

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Committee Substitute

for

Senate Bill 757

BY SENATORS MORRIS, OLIVERIO, AND WOELFEL

[Reported February 18, 2026, from 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; increasing maximum allowable
3 amount for open-ended contracts; clarifying that lowest qualified responsible bidder shall
4 certify that it meets experience requirements; granting public entity discretion to allow
5 apparent lowest qualified responsible bidder five business days to cure minor irregularities
6 in bid bond documentation; and requiring bids to remain valid for 60 calendar days.

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 solicitation
5 for competitive bids that are different from and priced separately from what is included in a base
6 bid.

7 (2) "Construction project" means a specifically identified scope of work involving the act,
8 trade, or process of building, erecting, constructing, adding, repairing, remodeling, rehabilitating,
9 reconstructing, altering, converting, improving, expanding, or demolishing of a building, structure,
10 facility, road, or highway. Repair and maintenance of existing public improvements that are
11 recurring or ongoing in nature and that are not fully identified or known at any one time shall be
12 considered a construction project and procured according to this article on an open-ended basis,
13 so long as the work to be performed under the contract falls into a generally accepted single class,
14 or type, and bidders are notified of the open-ended nature of the work in the solicitation: *Provided,*

15 That no open-ended repair or maintenance contract may exceed ~~\$500,000~~ \$1 million. A
16 construction project does not include a design-build project as set forth in §5-22A-1 *et seq.* of this
17 code or a construction management at-risk project as set forth in §5-22B-1 *et seq.* of this code.

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

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

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

24 (C) Has supplied a valid bid bond or other surety authorized or approved by the
25 contracting public entity; and

26 (D) Possesses the experience necessary to achieve the objectives set forth by the
27 contracting public entity in the project solicitation.

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

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

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

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

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

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

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

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

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

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

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

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

69 (2) The state spending unit refuses to approve a subcontractor in the original bid because
70 the subcontractor is under a debarment pursuant to §5A-3-33d of this code or a suspension under
71 §5A-3-32 of this code; or

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

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

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

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

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

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

101 (n) Nothing in this section applies to:

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

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

106 (3) Emergency repairs to building components, systems, and public infrastructure. For the
107 purpose of this subdivision, the term "emergency repairs" means repairs that if not made
108 immediately will seriously impair the use of building components, systems, and public
109 infrastructure or cause danger to persons using the building components, systems, and public
110 infrastructure; and

111 (4) A situation where the state or subdivision thereof reaches an agreement with
112 volunteers, or a volunteer group, in which the governmental body will provide construction or
113 repair materials, architectural, engineering, technical, or other professional services, and the
114 volunteers will provide the necessary labor without charge to, or liability upon, the governmental
115 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
3 bids will be received and shall at that time and place publicly open the bids and read them aloud.
4 No public entity may accept or take any bid, including receiving any hand-delivered bid, after the
5 time advertised to take bids. No bid may be opened on days which are recognized as holidays by
6 the United States Postal Service.

7 (b) No public entity may accept or consider any bids that do not contain a valid bid bond
8 or other surety approved by the State of West Virginia or its subdivisions: Provided, That a public
9 entity may in its discretion permit the apparent lowest qualified responsible bidder up to five
10 business days to correct a minor irregularity in an otherwise valid bid bond or other surety
11 submitted with a bid: Provided, however, That exercising the discretion granted pursuant to this
12 subsection is in the best interest of the public entity.

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

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

26 ~~(d)~~ (e) The provisions of a bid shall remain valid and legally binding for a period of ~~90~~ 60
27 calendar days. The ~~90~~ 60 days begin to run from the date of the bid opening as prescribed by the
28 public entity bid solicitation. The ~~90-day~~ 60-day period as set forth in this section may be extended
29 by mutual agreement of the contractor and the public entity. Any extension shall be in writing.