

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4666

BY DELEGATES BYRD, NELSON, CAPITO, PUSHKIN,

QUEEN, SKAFF, ROWE AND ROHRBACH

[Introduced February 04, 2020; Referred to the

Committee on Finance]

1 A BILL to amend and reenact §8-27-23 of the Code of West Virginia, 1931, as amended, relating
 2 to competitive bids for intergovernmental relations and urban mass transportation
 3 systems; increasing the contract sum that requires competitive bidding; and providing that
 4 competitive bidding is not required by certain urban transit authorities.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 27. INTERGOVERNMENTAL RELATIONS -- URBAN MASS
 TRANSPORTATION SYSTEMS.**

§8-27-23. Competitive bids; publication of solicitation for sealed bids.

1 (a) Any contract for the construction of facilities by any authority, when the expenditure
 2 required exceeds the sum of ~~\$10,000~~ \$25,000, shall be based solely on competitive sealed bids.

3 (b) Except as provided below, the procurement of all supplies, equipment and materials,
 4 where the expenditure required exceeds the sum of ~~\$10,000~~ \$25,000, shall be based on the
 5 competitive procedure that is best suited under the circumstances of the procurement.

6 (c) In determining the competitive bid procedures that is best suited under the
 7 circumstances, an authority shall conduct:

8 (1) Competitive sealed bidding if:

9 (A) Time permits a competitive bid process to be used;

10 (B) The award of the bid ~~will~~ shall be made primarily on price and price-related factors;

11 (C) It is likely to be unnecessary to conduct discussions with suppliers regarding bids,
 12 including discussions regarding price; and

13 (D) There is a reasonable expectation of receiving more than one sealed bid; or

14 (2) Competitive negotiation where competitive sealed bidding is not best suited under the
 15 circumstances.

16 (d) Notwithstanding the provisions of subsections (b) and (c) of this section, an authority
 17 may provide for the procurement of property or services covered by this section using other than

18 competitive procedures only when:

19 (1) The property or services needed are available only from one responsible source and
20 no other type of property or service will satisfy the authority's needs;

21 (2) The authority's need for the property or service is urgent, unusual and compelling
22 because the authority would be seriously injured unless the authority is permitted to limit the
23 number of sources from which it solicits;

24 (3) It is necessary to award a contract to a particular source or sources in order to maintain
25 a facility, producer, manufacturer or other supplier in case of emergency; ~~or~~

26 (4) It is necessary to establish or maintain an alternative source or sources of supply for
27 the property or service to increase or maintain competition; or

28 (5) Urban Transit Authorities who are designated recipients of Federal Transit
29 Administration (FTA) Section 5307 and 5340 Urbanized Area Formula Appropriations shall have
30 the option to follow the Third Party Procurement Guidance circular (currently FTA C 4220.1F)
31 when using that Federal assistance to finance its procurements (third party contracts).

32 (e) All sealed bids or competitive negotiated proposals received in response to a
33 solicitation or request for bid may be rejected if an authority determines that the action is in the
34 public interest.

35 (f) Sealed bids shall be opened publicly at the time and place stated in the solicitation and
36 the authority shall evaluate the bids without discussions with bidders and award a contract with
37 reasonable promptness to the responsible source whose bid conforms to the solicitation and is
38 most advantageous to the authority, considering only price and other price-related factors
39 included in the solicitation.

40 (g) The evaluation of competitive proposals may include written or oral discussions
41 conducted with all responsible bidders or suppliers at any time after receipt of the proposals and
42 before the award or may be made without discussions. In either event, the award shall be made
43 to the lowest responsible bidder or supplier.

44 (h) Adequate public notice of the solicitation of bids and proposals shall be given. Public
45 notice shall be given not less than seven days before the date set for bid opening or, in the case
46 of competitive negotiation, not less than seven days before the due date for receipt of proposals:
47 *Provided*, That bids for the construction of facilities shall be obtained by public notice published
48 as a Class I legal advertisement in compliance with ~~the provisions of §59-3-1 et seq.~~ of this code,
49 with such the publication being made at least 14 days before the final date for submitting bids.

NOTE: The purpose of this bill is to increase the contract sum that requires competitive bidding for urban mass transportation systems. It also provides that competitive bidding is not required by certain urban transit authorities.

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