COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 36

(By Senator Klempa)

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[Originating in the Committee on Labor;

reported February 16, 2012.]

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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 providing over a certain monetary amount of services within one business day 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.

1   (a) This section and the requirements set forth in this
2 section may be referred to as the "West Virginia Fairness In
3 Competitive Bidding Act."

4   (b) As used in this section:

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

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

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

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

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

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

1 under this section. All bids submitted pursuant to this chapter

2 shall include a valid bid bond or other surety as approved by the

3 State of West Virginia or its subdivisions.

4   (d) Following the solicitation of bids, the construction

5 contract shall be awarded to the lowest qualified responsible

6 bidder who shall furnish a sufficient performance and payment bond.

7 *Provided, That* The state and its subdivisions may reject all bids

8 and solicit new bids on the project. All bidders on a construction

9 contract with the Department of Administration, Division of

10 Purchasing, valued at more than $500,000.00 shall submit a list of

11 all subcontractors who will perform more than $25,000.00 of work on

12 the project including labor and materials: *Provided*, That this

13 section shall not apply to "design-build" projects as defined in

14 subsection (3), section two, article twenty-two-a of this chapter.

15 Such list shall include the license numbers as required by article

16 eleven, chapter twenty-one of this code. In addition, such listing

17 shall include addresses of the subcontractors. This information

18 shall be provided to the soliciting entity within one business day

19 of the close of bids for review prior to the awarding of a

20 construction contract. If no subcontractors are to be used to

21 complete the project it will be so noted on the subcontractor list.

22 Failure to submit the subcontractor list within twenty-four hours

23 after the deadline for submitting bids shall result in

24 disqualification of the bid. Written approval must be obtained

1 from the contracting public entity before any subcontractor

2 substitution is permitted. Substitutions are not permitted unless:

3   (1) The subcontractor listed in the original bid becomes

4 bankrupt or insolvent prior to execution of a subcontract;

5   (2) When the using agency refuses to approve the subcontractor

6 list in the original bid, provided such approval has been reserved

7 in the bidding documents;

8   (3) When the subcontractor listed in the original bill fails,

9 is unable or refuses to perform his subcontract; or

10   (4) When a bid alternate accepted by the using agency causes

11 the listed subcontractor's bid not to be low.

12   The provisions regarding subcontractors shall expire one year

13 from passage.

14   (e) The contracting public entity may not award the contract

15 to a bidder which fails to meet the minimum requirements set out in

16 this section. As to any prospective low bidder which the

17 contracting public entity determines not to have met any one or

18 more of the requirements of this section or other requirements as

19 determined by the public entity in the written bid solicitation,

20 prior to the time a contract award is made, the contracting public

21 entity shall document in writing and in reasonable detail the basis

22 for the determination and shall place the writing in the bid file.

23 After the award of a bid under this section, the bid file of the

24 contracting public agency and all bids submitted in response to the

1 bid solicitation shall be open and available for public inspection.

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

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

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

19   (I) Nothing in this section shall apply to:

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

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

1   (3) Emergency repairs to building components and systems. For

2 the purpose of this subdivision, the term emergency repairs means

3 repairs that if not made immediately will seriously impair the use

4 of building components and systems or cause danger to those persons

5 using the building components and systems; and

6   (4) Any situation where the state or a subdivision thereof

7 reaches an agreement with volunteers, or a volunteer group, whereby

8 the governmental body will provide construction or repair

9 materials, architectural, engineering, technical or any other

10 professional services and the volunteers will provide the necessary

11 labor without charge to, or liability upon, the governmental body.

     NOTE: The purpose of this bill is to require the disclosure
of subcontractors when construction contracts are of a certain
value.   Additionally, this bill would require contractors one
business day of the close of bids to submit this information 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 non-use 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.