

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

Senate Bill 544

By Senators Jeffries, Grady, Hamilton, Nelson,
Phillips, Smith, Swope, Takubo, Weld, Woelfel,
Plymale, Roberts, Queen, and Barrett

[Originating in the Committee on Economic
Development; reported February 8, 2024]

1 A BILL to amend and reenact §5-22-1 of the Code of West Virginia, 1931, as amended; and to
2 amend and reenact §8-16-1 and §8-16-5 of said code; all relating to raising the threshold
3 from \$25,000 to \$50,000 for requirement of bids for government construction projects;
4 clarifying definition of “Municipal public works” or “works”; and raising the threshold from
5 \$25,000 to \$50,000 for requirement of bids for municipal public works projects.

Be it enacted by the Legislature of West Virginia:

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.

ARTICLE 16. MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING.

§8-16-1. Definitions.

1 As used in this article, the following terms shall have the following meanings unless the text
2 clearly indicates otherwise.

3 (a) "Municipal public works", or "works", or "projects" means the construction,
4 reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement,
5 increase, equipment, maintenance, repair (including replacements) and operation of jails, jail
6 facilities, municipal buildings, police stations, fire stations, libraries, museums, other public
7 buildings, incinerator plants, land fill or other garbage disposal systems, hospitals, piers, docks,

8 terminals, airports, drainage systems, flood control systems, stormwater systems and associated
9 stormwater management program, public and municipal water and wastewater utilities, public
10 service districts and utility boards, flood walls, culverts, bridges (including approaches,
11 causeways, viaducts, underpasses and connecting roadways), public markets, cemeteries, motor
12 vehicle parking facilities (including parking lots, buildings, ramps, curb-line parking, meters and
13 other facilities considered necessary, appropriate, useful, convenient or incidental to the
14 regulation, control and parking of motor vehicles), farms, dormitories, apartments and other
15 housing facilities for the students and faculties of institutions of higher education; facilities
16 providing housing for the elderly, including, but not limited to, life care facilities, congregate living
17 facilities and adult residential facilities, stadiums, gymnasiums, sports arenas, auditoriums, public
18 recreation centers, public recreation parks, swimming pools, roller skating rinks, ice skating rinks,
19 tennis courts, golf courses, polo grounds, or the grading, regrading, paving, repaving, surfacing,
20 resurfacing, curbing, recurbing, widening or otherwise improving of any street, avenue, road, alley
21 or way, or the building or renewing of sidewalks, where works or projects will be made self-
22 supporting, and the cost thereof, together with the interest thereon, will be returned within a
23 reasonable period, not exceeding forty years, by means of tolls, fees, rents, special assessments
24 or charges other than taxation; and the terms shall also mean any works or project as a whole, and
25 all integral parts thereof, including all necessary, appropriate, useful, convenient, or incidental
26 appurtenances and equipment in connection with any one or more of the above.

27 (b) "Stormwater systems" means a stormwater system in its entirety or any integral part
28 thereof used to collect and dispose of stormwater and an associated stormwater management
29 program. It includes all facilities, structures, and natural water courses used for collecting and
30 conducting stormwater to, through, and from drainage areas to the points of final outlet including,
31 but not limited to, any and all of the following: Inlets, conduits, outlets, channels, ponds, drainage
32 easements, water quality facilities, catch basins, ditches, streams, gulches, flumes, culverts,
33 siphons, retention or detention basins, dams, floodwalls, pipes, flood control systems, levies, and

34 pumping stations. The term "stormwater systems" shall not include highways, road and drainage
35 easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia
36 Division of Highways.

37 (c) "Stormwater management program" means those activities associated with the
38 management, operation, maintenance and control of stormwater and stormwater systems, and
39 shall include, but not be limited to, public education, stormwater and surface runoff water quality
40 improvement, mapping, planning, flood control, inspection, enforcement, and any other activities
41 required by state and federal law. The term "stormwater management program" shall not include
42 those activities associated with the management, operation, maintenance, and control of
43 highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or
44 operated by the West Virginia Division of Highways without the express agreement of the
45 Commissioner of the Division of Highways.

§8-16-5. Powers of board.

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

9 (b) The board may employ engineers, architects, inspectors, superintendents, managers,
10 collectors, attorneys, and such other employees as in its judgment may be necessary in the
11 execution of its powers and duties, and may fix their compensation, all of whom shall do such work
12 as the board may direct. All compensation and expenses incurred in carrying out the provisions of
13 this article shall be paid solely from funds provided under the authority of this article, and the board

14 shall not exercise or carry out any power or authority herein given it so as to bind said board or any
15 municipality beyond the extent to which money shall have been, or may be, provided under the
16 authority of this article.

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

21 (d) After the construction, reconstruction, establishment, acquisition, renovation or
22 equipment of any such works, the board shall maintain, operate, manage, and control the same,
23 and may order and complete any improvements, extensions, enlargements, increase or repair
24 (including replacements) of and to the works that the board may consider expedient, if funds
25 therefor be available, or are made available, as provided in this article, and shall establish rules for
26 the use, maintenance, and operation of the works, and do all things necessary or expedient for the
27 successful operation thereof, and for stormwater systems and associated stormwater
28 management programs, those activities which include, but are not limited to, stormwater and
29 surface runoff water quality improvement activities necessary to comply with all federal and state
30 requirements. All public ways or public works damaged or destroyed by the board in carrying out
31 its authority under this article shall be restored or repaired by the board and placed in their original
32 condition, as nearly as practicable, if requested to do so by proper authority, out of the funds
33 provided under the authority of this article.

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