

# **WEST VIRGINIA LEGISLATURE**

**2020 REGULAR SESSION**

**ENROLLED**

**House Bill 4130**

BY DELEGATES D. JEFFRIES AND HANNA

[Passed January 30, 2020; in effect from passage.]



1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section  
2 designated §5-22-1a, relating to competitive bidding for government construction  
3 contracts arising out of declared states of emergency; allowing contracts for construction  
4 projects to be procured through competitive bidding on an open-ended basis as to quantity  
5 or by unit pricing on estimated quantities; allowing the establishment of multiple award  
6 construction contracts; eliminating need for emergency construction contract to specify  
7 the exact location of construction involved in the solicitation for bids; making the  
8 requirement that the entity to whom the contract is awarded furnish payment or  
9 performance bonds discretionary for residential projects; requiring contractor to provide  
10 release of claims before final payment is released if bonds are not required; and making  
11 the award of such contracts subject to other competitive bidding requirements of said  
12 code.

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

**ARTICLE 22. GOVERNMENT CONSTRUCTION CONTRACTS.**

**§5-22-1a. Permitting government construction contracts arising out of declared states of emergency on open-ended quantity or unit price basis; types of contracts allowed for construction projects; specific location of construction project not required in solicitation; certain bonds discretionary; other bidding requirements applicable.**

1 (a) The state, not including its subdivisions, may solicit competitive bids for construction  
2 projects arising out of a state of emergency declared pursuant to §15-5-6 of this code, in a manner  
3 that is open-ended as to quantity only, or for unit prices on estimated quantities, and may also  
4 award contracts to multiple qualified responsible bidders, thereby creating a pool of qualified  
5 responsible bidders, so long as the nature of the contract is fully disclosed in the solicitation in a  
6 way that allows for fair and competitive bidding. The state reserves the right to reject a bid that it  
7 deems to be nonresponsive, a bid from a bidder that is not qualified responsible, as defined in the  
8 first section of this article, or a bid that is higher than the state is willing to pay.

9 (b) If the state creates a pool of qualified responsible bidders, it must first offer work  
10 available to the multiple contract holders to the contract holder identified as the lowest qualified  
11 responsible bidder, and if that vendor is unable or unwilling to perform, then the same work must  
12 be extended to the contract holder identified as the second lowest qualified responsible bidder,  
13 and so on, until the work is either accepted or there are no remaining qualified responsible bidders  
14 holding a contract that are willing to perform the work. If no vendors accept the work, the state  
15 may revise the work and reoffer it to the lowest qualified responsible bidder, then the second  
16 lowest qualified responsible bidder, and so on.

17 (c) Solicitations or contracts under this section are not required to specify the exact  
18 addresses or identify the locations of the construction project, so long as the solicitation and  
19 resulting contract clearly articulate the mechanism by which the exact address or location will be  
20 identified prior to work being performed.

21 (d) For projects limited to the construction or replacement of one or more residential  
22 dwellings or appurtenances, the state agency responsible for overseeing the work may, in its  
23 discretion, choose not to require an entity to whom the contract is awarded to furnish payment or  
24 performance bonds, but only if it clearly indicates in the solicitation for bids that payment or  
25 performance bonds will not be required: *Provided*, That in the event a payment or performance  
26 bond is not required, the entity responsible for the contract shall provide to the state agency  
27 responsible for overseeing the work a document certifying that all of the claims of subcontractors,  
28 laborers, materialmen, and all persons furnishing material have been paid, satisfied, and  
29 discharged before final payment is released.

30 (e) A vendor or contractor that has been debarred pursuant to §5A-3-33f of this code may  
31 not bid on or be awarded a contract under this section.

32 (f) Except where other provisions of this article conflict with the provisions of this section,  
33 the other provisions of this article remain in effect.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....  
*Chairman, House Committee*

.....  
*Chairman, Senate Committee*

Originating in the House.

In effect from passage.

.....  
*Clerk of the House of Delegates*

.....  
*Clerk of the Senate*

.....  
*Speaker of the House of Delegates*

.....  
*President of the Senate*

\_\_\_\_\_

The within ..... this the.....  
day of ....., 2020.

.....  
*Governor*