

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Committee Substitute

for

Senate Bill 731

BY SENATOR RUCKER

[Reported March 14, 2025, from the Committee on
Government Organization]

1 A BILL to amend and reenact §5-22A-2, §5-22A-3, §5-22A-4, §5-22A-9a, and §5-22A-12 of the
2 Code of West Virginia, 1931, as amended; and to repeal §5-22A-5, relating to termination
3 of the Design-Build Board; and making technical and conforming amendments to allow
4 the continued use of the Design-Build project delivery method.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22A. DESIGN-BUILD PROCUREMENT ACT.

§5-22A-2. Definitions.

1 For the purpose of this article:

2 (4) "Agency" means all state departments, agencies, authorities, quasi-public corporations
3 and all political subdivisions, including cities, counties, boards of education, and public service
4 districts and the individual representatives of the agency appointed to oversee or supervise the
5 project.

6 ~~(2) "Board" means the Design-Build Board established pursuant to section four of this~~
7 ~~article to determine whether a public project satisfies the requirements of this article.~~

8 ~~(3) "Design-build" is defined as providing responsibility within a single contract for design,~~
9 ~~construction, or alteration of a building or buildings, together with incidental approaches,~~
10 ~~structures, and facilities to be constructed, in which services within the scope of the practice of~~
11 ~~professional engineering or architecture, as defined by the laws of the State of West Virginia, are~~
12 ~~performed by an engineer or architect duly licensed in the State of West Virginia and in which~~
13 ~~services within the scope of construction contracting, as defined by the laws of the State of West~~
14 ~~Virginia, are performed by a contractor qualified and licensed under the applicable statutes. The~~
15 ~~design-build method of construction may not be used for any other construction projects, such as~~
16 ~~highway, water or sewer projects.~~

17 (4) "Design-build contract" means the contract between an agency and a design-builder
18 to furnish the architecture, engineering, and related services as required, for a given public
19 project, and to furnish the labor, materials, and other construction of services for the same public

project. A design-build contract may be conditional upon subsequent refinements in scope and price, and may permit the agency to make changes in the scope of the project without invalidating the design-build contract.

~~(5)~~ "Design-builder" means the entity, whether natural person, partnership, joint venture, corporation, professional corporation, business association, or other legal entity, that proposes to design and construct any public project governed by the procedures of ~~section seven, article six of this chapter~~ and this article.

~~(6)~~ "Firm" means any individual, firm, partnership, corporation, limited liability company, limited liability partnership, association, joint venture, or other legal entity permitted by law to practice engineering, architecture, or construction contracting in the State of West Virginia.

~~(7)~~ "Invitation for proposals" means the document or publication by which an agency solicits proposals for a design-build project.

~~(8)~~ "Invitation for qualifications" means the document or publication by which an agency solicits a statement of qualifications from potential design-builders in order to select three to five design-builders to respond to the agency's invitation for proposal.

~~(9)~~ "Performance criteria" means the requirements for the public project, including as appropriate, aesthetics, capacity, durability, production standard, ingress and egress requirements, or other criteria for the intended use of the public project, expressed in performance-oriented drawings and specifications suitable to allow the design-builder to make a proposal.

~~(10)~~ "Performance criteria developer" means an architect or engineer licensed under the laws of this state and, if applicable, the architect's or engineer's employer, company, partners, joint venturers, affiliates, or subcontractors retained by the agency to develop performance criteria and to serve as the agency's technical advisor.

~~(11)~~ "Project" means that project described in the public announcement.

~~(12)~~ "Proposal" means an offer to enter into a design-build contract, as further defined in

this article.

~~(13)~~ "Qualified design-builder" means one of the three to five design-builders selected by the agency to respond to the invitation for proposals.

~~(14)~~ "Responsive proposal" means a proposal that scores a minimum of seventy points out of a possible 100 points in the qualitative evaluation.

~~(15)~~ "Statement of qualifications" means descriptive information or other data submitted by a design-builder indicating its ability to satisfy the requirements set forth in the invitation for qualifications.

~~(16)~~ "Substantial completion" means the stage in the progress of the work when the work or designated portion thereof is sufficiently complete in accordance with the design-build contract so the agency can occupy or utilize the work for its intended use.

~~(17)~~ "Technical review committee" means the group of individuals who have education and experience in the design, construction, operation, administration, and finance requirements of the project and users of the project selected by the agency to review, evaluate, and score the statement of qualifications and invitation for proposal.

~~(18)~~ "Work" means the design, construction and services required by the design-build contract, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the design-builder to fulfill the design-builder's obligations. The work may constitute the whole or a part of the project.

§5-22A-3. Public policy; conditions for contract.

(a) Recognizing that the design-bid-build method provides a viable delivery method for public projects, it is the public policy of this state to permit an agency to enter into design-build contracts for public projects.

