

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

Senate Bill 757

By Senator Morris

[Introduced February 5, 2026; referred

to the Committee on Government Organization]

1 A BILL to amend and reenact §5-22-1 and §5-22-2 of the Code of West Virginia, 1931, as
2 amended, relating to government construction contracts; and adding language allowing
3 bidders a 10-day grace period to provide valid bid bond documentation after the close of
4 the bid to address bonding errors in otherwise qualified bids.

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

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

17 design-build project as set forth in §5-22A-1 *et seq.* of this code or a construction
18 management at-risk project as set forth in §5-22B-1 *et seq.* of this code.

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

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

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

25 (C) ~~Has supplied~~ Is able to supply documentation of a valid bid bond or other surety
26 authorized or approved by the contracting public entity within 10 business days of award.

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

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

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

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

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

39 (d) All ~~bids submitted~~ bidders submitting responses pursuant to this chapter shall
40 ~~include~~ provide documentation of a valid bid bond or other surety as approved by the state
41 of West Virginia or its subdivisions within 10 business days of contract award.

42 (e) Following the solicitation of bids, the construction contract shall be awarded to

43 the lowest qualified responsible bidder who shall furnish a sufficient performance and
44 payment bond. The state and its subdivisions may reject all bids and solicit new bids on the
45 project.

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

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

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

68 (h) Written approval must be obtained from the state spending unit before any

69 subcontractor substitution is permitted. Substitutions are not permitted unless:

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

71 (2) The state spending unit refuses to approve a subcontractor in the original bid

72 because the subcontractor is under a debarment pursuant to §5A-3-33d of this code or a

73 suspension under §5A-3-32 of this code; or

74 (3) The contractor certifies in writing that the subcontractor listed in the original bill

75 fails, is unable, or refuses to perform the subcontract.

76 (i) The contracting public entity may not award the contract to a bidder which fails to

77 meet the minimum requirements set out in this section. As to a prospective low bidder

78 which the contracting public entity determines not to have met one or more of the

79 requirements of this section or other requirements as determined by the public entity in the

80 written bid solicitation, prior to the time a contract award is made, the contracting public

81 entity shall document in writing and in reasonable detail the basis for the determination and

82 shall place the writing in the bid file. After the award of a bid under this section, the bid file of

83 the contracting public agency and all bids submitted in response to the bid solicitation shall

84 be open and available for public inspection.

85 (j) The contracting public entity shall not award a contract pursuant to this section to

86 any bidder that is known to be in default on any monetary obligation owed to the state or a

87 political subdivision of the state, including, but not limited to, obligations related to payroll

88 taxes, property taxes, sales and use taxes, fire service fees, or other fines or fees. Any

89 governmental entity may submit to the Division of Purchasing information which identifies

90 vendors that qualify as being in default on a monetary obligation to the entity. The

91 contracting public entity shall take reasonable steps to verify whether the lowest qualified

92 bidder is in default pursuant to this subsection prior to awarding a contract.

93 (k) A public official or other person who individually or together with others

94 knowingly makes an award of a contract under this section in violation of the procedures

95 and requirements of this section is subject to the penalties set forth in §5A-3-29 of this
96 code.

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

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

105 (n) Nothing in this section applies to:

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

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

110 (3) Emergency repairs to building components, systems, and public infrastructure.

111 For the purpose of this subdivision, the term "emergency repairs" means repairs that if not
112 made immediately will seriously impair the use of building components, systems, and
113 public infrastructure or cause danger to persons using the building components, systems,
114 and public infrastructure; and

115 (4) A situation where the state or subdivision thereof reaches an agreement with
116 volunteers, or a volunteer group, in which the governmental body will provide construction
117 or repair materials, architectural, engineering, technical, or other professional services,
118 and the volunteers will provide the necessary labor without charge to, or liability upon, the
119 governmental 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
2 for the contract or purchase and for the advertisement for bids, designate the time and
3 place that the bids will be received and shall at that time and place publicly open the bids
4 and read them aloud. No public entity may accept or take any bid, including receiving any
5 hand-delivered bid, after the time advertised to take bids. No bid may be opened on days
6 which are recognized as holidays by the United States Postal Service. ~~No public entity may~~
7 ~~accept or consider any bids that do not contain a valid bid bond or other surety approved by~~
8 ~~the state of West Virginia or its subdivisions.~~

9 (b) The provisions and requirements of this section, §5-22-1 of this code, the
10 requirements stated in the advertisement for bids, and the requirements on the bid form
11 may not be waived by any public entity. The public entity may only reject an erroneous bid
12 after the opening if all of the following conditions exist: (1) An error was made; (2) ~~The error~~
13 materially affected the bid; (3) ~~Rejection of the bid would not cause a hardship on the public~~
14 entity involved, other than losing an opportunity to receive construction projects at a
15 reduced cost; and (4) ~~Enforcement of the bid in error would be unconscionable.~~ If a public
16 entity rejects a bid, it shall maintain a file of documented evidence demonstrating that all
17 the conditions set forth in this subdivision existed. If the public entity determines the bid to
18 be erroneous, the public entity shall return the bid security to the contractor.

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

22 (d) The provisions of a bid shall remain valid and legally binding for a period of 90
23 calendar days. The 90 days begin to run from the date of the bid opening as prescribed by
24 the public entity bid solicitation. The 90-day period as set forth in this section may be
25 extended by mutual agreement of the contractor and the public entity. Any extension shall

26 be in writing.

NOTE: The purpose of this bill is to add language that gives vendors a 10-day grace period to provide bid bond documentation after the bid closing to address bonding errors in otherwise qualified bids.

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