

COMMITTEE SUBSTITUTE

FOR

H. B. 2716

(BY DELEGATE(S) DISERIO, WALKER, FERRO,
SKINNER, BARILL, SWARTZMILLER, NELSON, E., ELLEM,
STORCH, MARCUM AND WHITE)

(Originating in the Committee on Finance)

[March 28, 2013]

A BILL to amend and reenact §5-22-1 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Fairness in Competitive Bidding Act; defining “state spending units”; lowering the threshold amount from \$500,000 to \$250,000 for triggering a low bidder’s duty to submit a list of subcontractors on state spending unit contracts; and to further modify reporting for the subcontractor list.

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 section
2 may be referred to as the West Virginia Fairness In Competitive
3 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
8 to 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 administra-
17 tive entity that includes such a subdivision, all municipalities and
18 all county boards of education.

19 (3) “State spending unit” means a department, agency or
20 institution of the state government for which an appropriation is
21 requested, or to which an appropriation is made by the Legisla-
22 ture.

23 (c) The state and its subdivisions shall, except as provided in
24 this section, solicit competitive bids for every construction
25 project exceeding \$25,000 in total cost. ~~Provided, That~~ A vendor
26 who has been debarred pursuant to the provisions of sections
27 ~~thirty-three-a~~ thirty-three-b through thirty-three-f, inclusive,
28 article three, chapter five-a of this code may not bid on or be
29 awarded a contract under this section. All bids submitted
30 pursuant to this chapter shall include a valid bid bond or other
31 surety as approved by the State of West Virginia or its subdivi-
32 sions.

33 (d) Following the solicitation of bids, the construction
34 contract shall be awarded to the lowest qualified responsible

35 bidder who shall furnish a sufficient performance and payment
36 bond. The state and its subdivisions may reject all bids and
37 solicit new bids on the project.

38 (e) The apparent low bidder on a contract valued at more
39 than \$250,000 for the construction, alteration, decoration,
40 painting or improvement of a new or existing building or
41 structure with a state spending unit ~~the Department of Adminis-~~
42 ~~tration, Division of Purchasing, valued at more than \$500,000.00~~
43 shall submit a list of all subcontractors who will perform more
44 than \$25,000 of work on the project including labor and materi-
45 als. ~~Provided, That this section shall not apply to any other~~
46 ~~construction projects, such as~~ This section does not apply to
47 other construction projects such as highway, mine reclamation,
48 water or sewer projects. The list shall include the names of the
49 bidders and the license numbers as required by article eleven,
50 chapter twenty-one of this code. This information shall be
51 provided to the ~~Division of Purchasing~~ state spending unit within
52 one business day of the opening of bids for review prior to the
53 awarding of a construction contract. If no subcontractors who
54 will perform more than \$25,000 of work are to be used to

55 complete the project it will be ~~so~~ noted on the subcontractor list.
56 Failure to submit the subcontractor list within one business day
57 after the deadline for submitting bids shall result in disqualifica-
58 tion of the bid.

59 (f) Written approval must be obtained from the ~~Division of~~
60 Purchasing state spending unit before any subcontractor substitu-
61 tion is permitted. Substitutions are not permitted unless:

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

64 (2) The ~~Division of Purchasing~~ state spending unit refuses to
65 approve a subcontractor in the original bid because the subcon-
66 tractor is under a debarment pursuant to section thirty-three-d,
67 article three, chapter five-a of this code or a suspension under
68 section thirty-two, article three, chapter five-a of this code; or

69 (3) The contractor certifies in writing that the subcontractor
70 listed in the original bill fails, is unable or refuses to perform ~~his~~
71 the subcontract.

72 ~~(g) The amendments to this section made during the 2012~~
73 ~~regular session of the Legislature shall expire one year from the~~
74 ~~effective date of the amendments absent further action of the~~
75 ~~Legislature.~~

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

89 ~~(i)~~ (h) ~~Any~~ A public official or other person who individu-
90 ally or together with others knowingly makes an award of a
91 contract under this section in violation of the procedures and
92 requirements of this section is subject to the penalties set forth
93 in section twenty-nine, article three, chapter five-a of the Code
94 of West Virginia.

95 ~~(j)~~ (i) No officer or employee of this state or of ~~any~~ a public
96 agency, public authority, public corporation or other public

97 entity and no person acting or purporting to act on behalf of ~~such~~
98 an officer or employee or public entity shall require that ~~any~~ a
99 performance bond, payment bond or surety bond required or
100 permitted by this section be obtained from ~~any~~ a particular surety
101 company, agent, broker or producer.

102 ~~(k)~~ (j) All bids shall be open in accordance with the provi-
103 sions of section two of this article, except design-build projects
104 which are governed by article twenty-two-a of this chapter and
105 are exempt from these provisions.

106 ~~(k)~~ (k) Nothing in this section ~~shall apply~~ applies to:

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

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

112 (3) Emergency repairs to building components and systems.

113 For the purpose of this subdivision, the term emergency repairs
114 means repairs that if not made immediately will seriously impair
115 the use of building components and systems or cause danger to
116 ~~those~~ persons using the building components and systems; and

117 (4) ~~Any~~ A situation where the state or ~~a subdivision thereof~~
118 subdivision thereof reaches an agreement with volunteers, or a
119 volunteer group, ~~whereby~~ in which the governmental body will
120 provide construction or repair materials, architectural, engineer-
121 ing, technical or ~~any~~ other professional services and the volun-
122 teers will provide the necessary labor without charge to, or
123 liability upon, the governmental body.