

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 309

**INTERIM
BILL**

**FISCAL
NOTE**

BY SENATORS SWOPE, PITSENBARGER, CLEMENTS, AND

CLINE

[Introduced January 10, 2020; referred
to the Committee on Government Organization]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §5-22-1a, relating to competitive bidding for government construction
 3 contracts arising out of declared states of emergency; allowing contracts for construction
 4 projects to be procured through competitive bidding on an open-ended basis as to quantity
 5 or by unit pricing on estimated quantities; allowing the establishment of multiple award
 6 construction contracts; eliminating need for emergency construction contract to specify
 7 the exact location of construction involved in the solicitation for bids; making the
 8 requirement that the entity to whom the contract is awarded furnish payment or
 9 performance bonds discretionary; and making the award of such contracts subject to other
 10 competitive bidding requirements of said code.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22. GOVERNMENT CONSTRUCTION CONTRACTS.

§5-22-1a. Permitting government construction contracts arising out of declared states of emergency on open-ended quantity or unit price basis; types of contracts allowed for construction projects; specific location of construction project not required in solicitation; certain bonds discretionary; other bidding requirements applicable.

1 (a) The state, not including its subdivisions, may solicit competitive bids for construction
 2 projects arising out of a state of emergency declared pursuant to §15-5-6 of this code, in a manner
 3 that is open-ended as to quantity only, or for unit prices on estimated quantities, and may also
 4 award contracts to multiple qualified responsible bidders, thereby creating a pool of qualified
 5 responsible bidders, so long as the nature of the contract is fully disclosed in the solicitation in a
 6 way that allows for fair and competitive bidding. The state reserves the right to reject a bid that it
 7 deems to be nonresponsive, a bid from a bidder that is not qualified responsible, as defined in the
 8 first section of this article, or a bid that is higher than the state is willing to pay.

9 (b) If the state creates a pool of qualified responsible bidders, it must first offer work
 10 available to the multiple contract holders to the contract holder identified as the lowest qualified

11 responsible bidder, and if that vendor is unable to unwilling to perform, then the same work must
12 be extended to the contract holder identified as the second lowest qualified responsible bidder,
13 and so on, until the work is either accepted or there are no remaining qualified responsible bidders
14 holding a contract that are willing to perform the work. If no vendors accept the work, the state
15 may revise the work and reoffer it to the lowest qualified responsible bidder, then the second
16 lowest qualified responsible bidder, and so on.

17 (c) Solicitations or contracts under this section are not required to specify the exact
18 addresses or identify the locations of the construction project, so long as the solicitation and
19 resulting contract clearly articulate the mechanism by which the exact address or location will be
20 identified prior to work being performed.

21 (d) The state agency responsible for overseeing the work may, in its discretion, choose
22 not to require an entity to whom the contract is awarded to furnish payment or performance bonds
23 by clearly indicating in the solicitation for bids that payment or performance bonds will not be
24 required.

25 (e) A vendor or contractor that has been debarred pursuant to §5A-3-33f of this code may
26 not bid on or be awarded a contract under this section.

27 (f) Except where other provisions of this article conflict with the provisions of this section,
28 the other provisions of this article remain in effect.

NOTE: The purpose of this bill is to provide that contracts for construction projects arising out of declared states of emergency may be bid on an open-ended basis, and may utilize a multiple contract award approach. The bill provides that solicitations and contracts for emergency construction are not required to specify or identify the location of the work at the time of the contract award, but must do so prior to work beginning, and are not required to mandate that the entity to whom the contract is to be awarded furnish certain bonds. The bill prohibits award of such contract to debarred vendors or contractors, and makes the bidding and award of such contracts otherwise subject to certain provisions of §5-22-1 *et seq.* of this code.

This bill has been recommended for passage by the Joint Legislative Committee on Flooding.

Strike-throughs indicate language that would be stricken from a heading or the present law,

and underscoring indicates new language that would be added.