WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2003

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ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 3117

(By Mr. Speaker, Mr. Kiss, Delegates Staton, Amores, Michael, Pino, Kuhn and Cann)

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Passed March 6, 2003

In Effect Ninety Days from Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 3117

(BY MR. SPEAKER, MR. KISS, DELEGATES STATON,
AMORES, MICHAEL, PINO, KUHN AND CANN)

[Passed March 6, 2003; in effect ninety days from passage.]

AN ACT to amend and reenact section one, article twenty-two,
chapter five of the code of West Virginia, one thousand nine
hundred thirty-one, as amended; and to further amend said article
by adding thereto a new section, designated section two, all
relating to bidding on government construction contracts;
inclusion of certain valid bid bonds; designation of time and place
of opening of certain bids; inability to waive certain bid provi­
sions and requirements; and inability to resubmit certain bids on
a project after bid withdrawal.

Be it enacted by the Legislature of West Virginia:

That section one, article twenty-two, chapter five of the code of
West Virginia, one thousand nine hundred thirty-one, as amended, be
amended and reenacted; and that said article be further amended by
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adding thereto a new section, designated section two, all to read as follows:

ARTICLE 22. GOVERNMENT CONSTRUCTION CONTRACTS.

§5-22-1. Bidding required; government construction contracts to go to qualified responsible bidder; debarment; exceptions.

(a) As used in this section, “the state and its subdivisions” means the state of West Virginia, every political subdivision thereof, every administrative entity that includes such a subdivision, all municipalities and all county boards of education.

(b) The state and its subdivisions shall, except as provided in this section, solicit competitive bids for every construction project exceeding twenty-five thousand dollars in total cost: Provided, That a vendor who has been debarred pursuant to the provisions of sections thirty-three-a through thirty-three-f, article three, chapter five-a of this code, may not bid on or be awarded a contract under this section. All bids submitted pursuant to this chapter shall include a valid bid bond or other surety as approved by the state of West Virginia or its subdivisions.

(c) Following the solicitation of such bids, the construction contract shall be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond: Provided, That the state and its subdivisions may reject all bids and solicit new bids on said project.

(d) All bids shall be opened in accordance with the provisions of section two of this article, except design-build projects which are governed by article twenty-two-a, chapter five of this code are exempt from these provisions.
(e) Nothing in this section shall apply to:

(1) Work performed on construction or repair projects by regular full-time employees of the state or its subdivisions;

(2) Prevent students enrolled in vocational educational schools from being utilized in construction or repair projects when such use is a part of the student’s training program;

(3) Emergency repairs to building components and systems. For the purpose of this subdivision, emergency repairs means repairs that if not made immediately will seriously impair the use of such building components and systems, or cause danger to those persons using such building components and systems; and

(4) Any situation where the state or a subdivision thereof shall come to an agreement with volunteers, or a volunteer group, whereby the governmental body will provide construction or repair materials, architectural, engineering, technical or any other professional services and the volunteers will provide the necessary labor without charge to, or liability upon, the governmental body.

§5-22-2. Designation of time and place for opening of bids; right to reject or withdraw bid; bid resubmission.

(a) The public entity accepting public contract bids shall, in its resolution providing for the contract or purchase and for the advertisement for bids, designate the time and place that the bids will be received and shall at that time and place publicly open the bids and read them aloud. No public entity may accept or take any bid, including receiving any hand delivered bid, after the time advertised to take bids. No bid may be opened on days which are recognized as holidays by the United States postal service. No public entity may accept or consider any bids
that do not contain a valid bid bond or other surety approved by
the state of West Virginia or its subdivisions.

(b) The provisions and requirements of this section, section
one of article twenty-two of this chapter, the requirements
stated in the advertisement for bids and the requirements on the
bid form may not be waived by any public entity. The public
entity may only reject an erroneous bid after the opening if all
of the following conditions exist: (1) An error was made; (2)
the error materially affected the bid; (3) rejection of the bid
would not cause a hardship on the public entity involved, other
than losing an opportunity to receive construction projects at a
reduced cost; and (4) enforcement of the bid in error would be
unconscionable. If a public rejects a bid, it shall maintain a file
of documented evidence demonstrating that all the conditions
set forth in this subdivision existed. If the public entity deter-
mines the bid to be erroneous, the public entity shall return the
bid security to the contractor.

(c) A contractor who withdraws a bid under the provisions
of this section may not resubmit a bid on the same project. If
the bid withdrawn is the lowest bid, the next lowest bid may be
accepted.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within approved this the 15th day of March 2003

Governor