

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 587

By Senator Jeffries

[Introduced February 24, 2025; Referred
to the Committee on the Workforce; and then to the
Committee on Government Organization]

1 A BILL to amend and reenact §5-22-1, §5-22-2, and §5-22-4 of the Code of West Virginia, 1931, as
2 amended; and to amend the code by adding a new article, designated §5-22B-1, §5-22B-2,
3 §5-22B-3, §5-22B-4, §5-22B-5, §5-22B-6, §5-22B-7, §5-22B-8, §5-22B-9, §5-22B-10, §5-
4 22B-11, §5-22B-12, §5-22B-13, §5-22B-14, §5-22B-15, §5-22B-16, §5-22B-17, §5-22B-
5 18, and §5-22B-19, relating to government contracting; providing for a bid validity period;
6 clarifying factors for considering when bids exceed budgeted amount; enacting the
7 Government Construction Management At-Risk Contracts Act; providing a short title;
8 defining terms; authorizing the state and/or its subdivisions to engage in construction
9 management at-risk contracts for projects greater than \$5 million in total estimated cost;
10 requiring the state and/or its subdivisions adopt policies and procedures for use in
11 construction management at-risk contract; requiring the state and/or its subdivisions using
12 construction management at-risk delivery method provide notice; requiring the state and/or
13 its subdivisions issue request for qualifications; requiring the state and/or its subdivisions
14 issue requests for proposals; establishing a standardized format for a proposal;
15 establishing the criteria a request for proposal must contain; providing standards and
16 criteria for the evaluation of proposals; providing for prequalification of firms; requiring a
17 proposal evaluation committee; establishing suggested membership of a proposal
18 evaluation committee; providing evaluation criteria and weight for aspects of proposals;
19 setting forth process to determine best value; authorizing the state and/or its subdivisions
20 to amend contracts after acceptance; providing exceptions for special maintenance
21 projects; making documents public in some instances; providing for rulemaking; required
22 reporting; setting forth a sunset date; and making technical and conforming amendments.

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.**

(a) This section and the requirements in this section may be referred to as the West Virginia Fairness in Competitive Bidding Act.

(b) As used in this section:

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

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

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

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

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

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

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

~~(5) "Construction project" means a specifically identified scope of work involving the act, trade, or process of building, erecting, constructing, adding, repairing, remodeling, rehabilitating, reconstructing, altering, converting, improving, expanding, or demolishing of a building, structure, facility, road, or highway. Repair and maintenance of existing public improvements that are~~

~~recurring or ongoing in nature and that are not fully identified or known at any one time shall be considered a construction project and procured according to this article on an open-ended basis, so long as the work to be performed under the contract falls into a generally accepted single class, or type, and bidders are notified of the open-ended nature of the work in the solicitation: *Provided*, That no open-ended repair or maintenance contract may exceed \$500,000.~~

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

"Construction project" means a specifically identified scope of work involving the act, trade, or process of building, erecting, constructing, adding, repairing, remodeling, rehabilitating, reconstructing, altering, converting, improving, expanding, or demolishing of a building, structure, facility, road, or highway. Repair and maintenance of existing public improvements that are recurring or ongoing in nature and that are not fully identified or known at any one time shall be considered a construction project and procured according to this article on an open-ended basis, so long as the work to be performed under the contract falls into a generally accepted single class, or type, and bidders are notified of the open-ended nature of the work in the solicitation: *Provided*, That no open-ended repair or maintenance contract may exceed \$500,000. A construction project does not include a construction management at-risk project as set forth in §5-22B-1 *et seq.* of this code.

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

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

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

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

51 "The state and/or its subdivisions" means the state of West Virginia, every political
52 subdivision thereof, every administrative entity that includes such a subdivision, all municipalities,
53 and all county boards of education;

54 "State spending unit" means a department, agency, or institution of the state government
55 for which an appropriation is requested, or to which an appropriation is made by the Legislature.

