

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

Senate Bill 413

BY SENATOR BLAIR

[Originating in the Committee on Government

Organization; reported on March 13, 2017]

1 A BILL to amend and reenact §5-22-1 of the Code of West Virginia, 1931, as amended, relating
2 to the solicitation for bids for government construction contracts; submitting bids on
3 government construction contracts; defining the term “alternates”; limiting the number of
4 alternates that may be included on any solicitation of bids for government construction
5 contracts; establishing procedures for acceptance of alternate bids and determination of
6 the lowest qualified responsible bidder; and providing procedures for the required
7 submission of a list of subcontractors who will perform more than \$25,000 of work on
8 certain projects.

Be it enacted by the Legislature of West Virginia:

1 That §5-22-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted
2 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 referred to as the West
2 Virginia Fairness In Competitive Bidding Act.

3 (b) As used in this section:

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

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

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

10 (C) Has supplied a valid bid bond or other surety authorized or approved by the contracting

11 public entity.

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

15 (3) "State spending unit" means a department, agency or institution of the state
16 government for which an appropriation is requested, or to which an appropriation is made by the
17 Legislature.

18 (4) "Alternates" means any additive options or alternative designs included in a solicitation
19 for competitive bids that are different from and priced separately from what is included in a base
20 bid.

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

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

30 (e) Any solicitation of bids shall include no more than seven alternates. Alternates, if
31 accepted, shall be accepted in the order in which they are listed on the bid form: *Provided, That*
32 a public entity may accept an alternate out of the listed order if acceptance would not affect
33 determination of the lowest qualified responsible bidder. Determination of the lowest qualified
34 responsible bidder shall be based on the sum of the base bid and any alternates accepted.

35 ~~(e)~~ (f) The apparent low bidder on a contract valued at more than \$250,000 for the
36 construction, alteration, decoration, painting or improvement of a new or existing building or

37 structure with a state spending unit shall submit a list of all subcontractors who will perform more
38 than \$25,000 of work on the project including labor and materials. This section does not apply to
39 other construction projects such as highway, mine reclamation, water or sewer projects. The list
40 shall include the names of the bidders and the license numbers as required by article eleven,
41 chapter twenty-one of this code. This information shall be provided to the state spending unit
42 within one business day of the opening of bids for review prior to the awarding of a construction
43 contract. ~~If no subcontractors who will perform more than \$25,000 of work are to be used to~~
44 ~~complete the project it will be noted on the subcontractor list. Failure to submit the subcontractor~~
45 ~~list within one business day after the deadline for submitting bids shall result in disqualification of~~
46 ~~the bid. If the apparent low bidder fails to submit the subcontractor list, the Purchasing Division~~
47 ~~shall promptly request by telephone and electronic mail that the low bidder and second low bidder~~
48 ~~provide the subcontractor list within one business day of the request. Failure to submit the~~
49 ~~subcontractor list within one business day of receiving the request shall result in disqualification~~
50 ~~of the bid. A subcontractor list may not be required if the bidder provides notice in the bid~~
51 ~~submission or in response to a request for a subcontractor list that no subcontractors who will~~
52 ~~perform more than \$25,000 of work will be used to complete the project.~~

53 (f) (g) Written approval must be obtained from the state spending unit before any
54 subcontractor substitution is permitted. Substitutions are not permitted unless:

- 55 (1) The subcontractor listed in the original bid has filed for bankruptcy;
- 56 (2) The state spending unit refuses to approve a subcontractor in the original bid because
57 the subcontractor is under a debarment pursuant to section thirty-three-d, article three, chapter
58 five-a of this code or a suspension under section thirty-two of said article; or
- 59 (3) The contractor certifies in writing that the subcontractor listed in the original bill fails, is
60 unable or refuses to perform the subcontract.

61 (g) (h) The contracting public entity may not award the contract to a bidder which fails to
62 meet the minimum requirements set out in this section. As to a prospective low bidder which the

63 contracting public entity determines not to have met one or more of the requirements of this
64 section or other requirements as determined by the public entity in the written bid solicitation, prior
65 to the time a contract award is made, the contracting public entity shall document in writing and
66 in reasonable detail the basis for the determination and shall place the writing in the bid file. After
67 the award of a bid under this section, the bid file of the contracting public agency and all bids
68 submitted in response to the bid solicitation shall be open and available for public inspection.

69 ~~(h)~~ (i) A public official or other person who individually or together with others knowingly
70 makes an award of a contract under this section in violation of the procedures and requirements
71 of this section is subject to the penalties set forth in section twenty-nine, article three, chapter five-
72 a of this code.

73 ~~(h)~~ (j) No officer or employee of this state or of a public agency, public authority, public
74 corporation or other public entity and no person acting or purporting to act on behalf of an officer
75 or employee or public entity shall require that a performance bond, payment bond or surety bond
76 required or permitted by this section be obtained from a particular surety company, agent, broker
77 or producer.

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

81 ~~(h)~~ (l) Nothing in this section applies to:

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

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

86 (3) Emergency repairs to building components and systems. For the purpose of this
87 subdivision, the term emergency repairs means repairs that if not made immediately will seriously
88 impair the use of building components and systems or cause danger to persons using the building

89 components and systems; and

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

NOTE: The purpose of this bill is to limit the number of alternate proposals in bidding for government construction projects; and set forth procedures for consideration of alternate bids.

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