WEST VIRGINIA CODE: §5-22-4

§5-22-4. Negotiation when all bids exceed budgeted amount.

(a) The state and its subdivisions may establish a maximum budgeted amount for each construction project. In the event the bids for a construction project exceed the funds available, the contracting public agency may negotiate with the lowest qualified responsible bidder pursuant to the provisions of this section.

(b) To utilize the provisions of this section, the contracting public agency shall:

(1) Establish a maximum budgeted amount;

(2) Maintain confidentiality of the maximum budgeted amount prior to the award of a contract; and

(3) Not proceed with a negotiated award if that results in more than a 10 percent change in cost from the original base bid.

(c) A negotiated award made pursuant to the provisions of this section shall be made within 60 calendar days of the original bid opening date.

(d) Negotiations under this section shall be completed in the following manner:

(1) If only one responsive and responsible bidder responds to a solicitation the contracting agency may negotiate an award based solely on the specifications contained within the original solicitation;

(2) If more than one bidder responds to a solicitation, the contracting public agency may negotiate with the apparent lowest qualified responsible bidder, as defined in §5-22-1 of this code: *Provided*, That any such negotiation must be based on the specifications contained within the original solicitation;

(3) The contracting public agency shall make available for public inspection all negotiated contracts; and

(4) The contracting public agency shall memorialize any change to the original project specifications that occur as a result of a negotiated award made pursuant to the provisions of this section.

(e) The provisions of this section are permissive and not mandatory for any contracting public agency.

(f) An award of a negotiated contract pursuant to the provisions of this section may not be made to a bidder who fails to meet the other qualifications set forth in this article.

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(g) For the purposes of this section, "construction project" does not mean the construction of a road, bridge, or highway.

(h) The provisions of this section expire and shall have no force and effect after December 31, 2029.

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