

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5420

By Delegate Barnhart

[Introduced February 02, 2024; Referred to the
Committee on Government Organization]

1 A BILL to amend and reenact §5-22-1 and §8-16-5 of the Code of West Virginia, 1931, as
 2 amended, relating to raising the threshold from \$25,000 to \$50,000 for the requirement of
 3 bids for government construction contracts and municipal public works projects.

Be it enacted by the Legislature of West Virginia:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE
 GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL;
 BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES,
 COMMISSIONS, OFFICES, PROGRAMS, ETC.**

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 in this section may be referred to as the West
 2 Virginia Fairness in Competitive Bidding Act.

3 (b) As used in this section:

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

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

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

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

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

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

18 (4) "Alternates" means any additive options or alternative designs included in a solicitation
19 for competitive bids that are different from and priced separately from what is included in a base
20 bid.

21 (5) "Construction project" means a specifically identified scope of work involving the act,
22 trade, or process of building, erecting, constructing, adding, repairing, remodeling, rehabilitating,
23 reconstructing, altering, converting, improving, expanding, or demolishing of a building, structure,
24 facility, road, or highway. Repair and maintenance of existing public improvements that are
25 recurring or ongoing in nature and that are not fully identified or known at any one time shall be
26 considered a construction project and procured according to this article on an open-ended basis,
27 so long as the work to be performed under the contract falls into a generally accepted single class,
28 or type, and bidders are notified of the open-ended nature of the work in the solicitation: *Provided,*
29 That no open-ended repair or maintenance contract may exceed \$500,000.

30 (c) The state and its subdivisions shall, except as provided in this section, solicit
31 competitive bids for every construction project exceeding ~~\$25,000~~ \$50,000 in total cost.

32 (1) If a solicitation contains a request for any alternates, the alternates shall be listed
33 numerically in the order of preference in the solicitation.

34 (2) A vendor who has been debarred pursuant to §5A-3-33b through §5A-3-33f of this
35 code, may not bid on or be awarded a contract under this section.

36 (d) All bids submitted pursuant to this chapter shall include a valid bid bond or other surety
37 as approved by the State of West Virginia or its subdivisions.

38 (e) Following the solicitation of bids, the construction contract shall be awarded to the
39 lowest qualified responsible bidder who shall furnish a sufficient performance and payment bond.
40 The state and its subdivisions may reject all bids and solicit new bids on the project.

41 (f) Any solicitation of bids shall include no more than five alternates. Alternates, if accepted,
42 shall be accepted in the order in which they are listed on the bid form. Any unaccepted alternate
43 contained within a bid shall expire 90 days after the date of the opening of bids for review.

44 Determination of the lowest qualified responsible bidder shall be based on the sum of the
45 base bid and any alternates accepted.

46 (g) The apparent low bidder on a contract valued at more than \$250,000 for the
47 construction, alteration, decoration, painting, or improvement of a new or existing building or
48 structure with a state spending unit shall submit a list of all subcontractors who will perform more
49 than \$25,000 worth of work on the project including labor and materials. This section does not
50 apply to other construction projects such as highway, mine reclamation, water, or sewer projects.
51 The list shall include the names of the bidders and the license numbers as required by §30-42-1 *et*
52 *seq.* of this code. This information shall be provided to the state spending unit within one business
53 day of the opening of bids for review prior to the awarding of a construction contract. If the
54 apparent low bidder fails to submit the subcontractor list, the spending unit shall promptly request
55 by telephone and electronic mail that the low bidder and second low bidder provide the
56 subcontractor list within one business day of the request. Failure to submit the subcontractor list
57 within one business day of receiving the request shall result in disqualification of the bid. A
58 subcontractor list may not be required if the bidder provides notice in the bid submission or in
59 response to a request for a subcontractor list that no subcontractors who will perform more than
60 \$25,000 worth of work will be used to complete the project.

61 (h) Written approval must be obtained from the state spending unit before any
62 subcontractor substitution is permitted. Substitutions are not permitted unless:

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

64 (2) The state spending unit refuses to approve a subcontractor in the original bid because
65 the subcontractor is under a debarment pursuant to §5A-3-33d of this code or a suspension under
66 §5A-3-32 of this code; or

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

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

77 (j) The contracting public entity shall not award a contract pursuant to this section to any
78 bidder that is known to be in default on any monetary obligation owed to the state or a political
79 subdivision of the state, including, but not limited to, obligations related to payroll taxes, property
80 taxes, sales and use taxes, fire service fees, or other fines or fees. Any governmental entity may
81 submit to the Division of Purchasing information which identifies vendors that qualify as being in
82 default on a monetary obligation to the entity. The contracting public entity shall take reasonable
83 steps to verify whether the lowest qualified bidder is in default pursuant to this subsection prior to
84 awarding a contract.

