

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 413

BY SENATOR BLAIR

[Introduced February 23, 2017; Referred
to the Committee on Government Organization]

1 A BILL to amend and reenact §5-22-1 of the Code of West Virginia, 1931, as amended, relating
 2 to bidding on government construction contracts; limiting number of alternate bids on
 3 government construction contracts; and setting forth procedures for consideration of
 4 alternate bids.

Be it enacted by the Legislature of West Virginia:

1 That §5-22-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted
 2 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.

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

3 (b) As used in this section:

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

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

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

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

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

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

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

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

27 (e) Any proposal shall include no more than three alternates. An alternate bid by any name
28 is still an alternate. Alternates, if accepted, shall be accepted in the order in which they are listed
29 on the bid form. Determination of the low bidder shall be on the basis of the sum of the base bid
30 and any alternates accepted. However, the public entity shall reserve the right to accept alternates
31 in any order which does not affect determination of the low bidder.

32 ~~(e)~~ (f) The apparent low bidder on a contract valued at more than \$250,000 for the
33 construction, alteration, decoration, painting or improvement of a new or existing building or
34 structure with a state spending unit shall submit a list of all subcontractors who will perform more
35 than \$25,000 of work on the project including labor and materials. This section does not apply to
36 other construction projects such as highway, mine reclamation, water or sewer projects. The list
37 shall include the names of the bidders and the license numbers as required by article eleven,
38 chapter twenty-one of this code. This information shall be provided to the state spending unit
39 within one business day of the opening of bids for review prior to the awarding of a construction
40 contract. If no subcontractors who will perform more than \$25,000 of work are to be used to

41 complete the project it will be noted on the subcontractor list. Failure to submit the subcontractor
42 list within one business day after the deadline for submitting bids shall result in disqualification of
43 the bid.

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

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

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

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

53 ~~(g)~~ (h) The contracting public entity may not award the contract to a bidder which fails to
54 meet the minimum requirements set out in this section. As to a prospective low bidder which the
55 contracting public entity determines not to have met one or more of the requirements of this
56 section or other requirements as determined by the public entity in the written bid solicitation, prior
57 to the time a contract award is made, the contracting public entity shall document in writing and
58 in reasonable detail the basis for the determination and shall place the writing in the bid file. After
59 the award of a bid under this section, the bid file of the contracting public agency and all bids
60 submitted in response to the bid solicitation shall be open and available for public inspection.

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

65 ~~(i)~~ (j) No officer or employee of this state or of a public agency, public authority, public
66 corporation or other public entity and no person acting or purporting to act on behalf of an officer

67 or employee or public entity shall require that a performance bond, payment bond or surety bond
68 required or permitted by this section be obtained from a particular surety company, agent, broker
69 or producer.

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

73 ~~(k)~~ (l) Nothing in this section applies to:

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

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

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

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

NOTE: The purpose of this bill is to limit the number of alternate proposals in bidding for government construction projects; and set forth procedures for consideration of alternate bids.

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