WEST VIRGINIA CODE: §5a-3-10E

§5A-3-10e. Prequalification agreement; agency-delegated bidding.

(a) Subject to the limitations of this section, the director may permit spending units to procure commodities and services from a preapproved vendor through a prequalification agreement and delegated prequalification bidding if the director determines the process is fair, economical, and in the best interests of the state.

(b) Definitions. — For purposes of this section:

"Prequalification agreement" means an agreement, having a term of no more than three years, between the Purchasing Division and at least two prequalified vendors authorizing a spending unit to purchase a commodity or service on a recurrent basis through the delegated prequalification bidding process defined in the prequalification agreement.

"Prequalified vendor" means a "vendor", as that term is defined in §5A-1-1 *et seq*. of this code, that has entered into a prequalification agreement with the Purchasing Division and may participate in the delegated prequalification bidding subject to the terms and conditions of the prequalification agreement.

"Delegated prequalification bidding" means the competitive bidding process whereby the prequalified vendors that are parties to a prequalification agreement may submit sealed bids directly to spending units to provide a commodity or service identified in the prequalification agreement subject to the limitations set forth in this section.

(c) Prequalification agreement. —

(1) For each prequalification agreement, the director shall set forth the requirements, technical or otherwise, under which a vendor may be qualified to supply a commodity or service through the delegated prequalification bidding. For each prequalification agreement, the director shall follow the notice and advertising requirements set forth in §5A-3-10 of this code.

(2) A prequalification agreement may authorize the delegated prequalification bidding for only one type of commodity or service.

(3) A vendor may submit information to the director to establish that it meets the requirements set forth in the prequalification agreement.

(4) If the director determines that a vendor meets the requirements set forth in the prequalification agreement, the vendor may enter into the prequalification agreement as a prequalified vendor.

(d) Delegated prequalification bidding procedures. —

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(1) A spending unit may commence the delegated prequalification bidding process by issuing a request for a commodity or service identified in the prequalification agreement stating in the request the quantity of the commodity or if a service, the scope of work to be completed, to be procured.

(2) The prequalified vendor that submits the lowest bid, or if the solicitation is a best value procurement, the highest scoring responsive and responsible bidder when evaluating all factors in the best value procurement, in response to the request shall be awarded the procurement: *Provided*, That the solicitation for a best value procurement include the scoring criteria and all factors used to determine the highest scoring responsive and responsible bidder when the procurement request is released.

(3) The delegated prequalification bidding may not be utilized for any request for commodities or services anticipated to cost more than $1 million, unless approved in writing by the Director of the Purchasing Division. The state may not issue a series of orders each anticipated to cost less than $1 million to circumvent the monetary limitation in this subsection. The limit expressed herein applies to each delegated prequalification bid conducted pursuant to the prequalification agreement and not to total spending under the prequalification agreement.

(e) Rule-making authority. — The Director of the Purchasing Division shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code to implement this section, including, but not limited to, provisions to establish procedures for the solicitation and authorization of prequalification agreements, prequalification of vendors, and implementation of delegated prequalification bidding.

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