85 (k) A public official or other person who individually or together with others knowingly
86 makes an award of a contract under this section in violation of the procedures and requirements of
87 this section is subject to the penalties set forth in §5A-3-29 of this code.

88 (l) No officer or employee of this state or of a public agency, public authority, public
89 corporation, or other public entity and no person acting or purporting to act on behalf of an officer

90 or employee or public entity may require that a performance bond, payment bond, or surety bond
91 required or permitted by this section be obtained from a particular surety company, agent, broker,
92 or producer.

93 (m) All bids shall be open in accordance with the provisions of §5-22-2 of this code, except
94 design-build projects which are governed by §5-22A-1 *et seq.* of this code and are exempt from
95 these provisions.

96 (n) Nothing in this section applies to:

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

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

101 (3) Emergency repairs to building components, systems, and public infrastructure. For the
102 purpose of this subdivision, the term "emergency repairs" means repairs that if not made
103 immediately will seriously impair the use of building components, systems, and public
104 infrastructure or cause danger to persons using the building components, systems, and public
105 infrastructure; and

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

CHAPTER 8. MUNICIPAL CORPORATIONS

ARTICLE 16. MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING.

§8-16-5. Powers of board.

1 (a) The board shall have plenary power and authority to take all steps and proceedings,

2 and to make and enter into all contracts or agreements necessary, appropriate, useful, convenient
3 or incidental to the performance of its duties and the execution of its powers and authority under
4 this article: *Provided*, That any contract or agreement relating to the financing, or the construction,
5 reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement,
6 increase, equipment, operation or maintenance of any such works, and any trust indenture with
7 respect thereto as hereafter provided for, shall be approved by the governing body or bodies.

8 (b) The board may employ engineers, architects, inspectors, superintendents, managers,
9 collectors, attorneys and such other employees as in its judgment may be necessary in the
10 execution of its powers and duties, and may fix their compensation, all of whom shall do such work
11 as the board may direct. All compensation and expenses incurred in carrying out the provisions of
12 this article shall be paid solely from funds provided under the authority of this article, and the board
13 shall not exercise or carry out any power or authority herein given it so as to bind said board or any
14 municipality beyond the extent to which money shall have been, or may be provided under the
15 authority of this article.

16 (c) No contract or agreement with any contractor or contractors for labor or materials, or
17 both, exceeding in amount the sum of ~~\$25,000~~ \$50,000 shall be made without advertising for bids,
18 which bids shall be publicly opened and an award made to the lowest responsible bidder, with
19 power and authority in the board to reject any and all bids.

20 (d) After the construction, reconstruction, establishment, acquisition, renovation or
21 equipment of any such works, the board shall maintain, operate, manage and control the same,
22 and may order and complete any improvements, extensions, enlargements, increase or repair
23 (including replacements) of and to the works that the board may consider expedient, if funds
24 therefor be available, or are made available, as provided in this article, and shall establish rules for
25 the use, maintenance and operation of the works, and do all things necessary or expedient for the
26 successful operation thereof, and for stormwater systems and associated stormwater
27 management programs, those activities which include, but are not limited to, stormwater and

28 surface runoff water quality improvement activities necessary to comply with all federal and state
29 requirements. All public ways or public works damaged or destroyed by the board in carrying out
30 its authority under this article shall be restored or repaired by the board and placed in their original
31 condition, as nearly as practicable, if requested so to do by proper authority, out of the funds
32 provided under the authority of this article.

33 (e) Emergency repairs shall be exempt from the bidding requirements of subsection (c) of
34 this section. For the purpose of this subdivision, the term emergency repairs means repairs that if
35 not made immediately will seriously impair the use of building components, systems, and public
36 infrastructure or cause danger to persons using the building components, systems, and public
37 infrastructure.

NOTE: The purpose of this bill is to raise the threshold from \$25,000 to \$50,000 for the requirement of bids for government construction contracts or municipal public works projects.

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