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### **Notice Regarding Citation of these Laws**

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#### **The West Virginia "Little Miller Act"**

**West Virginia Code, Chapter 5, General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc., Article 22, Government Construction Contracts, Sections 5-22-1 and 5-22-2**

**Chapter 38, Liens, Article 22, Mechanics' Liens, Section 38-2-39**

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**§ 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:

(1) "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:

(A) Is ready, able and willing to timely furnish the labor and materials required to complete the contract;

(B) Is in compliance with all applicable laws of the state of West Virginia; and

(C) Has supplied a valid bid bond or other surety authorized or approved by the contracting public entity.

(2) "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.

(e) The contracting public entity may not award the contract to a bidder which fails to meet the minimum requirements set out in this section. 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 agency and all bids submitted in response to the bid solicitation shall be open and available for public inspection.

(f) 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.

(g) No officer or employee of this state or of any public agency, public authority, public corporation or other public entity and no person acting or purporting to act on behalf of such officer or employee or public entity shall require that any performance bond, payment bond or surety bond required or permitted by this section be obtained from any particular surety company, agent, broker or producer.

(h) All bids shall be open in accordance with the provisions of section two of this article, except design-build projects which are governed by article twenty-two-a of this chapter and are exempt from these provisions.

(i) 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 the use is a part of the student's training program;

(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

(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.

**§ 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 entity 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 determines 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.

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**§ 38-2-39. Public building; bond of contractor; recordation of bond; no lien in such case.**

It shall be the duty of the state commissioner of public institutions, and of all county courts, boards of education, boards of trustees, and other legal bodies having authority to contract for the erection, construction, improvement, alteration or repair of any public building or other structure, or any building or other structure used or to be used for public purposes, to require of every person to whom it shall award, and with whom it shall enter into, any contract for the erection, construction, improvement, alteration or repair of any such public building or other structure used or to be used for public purposes, that such contractor shall cause to be executed and delivered to the secretary of such commissioner or other legal body, or other proper and designated custodian of the papers and records thereof, a good, valid, solvent and sufficient bond, in a penal sum equal at least to the reasonable cost of the materials, machinery, equipment and labor required for the completion of such contract, and conditioned that in the event such contractor shall fail to pay in full for all such materials, machinery, equipment and labor delivered to him for use in the erection, construction, improvement, alteration or repair of such public building or other structure, or building or other structure used or to be used for public purposes, then such bond and the sureties thereon shall be responsible to such materialman, furnisher of machinery or equipment, and furnisher or performer of such labor, or their assigns, for the full payment of the full value thereof.

No officer or employee of this state or of any public agency, public authority, public corporation, or other public entity, and no person acting or purporting to act on behalf of such officer or employee or public entity shall require that any surety bond required or permitted by this section be obtained from any particular surety company, agent, broker or producer.

All such bonds shall have as surety thereon either some incorporated bonding and/or surety company authorized to carry on business in this state, or in lieu of such corporate surety the contractor may deposit as security for such bond with the said state commissioner of public institutions, county court, board of education, board of trustees or other legal body having authority so to contract, a sum in cash or bonds and securities of the United States of America or of the state of West Virginia of sufficient amount and value equal at least to the reasonable cost of materials, machinery, equipment and labor required for the completion of such contract. Immediately upon the acceptance of either of said bonds by the state commissioner of public institutions, county court, board of education and board of trustees, or other legal body, the bond shall be recorded by the secretary of such commissioner or other legal body, or by the proper designated custodian of the papers or records thereof, in the office of the clerk of the county court of the county or counties wherein such work is to be done and where such materials, machinery or equipment are to be delivered, and no such contract shall be binding and effective upon either party or parties thereto until such bond has been executed, delivered and recorded as aforesaid.

Nothing in this article shall be construed to give a lien upon such a public building or improvement as is mentioned in this section, or upon the land upon which such public building or improvement is situated.

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The above statutory text was last reviewed for accuracy on July 13, 2009.