ENROLLED

Committee Substitute for
SENATE BILL NO. 694

(By Senator McCabe, et al.)

PASSED March 13, 2004

In Effect 90 Days From Passage
AN ACT to amend and reenact §5-22-1 of the code of West Virginia, 1931, as amended, relating to establishing the West Virginia fairness in competitive bidding act; requiring that competitive bids for government construction projects be awarded to the lowest qualified responsible bidder; providing clarification of the term "lowest qualified responsible bidder"; establishing procedures and requirements to be followed in awarding contracts for government construction projects; and providing criminal penalties for violation of the procedures and requirements to be followed in awarding government construction projects.

Be it enacted by the Legislature of West Virginia:

That §5-22-1 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 22. GOVERNMENT CONSTRUCTION CONTRACTS.
§5-22-1. Bidding required; government construction contracts to go to lowest qualified responsible bidder; procedures to be followed in awarding government construction projects; penalties for violation of procedures and requirements debarment; exceptions.

(a) This section and the requirements set forth in this section may be referred to as the "West Virginia Fairness In Competitive Bidding Act".

(b) 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.

(c) 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, inclusive, 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.

(d) Following the solicitation of 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 the project. As used in this section, the term "lowest qualified responsible bidder" means the bidder that bids the lowest price and that meets, as a minimum, all the following requirements in connection with the bidder's response to the bid solicitation. The bidder must certify that it: (1) Is ready, able and willing to timely furnish the labor and
materials required to complete the contract; (2) is in compliance with all applicable laws of the state of West Virginia; and (3) has supplied a valid bid bond or other surety authorized or approved by the contracting public entity. The contracting public entity may not award the contract to a bidder which fails to meet these minimum requirements. As to any prospective low bidder which the contracting public entity determines not to have met any one or more of the requirements of this section or other requirements as determined by the public entity in the written bid solicitation, prior to the time a contract award is made, the contracting public entity shall document in writing and in reasonable detail the basis for the determination and shall place the writing in the bid file. After the award of a bid under this section, the bid file of the contracting public entity and all bids submitted in response to the bid solicitation shall be open and available for public inspection.

(e) Any public official or other person who individually or together with others knowingly makes an award of a contract under this section in violation of the procedures and requirements of this section is subject to the penalties set forth in section twenty-nine, article three, chapter five-a of the code of West Virginia.

(f) 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 and are exempt from these provisions.

(g) 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
65 projects when the use is a part of the student’s training program;

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

68 (4) Any situation where the state or a subdivision thereof reaches 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is enacted this the __________ day of __________, 2004.

Governor