision thereof, every administrative entity that includes such a subdivision, all municipalities, and all county boards of education.

(3) "State spending unit" means a department, agency, or institution of the state government for which an appropriation is requested, or to which an appropriation is made by the Legislature.

(4) "Alternates" means any additive options or alternative designs included in a solicitation for competitive bids that are different from and priced separately from what is included in a base bid.

(5) "Construction project" means a specifically identified scope of work involving the act, trade, or process of building, erecting, constructing, adding, repairing, remodeling, rehabilitating, reconstructing, altering, converting, improving, expanding, or demolishing of a building, structure, facility, road, or highway. Repair and maintenance of existing public improvements that are recurring or ongoing in nature and that are not fully identified or known at any one time shall be considered a construction project and procured according to this article on an open-ended basis, so long as the work to be performed under the contract falls into a generally accepted single class, or type, and bidders are notified of the open-ended nature of the work in the solicitation: Provided, That no open-ended repair or maintenance contract may exceed \$500,000.

(c) The state and its subdivisions shall, except as provided in this section, solicit competitive bids for every construction project exceeding \$25,000 in total cost.

(1) If a solicitation contains a request for any alternates, the alternates shall be listed numerically in the order of preference in the solicitation.

(2) A vendor who has been debarred pursuant to §5A-3-33b through §5A-3-33f of this code, may not bid on or be awarded a contract under this section.

(d) All bids submitted pursuant to this chapter shall include a valid bid bond or other surety as approved by the State of West Virginia or its subdivisions.

(e) Following the solicitation of bids, the construction contract shall be awarded to the lowest qualified responsible bidder who shall furnish a sufficient performance and payment bond. The state and its subdivisions may reject all bids and solicit new bids on the project.

(f) Any solicitation of bids shall include no more than five alternates. Alternates, if accepted, shall be accepted in the order in which they are listed on the bid form. Any unaccepted alternate contained within a bid shall expire 90 days after the date of the opening of bids for review. Determination of the lowest qualified responsible bidder shall be based on the sum of the base bid and any alternates accepted.

(g) The apparent low bidder on a contract valued at more than \$250,000 for the construction, alteration, decoration, painting, or improvement of a new or existing building or structure with a state spending unit shall submit a list of all subcontractors who will perform more than \$25,000 worth of work on the project including labor and materials. This section does not apply to other construction projects such as highway, mine reclamation, water, or sewer projects. The list shall include the names of the bidders and the license numbers as required by §21-11-1 et seq. of this code. This information shall be provided to the state spending unit within one business day of the opening of bids for review prior to the awarding of a construction contract. If the apparent low bidder fails to submit the subcontractor list, the spending unit shall promptly request by telephone and electronic mail that the low bidder and second low bidder provide the subcontractor list within one business day of the request. Failure to submit the subcontractor list within one business day of receiving the request shall result in disqualification of the bid. A subcontractor list may not be required if the bidder provides notice in the bid submission or in response to a request for a subcontractor list that no subcontractors who will perform more than \$25,000 worth of work will be used to complete the project.

(h) Written approval must be obtained from the state spending unit before any subcontractor substitution is permitted. Substitutions are not permitted unless:

(1) The subcontractor listed in the original bid has filed for bankruptcy;

(2) The state spending unit refuses to approve a subcontractor in the original bid because the subcontractor is under a debarment pursuant to §5A-3-33d of this code or a suspension under §5A-3-32 of this code; or

(3) The contractor certifies in writing that the subcontractor listed in the original bill fails, is unable, or refuses to perform the subcontract.

(i) The contracting public entity may not award the contract to a bidder which fails to meet the minimum requirements set out in this section. As to a prospective low bidder which the contracting public entity determines not to have met one or more of the requirements of this section or other requirements as determined by the public entity in the written bid solicitation, prior to the time a contract award is made, the contracting public entity shall document in writing and in reasonable detail the basis for the determination and shall place the writing in the bid file. After the award of a bid under this section, the bid file of the contracting public agency and all bids submitted in response to the bid solicitation shall be open and available for public inspection.

(j) The contracting public entity shall not award a contract pursuant to this section to any bidder that is known to be in default on any monetary obligation owed to the state or a political subdivision of the state, including,

but not limited to, obligations related to payroll taxes, property taxes, sales and use taxes, fire service fees, or other fines or fees. Any governmental entity may submit to the Division of Purchasing information which identifies vendors that qualify as being in default on a monetary obligation to the entity. The contracting public entity shall take reasonable steps to verify whether the lowest qualified responsible bidder is in default pursuant to this subsection prior to awarding a contract.

(k) A public official or other person who individually or together with others knowingly makes an award of a contract under this section in violation of the procedures and requirements of this section is subject to the penalties set forth in §5A-3-29 of this code.

(l) No officer or employee of this state or of a public agency, public authority, public corporation, or other public entity and no person acting or purporting to act on behalf of an officer or employee or public entity may require that a performance bond, payment bond, or surety bond required or permitted by this section be obtained from a particular surety company, agent, broker, or producer.

(m) All bids shall be open in accordance with the provisions of §5-22-2 of this code, except design-build projects which are governed by §5-22A-1 et seq. of this code and are exempt from these provisions.

(n) Nothing in this section applies to:

(1) Work performed on construction or repair projects by regular full-time employees of the state or its subdivisions;

(2) Prevent students enrolled in vocational educational schools from being utilized in construction or repair projects when the use is a part of the student's training program;

(3) Emergency repairs to building components, systems, and public infrastructure. For the purpose of this subdivision, the term "emergency repairs" means repairs that if not made immediately will seriously impair the use of building components, systems, and public infrastructure or cause danger to persons using the building components, systems, and public infrastructure; and

(4) A situation where the state or subdivision thereof reaches an agreement with volunteers, or a volunteer group, in which the governmental body will provide construction or repair materials, architectural, engineering, technical, or other professional services, and the volunteers will provide the necessary labor without charge to, or liability upon, the governmental body.

