

VETO SB 694

FILED

2004 APR -7 P 2: 24

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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~~2004 APR -5 P 4: 24~~

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 2004

ENROLLED

COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 694

(By Senator MCCABE, ET AL)

PASSED MARCH 13, 2004

In Effect 90 Days From Passage

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 694

(SENATORS MCCABE, GUILLS AND HUNTER, *original sponsors*)

[Passed March 13, 2004; in effect ninety days from passage.]

AN ACT to amend and reenact §5-22-1 of the code of West Virginia, 1931, as amended, relating to establishing the West Virginia fairness in competitive bidding act; requiring that competitive bids for government construction projects be awarded to the lowest qualified responsible bidder; providing clarification of the term "lowest qualified responsible bidder"; establishing procedures and requirements to be followed in awarding contracts for government construction projects; and providing criminal penalties for violation of the procedures and requirements to be followed in awarding government construction projects.

Be it enacted by the Legislature of West Virginia:

That §5-22-1 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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 set forth in this
2 section may be referred to as the "West Virginia Fairness
3 In Competitive Bidding Act".

4 (b) As used in this section, "the state and its subdivi-
5 sions" means the state of West Virginia, every political
6 subdivision thereof, every administrative entity that
7 includes such a subdivision, all municipalities and all
8 county boards of education.

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

20 (d) Following the solicitation of bids, the construction
21 contract shall be awarded to the lowest qualified responsi-
22 ble bidder who shall furnish a sufficient performance and
23 payment bond: *Provided*, That the state and its subdivi-
24 sions may reject all bids and solicit new bids on the
25 project. As used in this section, the term "lowest qualified
26 responsible bidder" means the bidder that bids the lowest
27 price and that meets, as a minimum, all the following
28 requirements in connection with the bidder's response to
29 the bid solicitation. The bidder must certify that it: (1) Is
30 ready, able and willing to timely furnish the labor and

31 materials required to complete the contract; (2) is in
32 compliance with all applicable laws of the state of West
33 Virginia; and (3) has supplied a valid bid bond or other
34 surety authorized or approved by the contracting public
35 entity. The contracting public entity may not award the
36 contract to a bidder which fails to meet these minimum
37 requirements. As to any prospective low bidder which the
38 contracting public entity determines not to have met any
39 one or more of the requirements of this section or other
40 requirements as determined by the public entity in the
41 written bid solicitation, prior to the time a contract award
42 is made, the contracting public entity shall document in
43 writing and in reasonable detail the basis for the determi-
44 nation and shall place the writing in the bid file. After the
45 award of a bid under this section, the bid file of the
46 contracting public entity and all bids submitted in re-
47 sponse to the bid solicitation shall be open and available
48 for public inspection.

49 (e) Any public official or other person who individually
50 or together with others knowingly makes an award of a
51 contract under this section in violation of the procedures
52 and requirements of this section is subject to the penalties
53 set forth in section twenty-nine, article three, chapter five-
54 a of the code of West Virginia.

55 (f) All bids shall be opened in accordance with the
56 provisions of section two of this article, except design-
57 build projects which are governed by article twenty-two-a,
58 chapter five of this code and are exempt from these
59 provisions.

60 (g) Nothing in this section shall apply to:

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

63 (2) Prevent students enrolled in vocational educational
64 schools from being utilized in construction or repair

65 projects when the use is a part of the student's training
66 program;

67 (3) Emergency repairs to building components and
68 systems. For the purpose of this subdivision, the term
69 emergency repairs means repairs that if not made immedi-
70 ately will seriously impair the use of building components
71 and systems or cause danger to those persons using the
72 building components and systems; and

73 (4) Any situation where the state or a subdivision thereof
74 reaches an agreement with volunteers, or a volunteer
75 group, whereby the governmental body will provide
76 construction or repair materials, architectural, engineer-
77 ing, technical or any other professional services and the
78 volunteers will provide the necessary labor without charge
79 to, or liability upon, the governmental body.

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

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *7th*
Day of *April*, 2004.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

DATE 3.31.04

TIME 10:45 AM