

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2716

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

[Passed April 13, 2013; 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 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 in this section may be
2 referred to as the West Virginia Fairness In Competitive Bidding
3 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. A vendor who has been
26 debarred pursuant to the provisions of sections thirty-three-b
27 through thirty-three-f, inclusive, article three, chapter five-a of
28 this code may not bid on or be awarded a contract under this
29 section. All bids submitted pursuant to this chapter shall include
30 a valid bid bond or other surety as approved by the State of West
31 Virginia or its subdivisions.

32 (d) Following the solicitation of bids, the construction
33 contract shall be awarded to the lowest qualified responsible
34 bidder who shall furnish a sufficient performance and payment
35 bond. The state and its subdivisions may reject all bids and
36 solicit new bids on the project.

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

54 (f) Written approval must be obtained from state spending
55 unit before any subcontractor substitution is permitted. Substitu-
56 tions are not permitted unless:

57 (1) The subcontractor listed in the original bid has filed for
58 bankruptcy;

59 (2) The state spending unit refuses to approve a subcontractor
60 in the original bid because the subcontractor is under a
61 debarment pursuant to section thirty-three-d, article three,
62 chapter five-a of this code or a suspension under section
63 thirty-two, article three, chapter five-a of this code; or

64 (3) The contractor certifies in writing that the subcontractor
65 listed in the original bill fails, is unable or refuses to perform the
66 subcontract.

67 (g) The contracting public entity may not award the contract
68 to a bidder which fails to meet the minimum requirements set
69 out in this section. As to a prospective low bidder which the
70 contracting public entity determines not to have met one or more
71 of the requirements of this section or other requirements as
72 determined by the public entity in the written bid solicitation,
73 prior to the time a contract award is made, the contracting public
74 entity shall document in writing and in reasonable detail the
75 basis for the determination and shall place the writing in the bid
76 file. After the award of a bid under this section, the bid file of the
77 contracting public agency and all bids submitted in response to
78 the bid solicitation shall be open and available for public
79 inspection.

80 (h) A public official or other person who individually or
81 together with others knowingly makes an award of a contract
82 under this section in violation of the procedures and require-
83 ments of this section is subject to the penalties set forth in
84 section twenty-nine, article three, chapter five-a of the Code of
85 West Virginia.

86 (i) No officer or employee of this state or of a public agency,
87 public authority, public corporation or other public entity and no
88 person acting or purporting to act on behalf of an officer or

89 employee or public entity shall require that a performance bond,
90 payment bond or surety bond required or permitted by this
91 section be obtained from a particular surety company, agent,
92 broker or producer.

93 (j) All bids shall be open in accordance with the provisions
94 of section two of this article, except design-build projects which
95 are governed by article twenty-two-a of this chapter and are
96 exempt from these provisions.

97 (k) Nothing in this section applies to:

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

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

103 (3) Emergency repairs to building components and systems.
104 For the purpose of this subdivision, the term emergency repairs
105 means repairs that if not made immediately will seriously impair
106 the use of building components and systems or cause danger to
107 persons using the building components and systems; and

108 (4) A situation where the state or subdivision thereof reaches
109 an agreement with volunteers, or a volunteer group, in which the
110 governmental body will provide construction or repair materials,
111 architectural, engineering, technical or other professional
112 services and the volunteers will provide the necessary labor
113 without charge to, or liability upon, the governmental body.

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

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2013.

Governor

