

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2716**

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

6 (Originating in the Committee on Finance)

7 [March 28, 2013]

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10 A BILL 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 ~~set forth~~ in this

1 section may be referred to as the West Virginia Fairness In
2 Competitive Bidding 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. ~~Provided, That~~ A vendor
24 who has been debarred pursuant to the provisions of sections
25 ~~thirty-three-a~~ thirty-three-b through thirty-three-f, inclusive,
26 article three, chapter five-a of this code may not bid on or be

1 awarded a contract under this section. All bids submitted pursuant
2 to this chapter shall include a valid bid bond or other surety as
3 approved by the State of West 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 ~~the Department of Administration, Division of~~
13 ~~Purchasing, valued at more than \$500,000.00~~ shall submit a list of
14 all subcontractors who will perform more than \$25,000 of work on
15 the project including labor and materials. ~~Provided, That this~~
16 ~~section shall not apply to any other construction projects, such as~~
17 This section does not apply to other construction projects such as
18 highway, mine reclamation, water or sewer projects. The list shall
19 include the names of the bidders and the license numbers as
20 required by article eleven, chapter twenty-one of this code. This
21 information shall be provided to the ~~Division of Purchasing~~ state
22 spending unit within one business day of the opening of bids for
23 review prior to the awarding of a construction contract. If no
24 subcontractors who will perform more than \$25,000 of work are to
25 be used to complete the project it will be ~~so~~ noted on the
26 subcontractor list. Failure to submit the subcontractor list

1 within one business day after the deadline for submitting bids
2 shall result in disqualification of the bid.

3 (f) Written approval must be obtained from the ~~Division of~~
4 ~~Purchasing~~ state spending unit before any subcontractor
5 substitution is permitted. Substitutions are not permitted unless:

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

8 (2) The ~~Division of Purchasing~~ state spending unit refuses to
9 approve a subcontractor in the original bid because the
10 subcontractor is under a debarment pursuant to section
11 thirty-three-d, article three, chapter five-a of this code or a
12 suspension under section thirty-two, article three, chapter five-a
13 of this code; or

14 (3) The contractor certifies in writing that the subcontractor
15 listed in the original bill fails, is unable or refuses to perform
16 ~~his~~ the subcontract.

17 ~~(g) The amendments to this section made during the 2012~~
18 ~~regular session of the Legislature shall expire one year from the~~
19 ~~effective date of the amendments absent further action of the~~
20 ~~Legislature.~~

21 ~~(h)~~ (g) The contracting public entity may not award the
22 contract to a bidder which fails to meet the minimum requirements
23 set out in this section. As to ~~any~~ a prospective low bidder which
24 the contracting public entity determines not to have met ~~any~~ one or
25 more of the requirements of this section or other requirements as
26 determined by the public entity in the written bid solicitation,

1 prior to the time a contract award is made, the contracting public
2 entity shall document in writing and in reasonable detail the basis
3 for the determination and shall place the writing in the bid file.
4 After the award of a bid under this section, the bid file of the
5 contracting public agency and all bids submitted in response to the
6 bid solicitation shall be open and available for public inspection.

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

13 ~~(j)~~ (i) No officer or employee of this state or of ~~any~~ a
14 public agency, public authority, public corporation or other public
15 entity and no person acting or purporting to act on behalf of ~~such~~
16 an officer or employee or public entity shall require that ~~any~~ a
17 performance bond, payment bond or surety bond required or permitted
18 by this section be obtained from ~~any~~ a particular surety company,
19 agent, broker or producer.

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

24 ~~(l)~~ (k) Nothing in this section ~~shall apply~~ applies to:

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

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

4 (3) Emergency repairs to building components and systems. For
5 the purpose of this subdivision, the term emergency repairs means
6 repairs that if not made immediately will seriously impair the use
7 of building components and systems or cause danger to ~~those~~ persons
8 using the building components and systems; and

9 (4) ~~Any~~ A situation where the state or ~~a subdivision thereof~~
10 subdivision thereof reaches an agreement with volunteers, or a
11 volunteer group, ~~whereby~~ in which the governmental body will
12 provide construction or repair materials, architectural,
13 engineering, technical or ~~any~~ other professional services and the
14 volunteers will provide the necessary labor without charge to, or
15 liability upon, the governmental body.