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 22. GOVERNMENT CONSTRUCTION CONTRACTS.

§5-22-2. Designation of time and place for opening of bids; right to reject or withdraw bid; bid resubmission.

(a) The public entity accepting public contract bids shall, in its resolution providing for the contract or purchase and for the advertisement for bids, designate the time and place that the bids will be received and shall at that time and place publicly open the bids and read them aloud. No public entity may accept or take any bid, including receiving any hand delivered bid, after the time advertised to take bids. No bid may be opened on days which are recognized as holidays by the United States postal service. No public entity may accept or consider any bids that do not contain a valid bid bond or other surety approved by the State of West Virginia or its subdivisions.

(b) The provisions and requirements of this section, section one of article twenty-two of this chapter, the requirements stated in the advertisement for bids and the requirements on the bid form may not be waived by any public entity. The public entity may only reject an erroneous bid after the opening 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 public entity involved, other than losing an opportunity to receive construction projects at a reduced cost; and (4) enforcement of the bid in error would be unconscionable. If a public entity rejects a bid, it shall maintain a file of documented evidence demonstrating that all the conditions set forth in this subdivision existed. If the public entity determines the bid to be erroneous, the public entity shall return the bid security to the contractor.

(c) A contractor who withdraws a bid under the provisions of this section may not resubmit a bid on the same project. If the bid withdrawn is the lowest bid, the next lowest bid may be accepted.

CHAPTER 5G. PROCUREMENT OF ARCHITECT-ENGINEER SERVICES BY STATE AND ITS SUBDIVISIONS.**ARTICLE 1. PROCUREMENT OF ARCHITECT-ENGINEER SERVICES.****§5G-1-3. Contracts for architectural and engineering services; selection process where total project costs are estimated to cost \$250,000 or more.**

In the procurement of architectural and engineering services for projects estimated to cost \$250,000 or more, the director of purchasing shall encourage firms engaged in the lawful practice of the profession to submit an expression of interest, which shall include a statement of qualifications and performance data, and may include anticipated concepts and proposed methods of approach to the project. All jobs shall be announced by public notice published as a Class II legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code. A committee of three to five representatives of the agency initiating the request shall evaluate the statements of qualifications and performance data and other material submitted by interested firms and select three firms which, in their opinion, are best qualified to perform the desired service: Provided, That if such circumstances exist, such that seeking competition could result in a compromise to public safety, significantly increase costs, or an extended interruption of essential services, the agency may, with the prior approval of the director of purchasing, select a firm on the basis of previous satisfactory performance and knowledge of the agency's facilities and needs: Provided, however, That on projects funded, wholly or in part, by School Building Authority moneys, in accordance with §18-9D-15 and §18-9D-16 of this code, two of said three firms shall have had offices within this state for a period of at least one year prior to submitting an expression of interest regarding a project funded by School Building Authority moneys. Interviews with each firm selected shall be conducted and the committee shall conduct discussions regarding anticipated concepts and proposed methods of approach to the assignment. The committee shall then rank, in order of preference, no less than three professional firms deemed to be the most highly qualified to provide the services required, and shall commence scope of service and price negotiations with the highest qualified professional firm for architectural or engineering services or both. Should the agency be unable to negotiate a satisfactory contract with the professional firm considered to be the most qualified, at a fee determined to be fair and reasonable, price negotiations with the firm of second choice shall commence. Failing accord with the second most qualified professional firm, the committee shall undertake price negotiations with the third most qualified professional firm. Should the agency be unable to negotiate a satisfactory contract with any of the selected professional firms, it shall select additional professional firms in order of their competence and qualifications and it shall continue negotiations in accordance with this section until an agreement is reached: Provided further, That county boards of education may either elect to start the selection process over in the original order of preference, or it may select additional professional firms in order of their competence and qualifications, and it shall continue negotiations in accordance with this section until an agreement is reached: And provided further, That for any water or wastewater construction project the engineering design and construction inspection costs may not exceed the amount calculated pursuant to the compensation curves for consulting engineering services based upon project construction costs published by the American Society of Civil Engineers manual of practice, unless granted a variance by the Infrastructure and Jobs Development Council established pursuant to §31-15A-1 et seq. of this code.

CHAPTER 5G. PROCUREMENT OF ARCHITECT-ENGINEER SERVICES BY STATE AND ITS SUBDIVISIONS.

ARTICLE 1. PROCUREMENT OF ARCHITECT-ENGINEER SERVICES.

§5G-1-4. Contracts for architectural and engineering services; selection process where total project costs are estimated to cost less than \$250,000; division of highways procurements.

(a) In the procurement of architectural and engineering services for projects estimated to cost less than \$250,000, competition shall be sought by the agency. The agency shall conduct discussions with three or more professional firms solicited on the basis of known or submitted qualifications for the assignment prior to the awarding of any contract: Provided, That if a judgment is made that special circumstances exist and that seeking competition is not practical, the agency may, with the prior approval of the director of purchasing, select a firm on the basis of previous satisfactory performance and knowledge of the agency's facilities and needs. After selection, the agency and firm shall develop the scope of services required and negotiate a contract.

(b) The Division of Highways may procure the services of architectural and engineering firms under the provisions of this section in an amount not to exceed \$750,000 for the services per project.