

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 2716**

5 (By Delegates Diserio, Walker, Ferro, Skinner, Barill,
6 Swartzmiller, Nelson, E., Ellem, Storch, Marcum and White)

7
8 [Passed April 13, 2013; in effect ninety days from passage.]

9
10 AN ACT to amend and reenact §5-22-1 of the Code of West Virginia,
11 1931, as amended, relating to the West Virginia Fairness in
12 Competitive Bidding Act; defining "state spending units";
13 lowering the threshold amount from \$500,000 to \$250,000 for
14 triggering a low bidder's duty to submit a list of
15 subcontractors on state spending unit contracts; and to
16 further modify reporting for the subcontractor list.

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

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

20 **ARTICLE 22. GOVERNMENT CONSTRUCTION CONTRACTS.**

21 **§5-22-1. Bidding required; government construction contracts to go**
22 **to lowest qualified responsible bidder; procedures to**
23 **be followed in awarding government construction**
24 **projects; penalties for violation of procedures and**
25 **requirements debarment; exceptions.**

26 (a) This section and the requirements in this section may be

1 referred to as the West Virginia Fairness In Competitive Bidding
2 Act.

3 (b) As used in this section:

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

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

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

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

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

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

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

1 section. All bids submitted pursuant to this chapter shall include
2 a valid bid bond or other surety as approved by the State of West
3 Virginia or its subdivisions.

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

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

26 (f) Written approval must be obtained from the state spending

1 unit before any subcontractor substitution is permitted.

2 Substitutions are not permitted unless:

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

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

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

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14 (g) The contracting public entity may not award the contract
15 to a bidder which fails to meet the minimum requirements set out in
16 this section. As to a prospective low bidder which the contracting
17 public entity determines not to have met one or more of the
18 requirements of this section or other requirements as determined by
19 the public entity in the written bid solicitation, prior to the
20 time a contract award is made, the contracting public entity shall
21 document in writing and in reasonable detail the basis for the
22 determination and shall place the writing in the bid file. After
23 the award of a bid under this section, the bid file of the
24 contracting public agency and all bids submitted in response to the
25 bid solicitation shall be open and available for public inspection.

26 (h) A public official or other person who individually or

1 together with others knowingly makes an award of a contract under
2 this section in violation of the procedures and requirements of
3 this section is subject to the penalties set forth in section
4 twenty-nine, article three, chapter five-a of the Code of West
5 Virginia.

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

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

17 (k) Nothing in this section applies to:

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

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

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

1 the building components and systems; and

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