WEST VIRGINIA CODE: §17-4-20

§17-4-20. Bidder’s bond required; return or forfeiture of bond.

(a) In any case where a contract for work and materials shall be let as a result of competitive bidding, the successful bidder shall, within 20 days after notice of award, execute a formal contract to be approved as to its form, terms, and conditions by the commissioner, and shall also execute and deliver to the commissioner a good and sufficient surety or collateral bond, payable to the State of West Virginia, to be approved by the commissioner, in such amount as the commissioner may require, but not to exceed 110 percent of the contract price, conditioned that the contractor shall well and truly perform the contract. The commissioner may determine individual contractor surety or collateral bond amounts based upon objective criteria set by the commissioner, and any final decision that adversely affects a contractor shall be a contested case subject to appeal under Chapter 29A of this code.

(b) The contractor shall pay in full to the persons entitled thereto for all material, gas, oil, repairs, supplies, tires, equipment, rental charges for equipment and charges for the use of equipment, and labor used by the contractor in the performance of such contract, or which reasonably appeared, at the time of delivery or performance, would be substantially consumed in and about the performance of the contract. A legal action may be maintained upon the bond for breach thereof by any person for whose benefit the bond was executed or by his or her assignee.

(c) The bidder who has the contract awarded to him or her and who fails within 20 days after notice of the award to execute the required contract and bond shall forfeit such check or bond, which shall be taken and considered as liquidated damages and not as a penalty for failure of such bidder to execute the contract and bond.

(d) Upon the execution of the contract and bond by the successful bidder, his or her check or bond shall be released to him or her. The checks or bonds of the unsuccessful bidders shall be released to them promptly after the bids are opened and the contract awarded to the successful bidder.

(e) A duplicate copy of such contract and bond shall be furnished by the Commissioner of the Division of Highways, in electronic or paper form as may be required, to the county clerk of the county in which such contract is to be performed. It is the duty of the county clerk to bind and preserve the same in his or her office and index the same in the name of the commissioner and of the contractor.

WV Legislature