

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

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FOR

**Senate Bill No. 36**

(SENATOR KLEMPA, *original sponsor*)

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[Passed March 10, 2012; in effect ninety days from passage.]

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AN ACT to amend and reenact §5-22-1 of the Code of West Virginia, 1931, as amended, relating to requiring the disclosure of subcontractors within one business day of the opening of bids for certain public construction contracts by the apparent low bidder when any subcontractor is providing over \$25,000 of services on the project; providing exceptions; providing what information is to be submitted to the Division of Purchasing; disqualifying bidders for failure to comply; obtaining approval from the division before substituting any subcontractor; providing circumstances when substitutions are permitted; and providing a sunset provision.

*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.**

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

4 (b) As used in this section:

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

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

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

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

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

20 (c) The state and its subdivisions shall, except as pro-  
21 vided in this section, solicit competitive bids for every  
22 construction project exceeding \$25,000 in total cost: *Pro-*  
23 *vided*, That a vendor who has been debarred pursuant to the  
24 provisions of sections thirty-three-a through thirty-three-f,  
25 inclusive, article three, chapter five-a of this code may not  
26 bid on or be awarded a contract under this section. All bids

27 submitted pursuant to this chapter shall include a valid bid  
28 bond or other surety as approved by the State of West  
29 Virginia or its subdivisions.

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

35 (e) The apparent low bidder on a contract for the con-  
36 struction, alteration, decoration, painting or improvement of  
37 a new or existing building or structure with the Department  
38 of Administration, Division of Purchasing, valued at more  
39 than \$500,000.00 shall submit a list of all subcontractors who  
40 will perform more than \$25,000.00 of work on the project  
41 including labor and materials: *Provided*, That this section  
42 shall not apply to any other construction projects, such as  
43 highway, mine reclamation, water or sewer projects. The list  
44 shall include the names of the bidders and the license  
45 numbers as required by article eleven, chapter twenty-one of  
46 this code. This information shall be provided to the Division  
47 of Purchasing within one business day of the opening of bids  
48 for review prior to the awarding of a construction contract.  
49 If no subcontractors are to be used to complete the project it  
50 will be so noted on the subcontractor list. Failure to submit  
51 the subcontractor list within one business day after the  
52 deadline for submitting bids shall result in disqualification  
53 of the bid.

54 (f) Written approval must be obtained from the Division  
55 of Purchasing before any subcontractor substitution is  
56 permitted. Substitutions are not permitted unless:

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

59 (2) The Division of Purchasing refuses to approve a  
60 subcontractor in the original bid because the subcontractor  
61 is under a debarment pursuant to section thirty-three-d,  
62 article three, chapter five-a of this code or a suspension

63 under section thirty-two, article three, chapter five-a of this  
64 code; or

65 (3) The contractor certifies in writing that the subcon-  
66 tractor listed in the original bill fails, is unable or refuses to  
67 perform his subcontract.

68 (g) The amendments to this section made during the 2012  
69 regular session of the Legislature shall expire one year from  
70 the effective date of the amendments absent further action of  
71 the Legislature.

72 (h) The contracting public entity may not award the  
73 contract to a bidder which fails to meet the minimum  
74 requirements set out in this section. As to any prospective  
75 low bidder which the contracting public entity determines  
76 not to have met any one or more of the requirements of this  
77 section or other requirements as determined by the public  
78 entity in the written bid solicitation, prior to the time a  
79 contract award is made, the contracting public entity shall  
80 document in writing and in reasonable detail the basis for  
81 the determination and shall place the writing in the bid file.  
82 After the award of a bid under this section, the bid file of the  
83 contracting public agency and all bids submitted in response  
84 to the bid solicitation shall be open and available for public  
85 inspection.

86 (i) Any public official or other person who individually  
87 or together with others knowingly makes an award of a  
88 contract under this section in violation of the procedures and  
89 requirements of this section is subject to the penalties set  
90 forth in section twenty-nine, article three, chapter five-a of  
91 the Code of West Virginia.

92 (j) No officer or employee of this state or of any public  
93 agency, public authority, public corporation or other public  
94 entity and no person acting or purporting to act on behalf of  
95 such officer or employee or public entity shall require that  
96 any performance bond, payment bond or surety bond  
97 required or permitted by this section be obtained from any  
98 particular surety company, agent, broker or producer.

99 (k) All bids shall be open in accordance with the provi-  
100 sions of section two of this article, except design-build  
101 projects which are governed by article twenty-two-a of this  
102 chapter and are exempt from these provisions.

103 (l) Nothing in this section shall apply to:

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

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

109 (3) Emergency repairs to building components and  
110 systems. For the purpose of this subdivision, the term  
111 emergency repairs means repairs that if not made immedi-  
112 ately will seriously impair the use of building components  
113 and systems or cause danger to those persons using the  
114 building components and systems; and

115 (4) Any situation where the state or a subdivision thereof  
116 reaches an agreement with volunteers, or a volunteer group,  
117 whereby the governmental body will provide construction or  
118 repair materials, architectural, engineering, technical or any  
119 other professional services and the volunteers will provide  
120 the necessary labor without charge to, or liability upon, the  
121 governmental body.

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

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*Chairman Senate Committee*

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*Chairman House Committee*

Originated in the Senate.

In effect ninety days from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this the .....  
Day of ....., 2012.

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*Governor*