# WEST VIRGINIA CODE: §29-22B-1107

**§29-22B-1107. Bidding process.**

(a) Bids for issuance of permits shall be obtained by public notice published as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code.

(b) The second publication of the notice shall appear more than 60 days next preceding the final day for submitting bids.

(c) Each bid shall indicate the number of video lottery terminals for which the permit is sought. The bid shall state the amount bid for each video lottery terminal for which the permit is sought.

(d) No bid may be altered or withdrawn after the appointed hour for the opening of the bids.

(e) Subject to the provisions of subsection (f) of this section, permits shall be awarded to the persons submitting the highest per terminal bids, except that no person may be authorized to directly or indirectly own or lease more than seven and one-half percent of the total number of video lottery terminals authorized in §29-22B-1101 of this code. If a high bidder already holds a permit issued under this section, the bid shall be awarded to that bidder, but only to the extent the total number of video lottery terminals the operator or limited video lottery retailer is authorized to directly or indirectly own or lease does not exceed seven and one-half percent of the number of video lottery terminals authorized for the entire state specified in §29-22B-1101 of this code.

(f) No bid may be considered unless the bond required by §29-22B-1109 of this code accompanies the bid or was submitted to the State Treasurer before the time designated for opening of the bid.

(g) No bid may be considered unless the amount of the bid equals or exceeds the minimum bid amount for a video lottery terminal specified by the commission.

(h) All bids for a permit may be rejected by the commission if the commission determines that the bids are inadequate. In this event, the director shall begin anew the bidding process for the permits.

(i) Whenever there are two or more bids of the same dollar amount and the number of authorizations for which the bids were submitted exceeds the number of authorizations still available to fill the bids, the director shall award the permit based upon the drawing of lots among the bidders.

(j) A person submitting a bid under this article shall deliver one copy to the Director of Purchasing of the Purchasing Division within the Department of Administration. The bid must be received at the designated office location prior to the specified date and time of the

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bid opening.

(k) The failure to deliver or the nonreceipt of the bid forms at the designated office location prior to the appointed date and hour are grounds for rejection of the bid.

(l) After the award of a permit, the Director of the Lottery shall indicate upon the successful bid that it was the successful bid and the number of video lottery terminals for which a permit is awarded to the bidder. This shall be the number of video lottery terminals for which the bid was submitted, or the remaining number of video lottery terminals to be awarded when the number of video lottery terminals remaining is less than the number of terminals for which the bid was submitted. Thereafter, a copy of the bid and the bidder's application for an operator's license or a limited video lottery retailer license shall be maintained as a public record at the commissions' offices and shall be open to public inspection during its normal business hours. These documents may not be destroyed without the prior written consent of the Legislative Auditor.

(m) Prior to issuing a permit to a successful bidder, the bid price for the number of video lottery terminals authorized in the permit plus the amount of the operator's annual license fee or the limited video lottery retailer's annual license fee for the first license year, as specified in §29-22B-518 of this code shall be paid to the commission by money order, certified check or cashier's check. If the operator's annual license fee or the limited video lottery retailer's license fee was paid for the current license year before the due date of the bid amount, the license fee may not be collected a second time for the same license year. The amount paid shall be deposited into the fund established in §29-22-18a of this code.

(n) All permits shall be signed by the Director of the Lottery in the name of the state.

(o) If the successful bidder fails to pay to the commission the bid price and the operator's annual license fee or the limited video lottery retailer's license fee for the first license year, at the time specified by the commission, the bond provided for in §29-22B-1109 of this code shall be forfeited and the bidder may not be issued the permit.

(p) In the event of a default, as provided in subsection (h) of this section, the commission shall then issue the permit to the next highest bidder for video lottery terminals, or reject all remaining bids and start anew the bidding procedure for the remaining number of video lottery terminals.

(q) If after a permit is awarded, an operator or limited video lottery retailer surrenders the permit, in whole or in part, or the permit is revoked or canceled by operation of law, the commission may seek bids for video lottery terminals for which authorization was surrendered or revoked, subject to the limitations and requirements of this article.

(r) During the fiscal year of the state ending June 30, 2011, the commission shall seek bids for the 10-year period beginning July 1, 2011, and ending June 30, 2021.

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(s) For all bids conducted subsequent to June 30, 2011, the commission shall give a priority preference, to allow current permit holders to acquire permits which are held by those permit holders at the minimum stated bid price before those permits are made available for bid to other applicants.

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