

# **WEST VIRGINIA LEGISLATURE**

**2024 REGULAR SESSION**

**Enrolled**

**Committee Substitute**

**for**

**Senate Bill 217**

BY SENATORS WOODRUM, SWOPE, AND DEEDS

[Passed March 8, 2024; in effect from passage]



1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §5-22-4, relating to providing the state and its political subdivisions with ability  
3 and 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 for each  
2 construction project. In the event the bids for a construction project exceed the funds available,  
3 the contracting public agency may negotiate with the lowest qualified responsible bidder pursuant  
4 to the provisions of this section.

5 (b) To utilize the provisions of this section, the contracting public agency shall:

6 (1) establish a maximum budgeted amount;

7 (2) maintain confidentiality of the maximum budgeted amount prior to the award of a  
8 contract; and

9 (3) not proceed with a negotiated award if that results in more than a ten percent change  
10 in scope or cost from the original base bid.

11 (c) A negotiated award made pursuant to the provisions of this section shall be made  
12 within 30 calendar days of the original bid opening date.

13 (d) Negotiations under this section shall be completed in the following manner:

14 (1) If only one responsive and responsible bidder responds to a solicitation the contracting  
15 agency may negotiate an award based solely on the specifications contained within the original  
16 solicitation;

17           (2) If more than one bidder responds to a solicitation, the contracting public agency may  
18 negotiate with the apparent lowest qualified responsible bidder, as defined in §5-22-1 of this code:  
19 *Provided*, any such negotiation must be based on the scope and specifications contained within  
20 the original solicitation;

21           (3) The contracting public agency shall make available for public inspection all negotiated  
22 contracts; and

23           (4) The contracting public agency shall memorialize any change to the original project  
24 specifications that occur as a result of a negotiated award made pursuant to the provisions of this  
25 section.

26           (e) The provisions of this section are permissive and not mandatory for any contracting  
27 public agency.

28           (f) An award of a negotiated contract pursuant to the provisions of this section may not be  
29 made to a bidder who fails to meet the other qualifications set forth in this article.

30           (g) For the purposes of this section, “construction project” does not mean the construction  
31 of a road, bridge, or highway.

32           (h) The provisions of this section expire and shall have no force and effect after December  
33 31, 2029.

The Clerk of the Senate and the Clerk of the House of Delegates hereby certify that the foregoing bill is correctly enrolled.

.....  
*Clerk of the Senate*

.....  
*Clerk of the House of Delegates*

Originated in the Senate.

In effect from passage.

.....  
*President of the Senate*

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*Speaker of the House of Delegates*

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The within is ..... this the.....  
Day of ....., 2024.

.....  
*Governor*