



1                   **penalties for violation of procedures and requirements**  
2                   **debarment; exceptions.**

3           (a) This section and the requirements ~~set forth~~ in this  
4 section may be referred to as the West Virginia Fairness In  
5 Competitive Bidding Act.

6           (b) As used in this section:

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

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

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

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

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

21           (c) The state and its subdivisions shall, except as provided  
22 in this section, solicit competitive bids for every construction  
23 project exceeding \$25,000 in total cost. ~~Provided, That~~ A vendor

1 who has been debarred pursuant to the provisions of sections  
2 thirty-three-a through thirty-three-f, inclusive, article three,  
3 chapter five-a of this code may not bid on or be awarded a contract  
4 under this section. All bids submitted pursuant to this chapter  
5 shall include a valid bid bond or other surety as approved by the  
6 State of West Virginia or its subdivisions.

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

12 (e) The apparent low bidder on a contract for the  
13 construction, alteration, decoration, painting or improvement of a  
14 new or existing building or structure ~~with the Department of~~  
15 ~~Administration, Division of Purchasing,~~ valued at more than  
16 ~~\$500,000.00~~ \$100,000 shall submit a list of all subcontractors who  
17 will perform more than \$25,000 of work on the project including  
18 labor and materials. ~~Provided, That this section shall not apply to~~  
19 ~~any other construction projects, such as~~ This section does not  
20 apply to other construction projects such as highway, mine  
21 reclamation, water or sewer projects. The list shall include the  
22 names of the bidders and the license numbers as required by article  
23 eleven, chapter twenty-one of this code. This information shall be

1 provided to the ~~Division of Purchasing~~ contracting public entity  
2 within one business day of the opening of bids for review prior to  
3 the awarding of a construction contract. If no subcontractors are  
4 to be used to complete the project, it will be ~~so~~ noted on the  
5 subcontractor list. Failure to submit the subcontractor list  
6 within one business day after the deadline for submitting bids  
7 shall result in disqualification of the bid.

8 (f) Written approval must be obtained from the ~~Division of~~  
9 ~~Purchasing~~ contracting public entity before any subcontractor  
10 substitution is permitted. Substitutions are not permitted unless:

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

13 (2) The ~~Division of Purchasing~~ contracting public entity  
14 refuses to approve a subcontractor in the original bid because the  
15 subcontractor is under a debarment pursuant to section thirty-  
16 three-d, article three, chapter five-a of this code or a suspension  
17 under section thirty-two, article three, chapter five-a of this  
18 code; or

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

22 ~~(g) The amendments to this section made during the 2012~~  
23 ~~regular session of the Legislature shall expire one year from the~~

1 ~~effective date of the amendments absent further action of the~~  
2 ~~Legislature.~~

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

15       ~~(i)~~ (h) ~~Any~~ A public official or other person who individually  
16 or together with others knowingly makes an award of a contract  
17 under this section in violation of the procedures and requirements  
18 of this section is subject to the penalties set forth in section  
19 twenty-nine, article three, chapter five-a of the Code of West  
20 Virginia.

21       ~~(j)~~ (i) No officer or employee of this state or of ~~any~~ a  
22 public agency, public authority, public corporation or other public  
23 entity and no person acting or purporting to act on behalf of ~~such~~

1 an officer or employee or public entity shall require that ~~any~~ a  
2 performance bond, payment bond or surety bond required or permitted  
3 by this section be obtained from ~~any~~ a particular surety company,  
4 agent, broker or producer.

5 ~~(k)~~ (j) All bids shall be open in accordance with the  
6 provisions of section two of this article except design-build  
7 projects which are governed by article twenty-two-a of this chapter  
8 and are exempt from these provisions.

9 ~~(l)~~ (k) Nothing in this section ~~shall apply~~ applies to:

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

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

15 (3) Emergency repairs to building components and systems. For  
16 the purpose of this subdivision, the term emergency repairs means  
17 repairs that if not made immediately will seriously impair the use  
18 of building components and systems or cause danger to ~~those~~ persons  
19 using the building components and systems; and

20 (4) ~~Any~~ A situation where the state or ~~a subdivision thereof~~  
21 subdivision reaches an agreement with volunteers or a volunteer  
22 group ~~whereby~~ in which the governmental body will provide  
23 construction or repair materials, architectural, engineering,

1 technical or ~~any~~ other professional services and the volunteers  
2 will provide the necessary labor without charge to, or liability  
3 upon, the governmental body.

NOTE: The purpose of this bill is to lower the threshold amount, from \$500,000 to \$100,000, for triggering a low bidder's duty to submit list of subcontractors on government contracts.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.