

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 97

BY SENATOR ROMANO

[Introduced February 10, 2021; referred
to the Committee on Government Organization]

1 A BILL to amend and reenact §5G-1-3 of the Code of West Virginia, 1931, as amended, relating
 2 to modifying the procedure certain public agencies must take in order to contract for certain
 3 architectural and engineering services; requiring joint discussions with prospective
 4 architectural or engineering firms in certain situations; permitting contract proposals with
 5 a fee for service from the firms; replacing the single entity negotiations with a competitive
 6 low-bid process; and allowing for the public agency to reject all proposed contracts and
 7 seek proposals from additional firms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. PROCUREMENT OF ARCHITECT-ENGINEER SERVICES.

§5G-1-3. Contracts for architectural and engineering services; selection process where total project costs are estimated to cost \$250,000 or more.

1 (a) In the procurement of architectural and engineering services for projects estimated to
 2 cost \$250,000 or more, the director of purchasing shall encourage firms engaged in the lawful
 3 practice of the profession to submit an expression of interest, which shall include a statement of
 4 qualifications and performance data, and may include anticipated concepts and proposed
 5 methods of approach to the project. All jobs shall be announced by public notice published as a
 6 Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code. A
 7 committee of three to five representatives of the agency initiating the request shall evaluate the
 8 statements of qualifications and performance data and other material submitted by interested
 9 firms and select three firms which, in their opinion, are best qualified to perform the desired
 10 service: *Provided*, That if such circumstances exist, such that seeking competition could result in
 11 a compromise to public safety, significantly increase costs, or an extended interruption of
 12 essential services, the agency may, with the prior approval of the director of purchasing, select a
 13 firm on the basis of previous satisfactory performance and knowledge of the agency's facilities
 14 and needs: *Provided, however*, That on projects funded, wholly or in part, by School Building
 15 Authority moneys, in accordance with §18-9D-15 and §18-9D-16 of this code, two of said three

16 firms shall have had offices within this state for a period of at least one year prior to submitting an
17 expression of interest regarding a project funded by School Building Authority moneys. ~~Interviews~~
18 ~~with each firm selected shall be conducted and the committee shall conduct discussions regarding~~
19 ~~anticipated concepts and proposed methods of approach to the assignment. The committee shall~~
20 ~~then rank, in order of preference, no less than three professional firms deemed to be the most~~
21 ~~highly qualified to provide the services required, and shall commence scope of service and price~~
22 ~~negotiations with the highest qualified professional firm for architectural or engineering services~~
23 ~~or both. Should the agency be unable to negotiate a satisfactory contract with the professional~~
24 ~~firm considered to be the most qualified, at a fee determined to be fair and reasonable, price~~
25 ~~negotiations with the firm of second choice shall commence. Failing accord with the second most~~
26 ~~qualified professional firm, the committee shall undertake price negotiations with the third most~~
27 ~~qualified professional firm. Should the agency be unable to negotiate a satisfactory contract with~~
28 ~~any of the selected professional firms, it shall~~

29 (b) Following the selection of the three firms, the committee shall conduct joint discussions
30 regarding anticipated concepts and proposed methods of approach to the assignment with
31 representatives from each of the three firms. The joint discussions are an opportunity to allow all
32 three firms to hear the same details, parameters, and expectations for the project. All three firms
33 are permitted to ask questions openly during the joint discussions and answers shall be provided
34 by the committee orally to all three firms during the joint discussions or by writing to all three firms
35 as soon as practical thereafter. Upon conclusion of the meeting, and any required written follow-
36 up, all three firms will have the same information upon which to structure and calculate their fee
37 for services and present a proposed contract.

38 (c) Following the joint discussions, the three firms shall each submit a proposed contract,
39 including estimated costs to the agency and the agency will use that information, together with
40 the qualifications, in order to select the lowest, qualified firm from the three options. Should the
41 agency not be satisfied with the results of proposed contract submissions from the three firms,

42 the agency may select three additional professional firms from the original submissions in order
 43 of their competence and qualifications and ~~it shall~~ may continue ~~negotiations~~ joint discussions
 44 with those three firms in accordance with this section until the agency is satisfied with a proposed
 45 contract submission and an agreement is reached. As an alternative, the agency may initiate the
 46 advertising selection process again and follow all the requirements of this section in order to obtain
 47 a new pool of potential firms. ~~Provided further, That county boards of education may either elect~~
 48 ~~to start the selection process over in the original order of preference, or it may select additional~~
 49 ~~professional firms in order of their competence and qualifications, and it shall continue~~
 50 ~~negotiations in accordance with this section until an agreement is reached. And provided further,~~
 51 ~~That for~~

52 (d) For any water or wastewater construction project the engineering design and
 53 construction inspection costs may not exceed the amount calculated pursuant to the
 54 compensation curves for consulting engineering services based upon project construction costs
 55 published by the American Society of Civil Engineers manual of practice, unless granted a
 56 variance by the Infrastructure and Jobs Development Council established pursuant to §31-15A-1
 57 *et seq.* of this code.

NOTE: The purpose of this bill is to modify the procedure certain public agencies must take in order to contract for certain architectural and engineering services. The bill requires joint discussions with prospective architectural or engineering firms in certain situations. The bill permits contract proposals with a fee for service from the firms. The bill replaces the single entity negotiations with a competitive low bid process. The bill allows for the public agency to reject all proposed contracts and seek proposals from additional firms.

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