WEST VIRGINIA CODE: §5-22-1A

§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.

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

(b) If the state creates a pool of qualified responsible bidders, it must first offer work available to the multiple contract holders to the contract holder identified as the lowest qualified responsible bidder, and if that vendor is unable or unwilling to perform, then the same work must be extended to the contract holder identified as the second lowest qualified responsible bidder, and so on, until the work is either accepted or there are no remaining qualified responsible bidders holding a contract that are willing to perform the work. If no vendors accept the work, the state may revise the work and reoffer it to the lowest qualified responsible bidder, then the second lowest qualified responsible bidder, and so on.

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

(d) For projects limited to the construction or replacement of one or more residential dwellings or appurtenances, the state agency responsible for overseeing the work may, in its discretion, choose not to require an entity to whom the contract is awarded to furnish payment or performance bonds, but only if it clearly indicates in the solicitation for bids that payment or performance bonds will not be required: Provided, That in the event a payment or performance bond is not required, the entity responsible for the contract shall provide to the state agency responsible for overseeing the work a document certifying that all of the claims of subcontractors, laborers, materialmen, and all persons furnishing material have been paid, satisfied, and discharged before final payment is released.

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

WV Legislature

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

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