(b) An agency may not enter into a design-build contract for a public project unless

~~(1) The Department of Administration promulgates and publishes legislative rules pursuant to section six of this article, and consistent with this article for the solicitation and award of design-~~

~~build contracts and adheres to this article and those rules;~~

~~(2) the agency, for each public project or projects procured pursuant to this article, determines that it is in the best interest of the public to enter into a design-build contract to complete the public project or projects and adheres to this article. and the rules; and~~

~~(3) The Board established pursuant to section four of this article determines that the public project is appropriate as a design-build project utilizing the mandatory criteria as provided in section five of this article.~~

~~(c) When the Design-Build Board, established pursuant to section four of this article, is terminated pursuant to the Acts of the Legislature, no agency may enter into a design-build contract: *Provided*, That agencies may pursue and complete any design-build projects approved by the board prior to its termination date.~~

~~(c) The Secretary of Administration shall be vested with the authority and oversight responsibility to ensure that agencies comply with the provisions of §5-22A-1 *et seq.* of this code.~~

~~§5-22A-4. Design-Build Board and members; appointments; expense reimbursement; meetings terminated.~~

~~(a) The Design-Build Board is terminated as of July 1, 2025. continued within the Department of Administration and is composed of the following nine members who are appointed by the Governor with the advice and consent of the Senate: Two contractors licensed in the State of West Virginia; one architect licensed in the State of West Virginia; one professional engineer licensed in the State of West Virginia; the Secretary of the Department of Administration, ex officio; one representative from labor; and three other members of the public at large. Members of the board are not entitled to compensation for services performed as members, but may be reimbursed for actual and necessary expenses incurred for each day in which he or she is engaged in the discharge of official business, in accordance with rules promulgated pursuant to section eleven, article three, chapter twelve of this code and travel management policies adopted by the Department of Administration. Each member of the board shall take and subscribe to the~~

~~oath or affirmation required pursuant to section five, article IV of the Constitution of West Virginia.~~

~~(b) Terms of office are for three years, which are staggered in accordance with the initial appointments under prior enactment of this section, each term ending on the same day of the same month of the year as did the term which it succeeds. Each member holds office from the date of his or her appointment or until his or her successor qualifies for office. When a vacancy occurs as a result of death, resignation or removal in the membership of the board, the Governor shall fill the vacancy by an appointment within thirty days of the vacancy for the unexpired portion of the term in the same manner as original appointments.~~

~~(c) The Board shall elect a chairperson and other necessary officers. The Board shall adopt rules for its procedures. Five members of the board is a quorum. A majority of the total membership is necessary to act at all times. Meetings of the board shall be held upon the call of the Secretary of the Department of Administration, the call of the chairperson or the call of any two members of the board: *Provided*, That the board shall meet at least four times each calendar year and all meetings of the board must be held in accordance with the open governmental proceedings act as set out in article nine-a, chapter six of this code.~~

§5-22A-5. Duties of board to approve and monitor projects.

[Repealed.]

§5-22A-9a. Invitation for qualifications; selection of design-builders.

(a) The agency shall publish an invitation for qualifications which provides, at a minimum:

(1) A descriptive narrative of the type, scope and size of the proposed work;

(2) The evaluation criteria for selecting the three to five qualified design-builders; and

(3) A request for descriptive information or data supporting a design-builder's claim to be able to perform the work, including, but not limited to:

(A) Licensing, insurance and evidence of good standing with the State of West Virginia and the agency;

(B) Bonding ability;

(C) Experience and technical expertise;

(D) History of past performance;

(E) Qualifications, experience and licenses of key management and professional staff including contractors, architects and engineers;

(F) Staffing capabilities;

(G) Current workload;

(H) Quality control and quality assurance policies and programs; and

(I) Safety record, including employee modification rating for the past three years.

(b) The agency shall review the statements of qualifications and select not fewer than three nor more than five of the most qualified design-builders to participate in the invitation for proposals. If fewer than three design-builders are determined to be qualified, the agency shall seek approval of the ~~Design-Build Board~~ Secretary of the Department of Administration to continue with the selection process.

(c) The agency shall make the results of the selection available to the design-builders within 10 working days of the selection.

§5-22A-12. Acceptance of design-build proposal.

(a) The design-builder shall submit the proposal to the agency as required in the invitation for proposals. Clarifications may be required to ensure conformance of proposals with the performance criteria. In seeking clarifications, the performance criteria developer may not reveal any aspect of any proposal to any other design-builder. The performance criteria developer must certify that the proposal complies with the performance criteria.

(b) In the event the agency receives fewer than three proposals, ~~the board shall, in consultation with the Secretary of the Department of Administration, determine whether the~~ agency may, in its discretion, proceed or shall start the invitations for qualifications process over.

(c) After receiving the proposals, the technical review committee shall evaluate and score the technical submissions based upon the criteria and procedures set forth in the invitation for

11 proposals.

12 (d) ~~The agency shall submit the technical submissions, including the scores of the~~
13 ~~technical submissions, to the board.~~ The agency shall make the scores of the technical
14 submissions available for public review.

15 (e) ~~The Board shall ascertain that the technical submissions comply with the requirements~~
16 ~~of this article and shall notify the agency of its approval.~~ The agency shall open the cost
17 submissions and accept the proposal that receives the best score. ~~as set forth in the legislative~~
18 ~~rules promulgated pursuant to section six of this article.~~

19 (f) The agency shall notify the design-builder in writing that its proposal was accepted. At
20 the same time notice of acceptance is delivered, the agency shall also inform, in writing, the
21 design-builders whose proposals were not accepted. When a design-builder receives notification
22 that its proposal was not accepted, the design-builder may, within three days after receipt of such
23 notification, request in writing a copy of the scores and all other factors used or considered in the
24 selection process.