

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**Committee Substitute for**

**Senate Bill 539**

BY SENATOR WOODRUM

[Originating in the Committee on Government

Organization; reported on February 17, 2023]



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 ability and  
3 process by which to negotiate lower price for construction work when all bids received  
4 exceed the maximum budgeted amount; establishing ability to make negotiated award to  
5 lowest responsive and responsible bidder when there are multiple bidders; and setting  
6 sunset date.

*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 Provided, That a negotiated award made pursuant to the provisions of this section shall be made  
6 within 30 calendar days following the original bid opening date.

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

10 (2) If there is more than one bidder, the contracting public entity may negotiate with the  
11 lowest bidder, determined in writing to be responsive and responsible, based on criteria contained  
12 in the bid solicitation.

13 (b) The provisions of this section expire and shall have no force and effect after December  
14 31, 2027.