

Senate Bill No. 44

(By Senator Yost)

[Introduced January 14, 2015; referred to the Committee on Labor; and then to the Committee on Government Organization.]

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. GOVERNMENT CONSTRUCTION CONTRACTS.

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

(a) This section and the requirements in this section may be referred to as the West Virginia

1 Fairness In Competitive Bidding Act.

2 (b) As used in this section:

3 (1) “Lowest qualified responsible bidder” means the bidder that bids the lowest price and that
4 meets, as a minimum, all the following requirements in connection with the bidder’s response to the
5 bid solicitation. The bidder must certify that it:

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

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

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

11 (2) “The state and its subdivisions” means the State of West Virginia, every political
12 subdivision thereof, every administrative entity that includes such a subdivision, all municipalities
13 and all county boards of education.

14 (3) “State spending unit” means a department, agency or institution of the state government
15 for which an appropriation is requested, or to which an appropriation is made by the Legislature.

16 (c) The state and its subdivisions shall, except as provided in this section, solicit competitive
17 bids for every construction project exceeding \$25,000 in total cost. A vendor who has been debarred
18 pursuant to the provisions of sections thirty-three-b through thirty-three-f, inclusive, article three,
19 chapter five-a of this code may not bid on or be awarded a contract under this section. All bids
20 submitted pursuant to this chapter shall include a valid bid bond or other surety as approved by the
21 State of West Virginia or its subdivisions.

22 (d) Following the solicitation of bids, the construction contract shall be awarded to the lowest

1 qualified responsible bidder who shall furnish a sufficient performance and payment bond. The state
2 and its subdivisions may reject all bids and solicit new bids on the project.

3 (e) The apparent low bidder on a contract valued at more than ~~\$250,000~~ \$100,000 for the
4 construction, alteration, decoration, painting or improvement of a new or existing building or
5 structure with a state spending unit shall submit a list of all subcontractors who will perform more
6 than \$25,000 of work on the project including labor and materials. This section does not apply to
7 other construction projects such as highway, mine reclamation, water or sewer projects. The list
8 shall include the names of the bidders and the license numbers as required by article eleven, chapter
9 twenty-one of this code. This information shall be provided to the state spending unit within one
10 business day of the opening of bids for review prior to the awarding of a construction contract. If
11 no subcontractors who will perform more than \$25,000 of work are to be used to complete the
12 project it will be noted on the subcontractor list. Failure to submit the subcontractor list within one
13 business day after the deadline for submitting bids shall result in disqualification of the bid.

14 (f) Written approval must be obtained from the state spending unit before any subcontractor
15 substitution is permitted. Substitutions are not permitted unless:

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

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

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

22 (g) The contracting public entity may not award the contract to a bidder which fails to meet

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

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

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

17 (j) All bids shall be open in accordance with the provisions of section two of this article,
18 except design-build projects which are governed by article twenty-two-a of this chapter and are
19 exempt from these provisions.

20 (k) Nothing in this section applies to:

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

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

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

7 (4) A situation where the state or subdivision thereof reaches an agreement with volunteers,
8 or a volunteer group, in which the governmental body will provide construction or repair materials,
9 architectural, engineering, technical or other professional services and the volunteers will provide
10 the necessary labor 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.