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

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

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

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

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

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

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

72 (g) The apparent low bidder on a contract valued at more than \$250,000 for the
73 construction, alteration, decoration, painting, or improvement of a new or existing building or
74 structure with a state spending unit shall submit a list of all subcontractors who will perform more
75 than \$25,000 worth of work on the project including labor and materials. This section does not
76 apply to other construction projects such as highway, mine reclamation, water, or sewer projects.

77 The list shall include the names of the bidders and the license numbers as required by §30-42-1 *et*
78 *seq.* of this code. This information shall be provided to the state spending unit within one business
79 day of the opening of bids for review prior to the awarding of a construction contract. If the
80 apparent low bidder fails to submit the subcontractor list, the state spending unit shall promptly
81 request by telephone and electronic mail that the low bidder and second low bidder provide the
82 subcontractor list within one business day of the request. Failure to submit the subcontractor list
83 within one business day of receiving the request shall result in disqualification of the bid. A
84 subcontractor list may not be required if the bidder provides notice in the bid submission or in
85 response to a request for a subcontractor list that no subcontractors who will perform more than
86 \$25,000 worth of work will be used to complete the project.

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

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

90 (2) The state spending unit refuses to approve a subcontractor in the original bid because
91 the subcontractor is under a debarment pursuant to §5A-3-33d of this code or a suspension under
92 §5A-3-32 of this code; or

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

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

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

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

(l) No officer or employee of this state or of a public agency, public authority, public corporation, or other public entity and no person acting or purporting to act on behalf of an officer or employee or public entity may require that a performance bond, payment bond, or surety bond required or permitted by this section be obtained from a particular surety company, agent, broker, or producer.

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

(n) Nothing in this section applies to:

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

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

(3) Emergency repairs to building components, systems, and public infrastructure. For the purpose of this subdivision, the term "emergency repairs" means repairs that if not made

129 immediately will seriously impair the use of building components, systems, and public
130 infrastructure or cause danger to persons using the building components, systems, and public
131 infrastructure; and

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

**§5-22-2. Designation of time and place for opening of bids; right to reject or withdraw bid;
bid resubmission; bid validity date.**

1 (a) The public entity accepting public contract bids shall, in its resolution providing for the
2 contract or purchase and for the advertisement for bids, designate the time and place that the bids
3 will be received and shall at that time and place publicly open the bids and read them aloud. No
4 public entity may accept or take any bid, including receiving any hand delivered bid, after the time
5 advertised to take bids. No bid may be opened on days which are recognized as holidays by the
6 United States postal service. No public entity may accept or consider any bids that do not contain a
7 valid bid bond or other surety approved by the state of West Virginia or its subdivisions.

8 (b) The provisions and requirements of this section, section one of article twenty-two of this
9 chapter, the requirements stated in the advertisement for bids and the requirements on the bid
10 form may not be waived by any public entity. The public entity may only reject an erroneous bid
11 after the opening if all of the following conditions exist: (1) An error was made; (2) the error
12 materially affected the bid; (3) rejection of the bid would not cause a hardship on the public entity
13 involved, other than losing an opportunity to receive construction projects at a reduced cost; and
14 (4) enforcement of the bid in error would be unconscionable. If a public entity rejects a bid, it shall
15 maintain a file of documented evidence demonstrating that all the conditions set forth in this
16 subdivision existed. If the public entity determines the bid to be erroneous, the public entity shall

return the bid security to the contractor.

(c) A contractor who withdraws a bid under the provisions of this section may not resubmit a bid on the same project. If the bid withdrawn is the lowest bid, the next lowest bid may be accepted.

(d) The provisions of a bid shall remain valid and legally binding for a period of 60 calendar days. The 60 days begin to run from the date of the bid opening as prescribed by the public entity bid solicitation. The 60-day period as set forth in this section may be extended by mutual agreement of the contractor and the public entity. Any extension shall be in writing.

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

(a) The state and its subdivisions may establish a maximum budgeted amount for each construction project. In the event the bids for a construction project exceed the funds available, the contracting public agency may negotiate with the lowest qualified responsible bidder pursuant to the provisions of this section.

