

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **Senate Bill 539**

By Senator Woodrum

[Introduced February 01, 2023; referred  
to the Committee on Government Organization]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §5-22-4, relating to providing state and its political subdivisions with the ability  
3 and a process by which to negotiate a lower price for construction work when all bids  
4 received exceed the maximum budgeted amount.

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

## **ARTICLE 22. GOVERNMENT CONSTRUCTION CONTRACTS.**

### **§5-22-4. Negotiation when all bids exceed budgeted amount.**

1 (a) The State and its subdivisions may establish a maximum budgeted amount available  
2 for each construction project. No person may disclose this maximum budgeted amount to any  
3 vendor prior to the award of a contract. If all bids submitted pursuant to a solicitation exceed the  
4 maximum budgeted amount, then a negotiated award may be made as set forth in this section.

5 (1) If the contracting public entity determines in writing that there is only one responsive  
6 and responsible bidder, that entity may negotiate the price for a noncompetitive award or the  
7 specifications for a noncompetitive award based solely on the original purpose of the solicitation.

8 (2) If there is more than one bidder, the contracting public entity may negotiate with bidders  
9 determined in writing to be responsive and responsible, based on criteria contained in the bid  
10 invitation: *Provided*, That the contracting public entity must negotiate first with the lowest bidder. If  
11 the contracting public entity does not award the bid to the lowest bidder, the contracting public  
12 entity may close negotiations with that bidder and enter into negotiations with the next lowest  
13 bidder, and may continue to do so in like manner with the remaining responsive and responsible  
14 bidders. The contracting public entity may not extend an offer to any bidder that is not first  
15 extended to the prior bidders in order of rank.

16 (b) After negotiations occur pursuant to subsection (a) of this section, if the contracting  
17 public entity determines that more than 15 percent of the value of the bid must be renegotiated by  
18 revising the specifications of the original solicitation, only a resolicitation may be initiated or the  
19 solicitation may be withdrawn.

- 20            (c) The contracting public entity may not renegotiate with any bidder after closing  
21 negotiations with that bidder and entering into negotiations with the next bidder.

NOTE: The purpose of this bill is to authorize the state and its subdivisions to negotiate lower prices for construction when all bids received exceed the maximum budget.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.