

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

FILED

2020 FEB -5 P 2:59

OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

House Bill 4130

BY DELEGATES D. JEFFRIES AND HANNA

[Passed January 30, 2020; in effect from passage.]

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[Passed January 30, 2020; in effect from passage.]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section
2 designated §5-22-1a, relating to competitive bidding for government construction
3 contracts arising out of declared states of emergency; allowing contracts for construction
4 projects to be procured through competitive bidding on an open-ended basis as to quantity
5 or by unit pricing on estimated quantities; allowing the establishment of multiple award
6 construction contracts; eliminating need for emergency construction contract to specify
7 the exact location of construction involved in the solicitation for bids; making the
8 requirement that the entity to whom the contract is awarded furnish payment or
9 performance bonds discretionary for residential projects; requiring contractor to provide
10 release of claims before final payment is released if bonds are not required; and making
11 the award of such contracts subject to other competitive bidding requirements of said
12 code.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22. GOVERNMENT CONSTRUCTION CONTRACTS.

**§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.**

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

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

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

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

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

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Noor Caputo
.....
Chairman, House Committee

Mark Pappas
.....
Chairman, Senate Committee

Originating in the House.

In effect from passage.

Steve Northon
.....
Clerk of the House of Delegates

Joe Lanni
.....
Clerk of the Senate

Lee Jordan
.....
Speaker of the House of Delegates

Walter B. Long
.....
President of the Senate

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CLERK OF THE SENATE
STATE OF MARYLAND

The within *is approved* this the *5th*
day of *February*, 2020.

Jane S. Gunter
.....
Governor

PRESENTED TO THE GOVERNOR

FEB 03 2020

Time 10:13am