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

(1) Establish a maximum budgeted amount;

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

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

(c) A negotiated award made pursuant to the provisions of this section shall be made within ~~30~~ 60 calendar days of the original bid opening date.

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

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

(2) If more than one bidder responds to a solicitation, the contracting public agency may

negotiate with the apparent lowest qualified responsible bidder, as defined in §5-22-1 of this code:
Provided, any such negotiation must be based on the ~~scope and~~ specifications contained within
 the original solicitation;

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

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

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

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

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

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

ARTICLE 22B. GOVERNMENT CONSTRUCTION MANAGEMENT AT-RISK CONTRACTS.

§5-22B-1. Short title; applicability of article.

This act shall be known as the Government Construction Management At-Risk Contracts
 Act. The provisions of this article may be used to select construction managers at-risk for
 authorized public construction projects as set forth in this article. Notwithstanding the provisions of
 §5-22-1 et seq. of this code construction management at-risk contracts shall be awarded pursuant to
 the provisions of this article: *Provided*, That a construction management at-risk contract shall not
 be authorized for construction projects of less than \$5 million in estimated total cost.

§5-22B-2.**Definitions.**

The following terms shall have the following meaning:

"At-risk fee" means the portion of the construction fee attributable to the risk the construction manager at risk assumes by agreeing to be responsible for the performance of the work. The difference between the construction fee and the at-risk fee is the fee the construction manager at risk would charge to provide construction phase services as a construction manager as defined in this article.

"Best value" means a selection process in which proposals contain both pricing and performance components, an award is based upon a combination of pricing and performance considerations to determine the offer deemed most advantageous and of the greatest value to the state spending authority.

"Construction fee" means a combination of home office overhead and profit for services provided during the construction phase of the project, as defined in the contract documents.

"Construction management at-risk contract" means a contract by which a construction manager:

(A) Assumes the legal responsibility to deliver a construction project within a contracted price;

(B) Acts as a construction consultant to the state and/or its subdivision during the design development phase of the project when the state and/or its subdivisions architect or engineer designs the project: and

(C) Is the builder during the construction phase of the project;

"Construction manager" means the legal entity that proposes to enter into a construction management at-risk contract pursuant to this article;

"Contingency" means an amount set aside by the construction manager at-risk firm to pay for unexpected events, as defined in the contract documents;

"General conditions" means materials, services, and equipment necessary to perform the

work but that are not incorporated into the project as defined in the contract documents.

"Letter of interest" means a statement indicating interest to enter into a construction management at-risk contract for a public project pursuant to this article;

"Lowest qualified responsible bidder" shall have the same meaning as that term is used in §5-22-1(b) of this code;

"Preconstruction fee" means a combination of home office overhead and profit for services provided during the preconstruction phase of the project, as defined in the contract documents;

"Proposal" means an offer in response to a request for proposals by a construction manager to enter into a construction management at-risk contract for a project pursuant to the provisions of this article;

"Request for qualifications" means the documentation or publication by which a state and/or its subdivisions solicits letters of interest detailing a firm's qualifications for a specific project;

"Request for proposals" means the documentation by which a state and/or its subdivisions solicits proposals;

"The state and/or its subdivisions" means the state of West Virginia, every political subdivision thereof, every administrative entity that includes such a subdivision, all municipalities, and all county boards of education.

§5-22B-3. Authorization of construction management at-risk contracts for public construction projects.

(a) Notwithstanding any other provision of this code to the contrary, the state and/or its subdivisions who comply with the provisions of this article may solicit and execute a construction management at-risk contract.

(b) The execution of a construction management at-risk contract between the state and/or its subdivisions and a construction manager is optional. The use of a construction management at-risk contract is at the discretion of the state and/or its subdivisions. If the state and/or its

7 subdivisions opt not to execute a construction management at-risk contract the provisions of §5-
8 22-1 et seq. of this code shall apply to the selection and management of the bidding process of the
9 project.

