WEST VIRGINIA CODE: §5A-3-11A

§5A-3-11a. Negotiation when all bids exceed budget in requisition.

(a) Spending units shall include the maximum budgeted amount available for each purchase in a requisition submitted to the Purchasing Division. No person may disclose this maximum budgeted amount to any vendor prior to the award of a contract. If all bids submitted pursuant to a solicitation exceed the funds available for the purchase, then a negotiated award may be made as set forth in this section.

(1) If the director determines in writing that there is only one responsive and responsible bidder, he or she may negotiate the price for a noncompetitive award or the specifications for a noncompetitive award based solely on the original purpose of the solicitation.

(2) If the Purchasing Division solicits bids with a request for quotation and there is more than one bidder, the director may negotiate with bidders determined in writing to be responsive and responsible, based on criteria contained in the bid invitation: Provided, That the director must negotiate first with the lowest bidder. If the director does not award the bid to the lowest bidder, he or she may close negotiations with that bidder and enter into negotiations with the next lowest bidder, and may continue to do so in like manner with the remaining responsive and responsible bidders. The director may not extend an offer to any bidder that is not first extended to the prior bidders in order of rank.

(3) If the Purchasing Division solicits bids utilizing a best value procurement, as set forth in section ten-b of this section, and there is more than one bidder, the director may negotiate with bidders determined in writing to be responsive and responsible, based on criteria contained in the bid invitation: Provided, That the director must negotiate first with the highest scoring bidder. If the director does not award the bid to the highest scoring bidder, he or she may close negotiations with that bidder and enter into negotiations with the next highest scoring bidder, and may continue to do so in like manner with the remaining responsive and responsible bidders. The director may not extend an offer to any bidder that is not first extended to the prior bidders in order of rank.

(b) After negotiations occur pursuant to subsection (a) of this section, if the director determines that more than fifteen percent of the value of the bid must be renegotiated by revising the specifications of the original solicitation, only a resolicitation may be initiated or the solicitation may be withdrawn.

(c) The director may not renegotiate with any bidder after closing negotiations with that bidder and entering into negotiations with the next bidder.

WV Legislature