

Senate Bill No. 203

(By Senators Klempa, Browning, Yost and Kessler (Acting
President))

[Introduced January 19, 2011; referred to the Committee on the
Judiciary.]

A BILL to amend and reenact §5-22-1 of the Code of West Virginia,
1931, as amended, relating to requiring the disclosure of
subcontractors within two hours of the close of bids for
public construction contracts.

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.**

(a) This section and the requirements set forth in this

1 section may be referred to as the "West Virginia Fairness In
2 Competitive Bidding Act."

3 (b) As used in this section:

4 (1) "Lowest qualified responsible bidder" means the bidder
5 that bids the lowest price and that meets, as a minimum, all the
6 following requirements in connection with the bidder's response to
7 the bid solicitation. The bidder must certify that it:

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

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

12 (C) Has supplied a valid bid bond or other surety authorized
13 or approved by the contracting public entity.

14 (2) "The state and its subdivisions" means the State of West
15 Virginia, every political subdivision thereof, every administrative
16 entity that includes such a subdivision, all municipalities and all
17 county boards of education.

18 (c) The state and its subdivisions shall, except as provided
19 in this section, solicit competitive bids for every construction
20 project exceeding \$25,000 in total cost: *Provided*, That a vendor
21 who has been debarred pursuant to the provisions of sections
22 thirty-three-a through thirty-three-f, inclusive, article three,
23 chapter five-a of this code may not bid on or be awarded a contract
24 under this section. All bids submitted pursuant to this chapter
25 shall include a valid bid bond or other surety as approved by the

1 State of West Virginia or its subdivisions.

2 (d) Following the solicitation of bids, the construction
3 contract shall be awarded to the lowest qualified responsible
4 bidder who shall furnish a sufficient performance and payment bond.
5 ~~Provided, That~~ The state and its subdivisions may reject all bids
6 and solicit new bids on the project. All bidders on a construction
7 contract shall submit a list of all subcontractors including the
8 addresses and license numbers as required by article eleven,
9 chapter twenty-one of this code to the contracting public entity
10 within two hours of the close of bids for review prior to the
11 awarding of a construction contract. If no subcontractors are to
12 be used to complete the project it will be so noted on the
13 subcontractor list. Failure to submit the subcontractors list
14 within two hours after the deadline for submitting bids shall
15 result in disqualification of the bid. Written approval must be
16 obtained from the owner or the owner's representative before any
17 subcontractor substitution is permitted. Substitutions are not
18 permitted unless it can be shown to be to the advantage of the
19 owner.

20 (e) The contracting public entity may not award the contract
21 to a bidder which fails to meet the minimum requirements set out in
22 this section. As to any prospective low bidder which the
23 contracting public entity determines not to have met any one or
24 more of the requirements of this section or other requirements as
25 determined by the public entity in the written bid solicitation,

1 prior to the time a contract award is made, the contracting public
2 entity shall document in writing and in reasonable detail the basis
3 for the determination and shall place the writing in the bid file.

4 After the award of a bid under this section, the bid file of the
5 contracting public agency and all bids submitted in response to the
6 bid solicitation shall be open and available for public inspection.

7 (f) Any public official or other person who individually or
8 together with others knowingly makes an award of a contract under
9 this section in violation of the procedures and requirements of
10 this section is subject to the penalties set forth in section
11 twenty-nine, article three, chapter five-a of the Code of West
12 Virginia.

13 (g) No officer or employee of this state or of any public
14 agency, public authority, public corporation or other public entity
15 and no person acting or purporting to act on behalf of such officer
16 or employee or public entity shall require that any performance
17 bond, payment bond or surety bond required or permitted by this
18 section be obtained from any particular surety company, agent,
19 broker or producer.

20 (h) All bids shall be open in accordance with the provisions
21 of section two of this article, except design-build projects which
22 are governed by article twenty-two-a of this chapter and are exempt
23 from these provisions.

24 (i) Nothing in this section shall apply to:

25 (1) Work performed on construction or repair projects by

1 regular full-time employees of the state or its subdivisions;

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

5 (3) Emergency repairs to building components and systems. For
6 the purpose of this subdivision, the term emergency repairs means
7 repairs that if not made immediately will seriously impair the use
8 of building components and systems or cause danger to those persons
9 using the building components and systems; and

10 (4) Any situation where the state or a subdivision thereof
11 reaches an agreement with volunteers, or a volunteer group, whereby
12 the governmental body will provide construction or repair
13 materials, architectural, engineering, technical or any other
14 professional services and the volunteers will provide the necessary
15 labor without charge to, or liability upon, the governmental body.

NOTE: The purpose of this bill is to require the disclosure of subcontractors within two hours of the close of bids for public contracts. The bill provides that if this disclosure is not made the bid will be disqualified. The bill also requires that if no subcontractors are to be used their nonuse will be noted. Additionally, the bill prohibits the substitution of a contractor unless it is to the owner's advantage.

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