10 (c) Prior to entering into a construction management at-risk contract, the state and/or its
11 subdivisions shall adopt policies for utilization of a construction management at-risk contract. The
12 policies shall require that such contracts include, at a minimum, the following:

13 (1) Procedures for the preparation and content of requests for qualifications and requests
14 for proposals;

15 (2) Procedures for preparing and submitting proposals;

16 (3) Procedures for evaluating proposals in accordance with §5-22B-12 of this code;

17 (4) Procedures for negotiations between the state and/or its subdivisions and the construction
18 managers submitting proposals prior to the acceptance of a proposal if any such
19 negotiations are contemplated; and

20 (5) Procedures for filing and acting on formal protests relating to the solicitation or
21 execution of construction management at-risk contracts.

22 (d) The state and/or its subdivisions may require supplemental conditions to a construction
23 management at-risk agreement and any modifications to the agreement will be communicated to
24 all parties prior to the execution of the contract.

25 **§5-22B-4. Construction management at-risk contract required procedures.**

1 (a) The state and/or its subdivisions shall utilize a two-step process for every construction
2 manager at-risk project. The first phase shall be the qualifications phase and the second shall be a
3 request for proposal phase. For each construction manager at-risk project, it shall be the
4 responsibility of the state and/or its subdivisions to:

5 (1) Identify the qualifications criteria required for the project in accordance with paragraph
6 (b)(1) of this section and determine how the qualifications criteria shall be evaluated in the
7 qualifications phase of the selection;

(2) Identify if there are any minimum or mandatory technical requirements for the project;
and

(3) Establish a process for maintaining records of decisions made at all stages of the selection process.

(b) Prior to the announcement of the qualifications phase, the state and/or its subdivisions shall establish criteria for the evaluation of a firm's qualifications subject to the provisions of §5-22B-12 of this code. The state and/or its subdivisions shall include the following as part of its qualifications criteria:

(1) Competence to perform the required management services as indicated by the technical training, education, and experience of the construction manager at-risk's personnel, especially the technical training, education, and experience of the construction manager at-risk's employees who would be assigned to perform the services;

(2) Ability in terms of workload and the availability of qualified personnel, equipment, and facilities to perform the required management services competently and expeditiously, and experience working on similar types of projects;

(3) Past performance as reflected by the evaluation of previous clients with respect to factors such as control of costs, quality of work, dispute resolution, administration of subcontractors, and meeting of deadlines;

(4) Financial responsibility including evidence of the capability to provide a surety letter;
and

(5) Other qualifications that are consistent with the scope and needs of the project including, but not limited to, knowledge of the local area and working relationships with local subcontractors and suppliers.

§5-22B-5. Evaluation committee.

(a) The state and/or its subdivisions shall convene an evaluation committee. The composition of the committee is at the discretion of the state and/or its subdivisions ; however, the

composition of the committee shall not consist of enough members of a public body to constitute a quorum. The state and/or its subdivisions may permit the project's architectural or professional design firm if selected, or other independent advisors to support the evaluation committee or advise it on technical and pricing issues. The architectural or professional design firm or independent advisors shall not participate as a voting member of the committee.

(b) Membership on the evaluation committee may include, but are not required to include:

(1) Procurement officer: Who is responsible for the procurement and ensuring compliance with relevant laws and policies;

(2) Technical and administrative personnel: Members with technical and administrative expertise;

(3) User department staff: Members from the department that will use the product or service;

(4) Specialists: Members with expertise in specific areas, such as finance, database design, or business; and

(5) Other knowledgeable people: Individuals from the organization who can bring special expertise to the process.

§5-22B-6. Request for qualifications phase.

(a) Following the determination of qualifications and establishment of the evaluation team, the state and/or its subdivisions shall prepare a request for qualifications for construction manager at-risk contract proposals in accordance with the provisions of this article. The request for qualifications shall describe the project in sufficient detail to permit a construction manager to submit a letter of interest detailing their qualifications.

(b) The request for qualifications shall be:

(1) Published in the newspaper of general circulation in the geographic area of the proposed project at least 30 days prior to the deadline for receiving letters of interest; and

(2) Sent by first-class mail to any construction manager upon request.

