

**FILED**

2003 MAR 18 P 6: 19

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# **WEST VIRGINIA LEGISLATURE**

FIRST REGULAR SESSION, 2003



# **ENROLLED**

**COMMITTEE SUBSTITUTE  
FOR**

## **House Bill No. 3117**

(By Mr. Speaker, Mr. Kiss, Delegates Staton, Amores, Michael, Pino, Kuhn and Cann)



Passed March 6, 2003

In Effect Ninety Days from Passage

**FILED**

2003 MAR 18 P 6: 20

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**E N R O L L E D**

COMMITTEE SUBSTITUTE

FOR

**H. B. 3117**

(BY MR. SPEAKER, MR. KISS, DELEGATES STATON,  
AMORES, MICHAEL, PINO, KUHN AND CANN)

[Passed March 6, 2003; in effect ninety days from passage.]

AN ACT to amend and reenact section one, article twenty-two, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section two, all relating to bidding on government construction contracts; inclusion of certain valid bid bonds; designation of time and place of opening of certain bids; inability to waive certain bid provisions and requirements; and inability to resubmit certain bids on a project after bid withdrawal.

*Be it enacted by the Legislature of West Virginia:*

That section one, article twenty-two, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by

adding thereto a new section, designated section two, all to read as follows:

**ARTICLE 22. GOVERNMENT CONSTRUCTION CONTRACTS.**

**§5-22-1. Bidding required; government construction contracts to go to qualified responsible bidder; debarment; exceptions.**

1 (a) As used in this section, “the state and its subdivisions”  
2 means the state of West Virginia, every political subdivision  
3 thereof, every administrative entity that includes such a  
4 subdivision, all municipalities and all county boards of educa-  
5 tion.

6 (b) The state and its subdivisions shall, except as provided  
7 in this section, solicit competitive bids for every construction  
8 project exceeding twenty-five thousand dollars in total cost:  
9 *Provided*, That a vendor who has been debarred pursuant to the  
10 provisions of sections thirty-three-a through thirty-three-f,  
11 article three, chapter five-a of this code, may not bid on or be  
12 awarded a contract under this section. All bids submitted  
13 pursuant to this chapter shall include a valid bid bond or other  
14 surety as approved by the state of West Virginia or its subdivi-  
15 sions.

16 (c) Following the solicitation of such bids, the construction  
17 contract shall be awarded to the lowest qualified responsible  
18 bidder, who shall furnish a sufficient performance and payment  
19 bond: *Provided*, That the state and its subdivisions may reject  
20 all bids and solicit new bids on said project.

21 (d) All bids shall be opened in accordance with the provi-  
22 sions of section two of this article, except design-build projects  
23 which are governed by article twenty-two-a, chapter five of this  
24 code are exempt from these provisions.

25 (e) Nothing in this section shall apply to:

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

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

31 (3) Emergency repairs to building components and systems.  
32 For the purpose of this subdivision, emergency repairs means  
33 repairs that if not made immediately will seriously impair the  
34 use of such building components and systems, or cause danger  
35 to those persons using such building components and systems;  
36 and

37 (4) Any situation where the state or a subdivision thereof  
38 shall come to an agreement with volunteers, or a volunteer  
39 group, whereby the governmental body will provide construc-  
40 tion or repair materials, architectural, engineering, technical or  
41 any other professional services and the volunteers will provide  
42 the necessary labor without charge to, or liability upon, the  
43 governmental body.

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

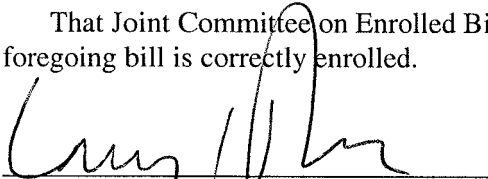
1 (a) The public entity accepting public contract bids shall, in  
2 its resolution providing for the contract or purchase and for the  
3 advertisement for bids, designate the time and place that the  
4 bids will be received and shall at that time and place publicly  
5 open the bids and read them aloud. No public entity may accept  
6 or take any bid, including receiving any hand delivered bid,  
7 after the time advertised to take bids. No bid may be opened on  
8 days which are recognized as holidays by the United States  
9 postal service. No public entity may accept or consider any bids

10 that do not contain a valid bid bond or other surety approved by  
11 the state of West Virginia or its subdivisions.

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

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

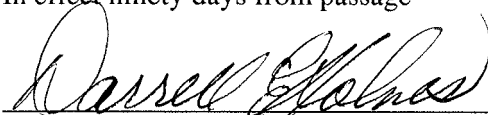
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

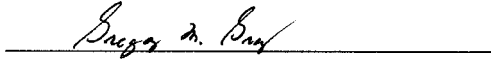
  
Chairman Senate Committee

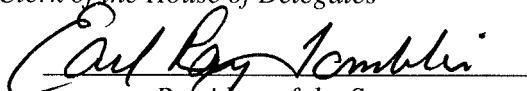
  
Chairman House Committee

Originating in the House.

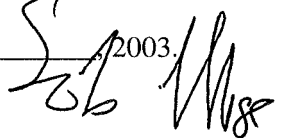
In effect ninety days from passage

  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within is approved this the 18<sup>th</sup>  
day of March 2003.  


Governor

PRESENTED TO THE  
GOVERNOR

Date 3/12/03

Time 11:10 am