WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4666

BY DELEGATES BYRD, NELSON, CAPITO, PUSHKIN,
QUEEN, SKAFF, ROWE AND ROHRBACH

[Passed March 7, 2020; in effect ninety days from passage.]
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[Passed March 7, 2020; in effect ninety days from passage.]
AN ACT to amend and reenact §8-27-23 of the Code of West Virginia, 1931, as amended, relating to competitive bids for intergovernmental relations and urban mass transportation systems; increasing the contract sum that requires competitive bidding; and providing that competitive bidding is not required by certain urban transit authorities.

Be it enacted by the Legislature of West Virginia:

ARTICLE 27. INTERGOVERNMENTAL RELATIONS — URBAN MASS TRANSPORTATION SYSTEMS.

§8-27-23. Competitive bids; publication of solicitation for sealed bids.

(a) Any contract for the construction of facilities by any authority, when the expenditure required exceeds the sum of $25,000, shall be based solely on competitive sealed bids.

(b) Except as provided in subsections (c) or (d) of this section, the procurement of all supplies, equipment and materials, where the expenditure required exceeds the sum of $25,000, shall be based on the competitive procedure that is best suited under the circumstances of the procurement.

(c) In determining the competitive bid procedure that is best suited under the circumstances, an authority shall conduct:

(1) Competitive sealed bidding if:

(A) Time permits a competitive bid process to be used;

(B) The award of the bid will be made primarily on price and price-related factors;

(C) It is likely to be unnecessary to conduct discussions with suppliers regarding bids, including discussions regarding price; and

(D) There is a reasonable expectation of receiving more than one sealed bid; or

(2) Competitive negotiation where competitive sealed bidding is not best suited under the circumstances.
(d) Notwithstanding the provisions of subsections (b) and (c) of this section, an authority may provide for the procurement of property or services covered by this section using other than competitive procedures only when:

(1) The property or services needed are available only from one responsible source and no other type of property or service will satisfy the authority’s needs;

(2) The authority’s need for the property or service is urgent, unusual and compelling because the authority would be seriously injured unless the authority is permitted to limit the number of sources from which it solicits;

(3) It is necessary to award a contract to a particular source or sources in order to maintain a facility, producer, manufacturer or other supplier in case of emergency;

(4) It is necessary to establish or maintain an alternative source or sources of supply for the property or service to increase or maintain competition; or

(5) The authority is using the Federal Transit Administration Third Party Procurement Guidance circular, as may be amended by the Federal Transit Administration, when spending federal appropriations as a designated recipient of 49 U.S.C. §5307 and 49 U.S.C. §5340 - Urbanized Area Formula Appropriations - to finance its procurements or contracts.

(e) All sealed bids or competitive negotiated proposals received in response to a solicitation or request for bid may be rejected if an authority determines that the action is in the public interest.

(f) Sealed bids shall be opened publicly at the time and place stated in the solicitation and the authority shall evaluate the bids without discussions with bidders and award a contract with reasonable promptness to the responsible source whose bid conforms to the solicitation and is most advantageous to the authority, considering only price and other price-related factors included in the solicitation.

(g) The evaluation of competitive proposals may include written or oral discussions conducted with all responsible bidders or suppliers at any time after receipt of the proposals and
before the award or may be made without discussions. In either event, the award shall be made
to the lowest responsible bidder or supplier.

(h) Adequate public notice of the solicitation of bids and proposals shall be given. Public
notice shall be given not less than seven days before the date set for bid opening or, in the case
of competitive negotiation, not less than seven days before the due date for receipt of proposals:

Provided, That bids for the construction of facilities shall be obtained by public notice published
as a Class I legal advertisement in compliance with §59-3-1 et seq. of this code, with the
publication being made at least 14 days before the final date for submitting bids.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within is approved this the 25th day of March, 2020.

Governor
PRESENTED TO THE GOVERNOR

MAR 19 2020

Time 1:15 pm