(c) The state and/or its subdivisions shall answer any questions from interested firms in writing and make all questions and answers available to all interested firms.

§5-22B-7. Prequalified firms.

(a) When the state and/or its subdivisions receive responses to the request for qualifications, the evaluation committee shall evaluate the responses based on the information submitted to the state and/or its subdivisions in response to a request for qualifications and select no fewer than three firms that it considers most qualified to provide the required services: *Provided*, That the evaluation committee shall select fewer than three firms when it determines in writing that fewer than three qualified construction managers at risk are available. The firms selected in the qualifications phase shall be referred to as the "prequalified firms" in the request for proposal phase.

(b) Prior to the submission of proposals, the state and/or its subdivisions may meet individually with each prequalified listed firm to permit them to clarify any ambiguities in the qualifications of the prequalified firm and allow the prequalified firm to ask questions regarding the proposal requirements.

§5-22B-8. Request for proposal phase.

(a) The second phase shall be the request for proposals. Following the selection of prequalified firms, the state and/ or its subdivisions shall prepare a request for proposal for construction manager at-risk contract proposals. The request for proposal shall consist of two portions.

(1) Pricing criteria: As part of its preparation for the pricing component of the request for proposal phase, the state and/or its subdivisions shall establish pricing criteria which shall contain the following components:

(A) Preconstruction fee;

(B) Construction fee;

(C) At-risk fee;

11 (D) General conditions; and

12 (E) Contingency.

13 (2) Performance criteria: As part of its preparation for the technical component of the
14 proposal phase, the state and/or its subdivisions shall establish performance criteria which may
15 include an evaluation of a firm's proposed:

16 (A) Schedule;

17 (B) Approach to the work, including any anticipated self-performed work;

18 (C) Work sequencing;

19 (D) Performance history;

20 (E) Approaches to performance specifications when used;

21 (F) Plan for anticipated procurement difficulties;

22 (G) Plan for additional considerations which may include technical design, technical
23 approach, quality of proposed personnel, and management plan.

24 (b) Once the evaluation committee has selected the prequalified firms, the state and/or its
25 subdivisions shall prepare a request for proposals for each construction management at-risk
26 contract in accordance with the provisions of this article. At least 30 days prior to the deadline for
27 receiving and opening proposals, notice of the request shall be published in the newspaper of
28 general circulation in the geographic area of the proposed project; and sent by first-class mail to any
29 construction manager upon request.

30 (c) The request for proposals shall contain, at a minimum, the following elements:

31 (1) The identity of the state and/or its subdivision for which the project will be built and the
32 name of the state agency or subdivision that will execute the contract;

33 (2) The proposed terms and conditions of the construction manager at-risk contract,
34 including any terms and conditions that are subject to further negotiation. The proposed general
35 terms and conditions shall be consistent with nationally recognized model general terms and
36 conditions which are standard in the design and construction industry in West Virginia. The

proposed terms and conditions may set forth an initial determination of the manner by which the construction manager selects any subcontractor and shall require that any work subcontracted be awarded to the lowest qualified responsible bidder;

(3) Any bonds and insurance required by law or as may be additionally required by the state and/or its subdivisions;

(4) General information about the project which will assist the state and/or its subdivisions in its selection of the construction manager, including a project statement that contains information about the scope and nature of the project, the project site, and the project schedule;

(5) The criteria for evaluation of proposals; and

(6) A description of any other information the state and/or its subdivisions may require.

§5-22B-9. Proposal format.

A proposal submitted by a firm in response to a request for proposal as set out in this article shall be submitted in the following format:

(1) Signed cover page;

(2) Offeror profile;

(3) Staffing plan and key personnel;

(4) Conflict of interest statement;

(5) Proof of insurance;

(6) Cost summary which shall include reconstruction costs, construction fees, and general conditions;

(7) Additional attachments from the request for proposal that require input from offeror (if any);

(8) Surety letter (CMR Only);

(9) Similar project examples from prior 10 years; and

(10) West Virginia contractor license.

