

1 **Senate Bill No. 238**

2 (By Senator Yost)

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4 [Introduced January 8, 2014; referred to the Committee on Labor;
5 and then to the Committee on Government Organization.]

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10 A BILL to amend and reenact §5-22-1 of the Code of West Virginia,
11 1931, as amended, relating to the West Virginia Fairness in
12 Competitive Bidding Act; and lowering the threshold amount,
13 from \$250,000 to \$100,000, for triggering a low bidder's duty
14 to submit list of subcontractors on government contracts.

15 *Be it enacted by the Legislature of West Virginia:*

16 That §5-22-1 of the Code of West Virginia, 1931, as amended,
17 be amended and reenacted to read as follows:

18 **ARTICLE 22. GOVERNMENT CONSTRUCTION CONTRACTS.**

19 **§5-22-1. Bidding required; government construction contracts to go**
20 **to lowest qualified responsible bidder; procedures to**
21 **be followed in awarding government construction**
22 **projects; penalties for violation of procedures and**

1 **requirements debarment; exceptions.**

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

5 (b) As used in this section:

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

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

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

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

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

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

23 (c) The state and its subdivisions shall, except as provided

1 in this section, solicit competitive bids for every construction
2 project exceeding \$25,000 in total cost. A vendor who has been
3 debarred pursuant to the provisions of sections thirty-three-b
4 through thirty-three-f, inclusive, article three, chapter five-a of
5 this code may not bid on or be awarded a contract under this
6 section. All bids submitted pursuant to this chapter shall include
7 a valid bid bond or other surety as approved by the State of West
8 Virginia or its subdivisions.

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

14 (e) The apparent low bidder on a contract valued at more than
15 ~~\$250,000~~ \$100,000 for the construction, alteration, decoration,
16 painting or improvement of a new or existing building or structure
17 with a state spending unit shall submit a list of all
18 subcontractors who will perform more than \$25,000 of work on the
19 project including labor and materials. This section does not apply
20 to other construction projects such as highway, mine reclamation,
21 water or sewer projects. The list shall include the names of the
22 bidders and the license numbers as required by article eleven,
23 chapter twenty-one of this code. This information shall be

1 provided to the state spending unit within one business day of the
2 opening of bids for review prior to the awarding of a construction
3 contract. If no subcontractors who will perform more than \$25,000
4 of work are to be used to complete the project it will be noted on
5 the 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 state spending
9 unit before any subcontractor substitution is permitted.
10 Substitutions are not permitted unless:

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

13 (2) The state spending unit refuses to approve a subcontractor
14 in the original bid because the subcontractor is under a debarment
15 pursuant to section thirty-three-d, article three, chapter five-a
16 of this code or a suspension under section thirty-two, article
17 three, chapter five-a of this code; or

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

21 (g) The contracting public entity may not award the contract
22 to a bidder which fails to meet the minimum requirements set out in
23 this section. As to a prospective low bidder which the contracting

1 public entity determines not to have met one or more of the
2 requirements of this section or other requirements as determined by
3 the public entity in the written bid solicitation, prior to the
4 time a contract award is made, the contracting public entity shall
5 document in writing and in reasonable detail the basis for the
6 determination and shall place the writing in the bid file. After
7 the award of a bid under this section, the bid file of the
8 contracting public agency and all bids submitted in response to the
9 bid solicitation shall be open and available for public inspection.

10 (h) A public official or other person who individually or
11 together with others knowingly makes an award of a contract under
12 this section in violation of the procedures and requirements of
13 this section is subject to the penalties set forth in section
14 twenty-nine, article three, chapter five-a of the Code of West
15 Virginia.

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

23 (j) All bids shall be open in accordance with the provisions

1 of section two of this article, except design-build projects which
2 are governed by article twenty-two-a of this chapter and are exempt
3 from these provisions.

4 (k) Nothing in this section applies to:

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

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

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

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

NOTE: The purpose of this bill is to lower the threshold
amount, from \$250,000 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.