

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

House Bill 4666

BY DELEGATES BYRD, NELSON, CAPITO, PUSHKIN,

QUEEN, SKAFF, ROWE AND ROHRBACH

[Originating in the Committee on Finance;

February 11, 2020.]

1 A BILL to amend and reenact §8-27-23 of the Code of West Virginia, 1931, as amended, relating
2 to competitive bids for intergovernmental relations and urban mass transportation
3 systems; increasing the contract sum that requires competitive bidding; and providing that
4 competitive bidding is not required by certain urban transit authorities.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 27. INTERGOVERNMENTAL RELATIONS — URBAN MASS
TRANSPORTATION SYSTEMS.**

§8-27-23. Competitive bids; publication of solicitation for sealed bids.

1 (a) Any contract for the construction of facilities by any authority, when the expenditure
2 required exceeds the sum of ~~\$10,000~~ \$25,000, shall be based solely on competitive sealed bids.

3 (b) Except as provided ~~below~~ in subsections (c) or (d) of this section, the procurement of
4 all supplies, equipment and materials, where the expenditure required exceeds the sum of
5 ~~\$10,000~~ \$25,000, shall be based on the competitive procedure that is best suited under the
6 circumstances of the procurement.

7 (c) In determining the competitive bid ~~procedures~~ procedure that is best suited under the
8 circumstances, an authority shall conduct:

9 (1) Competitive sealed bidding if:

10 (A) Time permits a competitive bid process to be used;

11 (B) The award of the bid will be made primarily on price and price-related factors;

12 (C) It is likely to be unnecessary to conduct discussions with suppliers regarding bids,
13 including discussions regarding price; and

14 (D) There is a reasonable expectation of receiving more than one sealed bid; or

15 (2) Competitive negotiation where competitive sealed bidding is not best suited under the
16 circumstances.

17 (d) Notwithstanding the provisions of subsections (b) and (c) of this section, an authority
18 may provide for the procurement of property or services covered by this section using other than
19 competitive procedures only when:

20 (1) The property or services needed are available only from one responsible source and
21 no other type of property or service will satisfy the authority's needs;

22 (2) The authority's need for the property or service is urgent, unusual and compelling
23 because the authority would be seriously injured unless the authority is permitted to limit the
24 number of sources from which it solicits;

25 (3) It is necessary to award a contract to a particular source or sources in order to maintain
26 a facility, producer, manufacturer or other supplier in case of emergency; ~~or~~

27 (4) It is necessary to establish or maintain an alternative source or sources of supply for
28 the property or service to increase or maintain competition; or

29 (5) The authority is using the Federal Transit Authority Third Party Procurement Guidance
30 circular, as may be amended by the Federal Transit Administration, when spending federal
31 appropriations as a designated recipient of 49 U.S.C. §5307 and 49 U.S.C. §5340 - Urbanized
32 Area Formula Appropriations - to finance its procurements or contracts.

33 (e) All sealed bids or competitive negotiated proposals received in response to a
34 solicitation or request for bid may be rejected if an authority determines that the action is in the
35 public interest.

36 (f) Sealed bids shall be opened publicly at the time and place stated in the solicitation and
37 the authority shall evaluate the bids without discussions with bidders and award a contract with
38 reasonable promptness to the responsible source whose bid conforms to the solicitation and is
39 most advantageous to the authority, considering only price and other price-related factors
40 included in the solicitation.

41 (g) The evaluation of competitive proposals may include written or oral discussions
42 conducted with all responsible bidders or suppliers at any time after receipt of the proposals and

43 before the award or may be made without discussions. In either event, the award shall be made
44 to the lowest responsible bidder or supplier.

45 (h) Adequate public notice of the solicitation of bids and proposals shall be given. Public
46 notice shall be given not less than seven days before the date set for bid opening or, in the case
47 of competitive negotiation, not less than seven days before the due date for receipt of proposals:
48 *Provided*, That bids for the construction of facilities shall be obtained by public notice published
49 as a Class I legal advertisement in compliance with ~~the provisions of~~ §59-3-1 *et seq.* of this code,
50 with ~~such~~ the publication being made at least 14 days before the final date for submitting bids.