§5-22B-10. Determination of best value.

1 (a) The evaluation committee shall interview each prequalified firm that submits a proposal.
2 The purpose of the interview is to allow each prequalified firm an opportunity to clarify and
3 respond to questions related to its proposal. The state and/or its subdivisions may provide a list
4 of questions to the short-listed firms in advance of each interview. The interview will not be
5 scored or included in the scoring of the proposal. Should a state and/or its subdivisions find any
6 major discrepancy or irregularity in the proposal, the state and/or its subdivisions shall notify the
7 affected firm in writing to address the concern at the interview and require the firm to provide its
8 response in writing no later than the date of the interview. This interview may be done in person
9 or electronically.

10 (b) The evaluation committee shall evaluate each proposal utilizing the criteria established
11 by the state and/or its subdivisions and as set out in this article.

12 (c) The committee shall rank the prequalified firms based on the final evaluation of each
13 proposal to determine the best value.

14 (d) The state and/or its subdivisions shall announce the firm determined to be the best
15 value and shall enter into negotiations for a construction management contract.

§5-22B-11. Evaluation of proposals; selection of construction managers.

1 (a) The state and/or its subdivisions shall evaluate proposals for a construction management
2 at-risk contract in accordance with the provisions of this article.

3 (b) The state and/or its subdivisions shall evaluate and rank each proposal on the basis of
4 best meeting the criteria in the request for proposals and taking into consideration the
5 recommendation of the evaluation committee pursuant to the provisions of this article.

6 (c) The state and/or its subdivisions shall attempt to negotiate a construction management at-
7 risk contract with the highest-ranked construction manager and may execute a construction
8 management at-risk contract after negotiations. The negotiations shall include a final determination
9 of the manner by which the construction manager selects each subcontractor. If the state and/or its
10 subdivisions are unable to negotiate a satisfactory contract with the highest-ranked construction

11 manager, the state and/or its subdivisions may terminate negotiations with that construction
12 manager. Only after negotiations have been terminated with the highest-ranked construction
13 manager may the state and/or its subdivisions undertake negotiations with the second highest-
14 ranked construction manager and may execute a construction management at-risk contract after
15 negotiations. Only after negotiations have been terminated with the second highest-ranked
16 construction manager may the state and/or its subdivisions undertake negotiations with the third
17 highest-ranked construction manager, if any, and may execute a construction management at-risk
18 contract after negotiations.

19 (d) If the state and/or its subdivisions are unable to negotiate a satisfactory contract with any
20 of the prequalified and ranked construction managers, the state and/or its subdivisions may either
21 revise the request for proposals and solicit new proposals or cancel the construction management
22 at-risk process.

§5-22B-12. Criteria for evaluation.

1 (a) The evaluation committee shall evaluate proposals taking into consideration the
2 criteria set out in this section with the maximum percentage of total points for evaluation which
3 may be assigned to each criterion as set forth in this section. The following criteria shall be
4 evaluated, when applicable:

5 (1) The financial resources of the construction manager to complete the project, 10
6 percent;

7 (2) The ability of the proposed personnel of the construction manager to perform, 20
8 percent;

9 (3) The character, integrity, reputation, judgment, experience, and efficiency of the
10 construction manager, 20 percent;

11 (4) The quality of performance on previous projects, 20 percent;

12 (5) The ability of the construction manager to perform within the time specified, 10
13 percent;

(6) The previous and existing compliance of the construction manager with laws relating to the contract, 10 percent; and

(7) Such other information as may be secured having a bearing on the selection, 10 percent.

(b) The records of the evaluation committee in evaluating proposals and making recommendations shall be considered public records for purposes of §29B-1-1 *et seq.* of this code.

§5-22B-13. Amendments to construction management at-risk contract after acceptance.

A construction management at-risk contract may be conditioned upon later refinements in scope and price and may permit the state and/or its subdivisions in agreement with the construction manager to make changes in the project without invalidating the contract. Later refinements to a contract pursuant to the provisions of this section shall not exceed the scope of the project statement contained in the request for proposals.

§5-22B-14. Public records.

(a) Records that are maintained by the state and/or its subdivisions during the qualifications phase and proposal phase are public, to the extent permitted by §29B-1-1 *et seq.* of this code, and shall be available for inspection only after the announcement of the state and/or its subdivisions set forth in §5-22B-10(d) of this code.

(b) Nothing in this article affects a state and/or its subdivisions right to accept or reject any or all proposals in whole or in part.

§5-22B-15. No effect on bonding and insurance requirements.

Nothing contained within the provisions of this article shall be construed to limit or reduce existing statutory or regulatory requirements regarding bonding or insurance.

§5-22B-16. Specialty Maintenance Projects.

(a) The state and/or its subdivisions shall not use a construction management at-risk contract for a construction project with locations on parcels of land which are not contiguous except for specialty maintenance projects.

4 **(b) For purposes of this section:**

5 **(1) A specialty maintenance project is a construction project for the maintenance of an**
6 **existing facility with a specialty contractor, including but not limited to an electrical contractor or**
7 **plumbing contractor; and**

8 **(2) Parcels are considered contiguous if they would be contiguous but for the existence of a**
9 **public road.**

§5-22B-17.

Rulemaking.

1 **The Division of Purchasing shall propose rules for legislative approval in accordance with**
2 **the procedures of §29A-3-1 et seq. of this code to develop standardized forms for use in**
3 **construction management at-risk contracting. These forms shall include:**

4 **(1) An offeror required information form;**

5 **(2) A signed contract form; and**

6 **(3) A conflict of interest statement form.**

§5-22B-18. Reporting.

1 **The Division of Purchasing shall report to the Joint Committee on Government and**
2 **Finance by December 31, 2025, and annually thereafter until the provisions of this article have no**
3 **further force or effect on the usage of the provisions of this article including, but not limited to:**

4 **(a) The number of contracts processed as a construction manager at-risk contract during**
5 **that year;**

6 **(b) The number of contracts that could have been processed as a construction manager at-**
7 **risk contract but were processed instead pursuant to the provisions of §5-22-1 et seq. of this code;**

8 **(c) A list of state entities or subdivisions of the state that have awarded contracts pursuant**
9 **to the provisions of this article;**

10 **(d) Any suggested changes to this article to make the process of construction manager at-**
11 **risk contracts more useful and effective; and**

12 **(e) Any other information that the Division of Purchasing finds informative and probative.**

§5-22B-19. **Sunset** **date.**

- 1 This article shall have no further force or effect and no construction manager at risk
 2 contract shall be authorized on or after July 1, 2030, unless further reenacted by the Legislature.

NOTE: The purpose of this bill generally relates to government contracting. The bill provides for a bid validity period. The bill clarifies factors for considering when bids exceed budgeted amount. The bill enacts the Government Construction Management At-Risk Contracts Act. The bill provides for a short title. The bill defines terms. The bill authorizes the state and/or its subdivisions to engage in construction management at-risk contracts for projects greater than \$5 million in total estimated cost. The bill requires the state and/or its subdivisions adopt policies and procedures for use in construction management at-risk contract. The bill requires the state and/or its subdivisions using construction management at risk delivery method provide notice. The bill requires the state and/or its subdivisions issue request for qualifications. The bill requires the state and/or its subdivisions issue requests for proposals. The bill establishes a standardized format for a proposal. The bill establishes the criteria a request for proposal must contain. The bill provides standards and criteria for the evaluation of proposals. The bill provides for prequalification of firms. The bill requires a proposal evaluation committee. The bill establishes suggested membership of a proposal evaluation committee. The bill provides for evaluation criteria and weight for aspects of proposals. The bill sets out process to determine best value. The bill authorizes the state and/or its subdivisions amend contracts after acceptance. The bill provides exceptions for special maintenance projects. The bill makes documents public in some instances. The bill provides for rulemaking. The bill creates required reporting. The bill sets forth a sunset date. Finally, the bill makes technical and conforming amendments.

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