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HOUSE BILL NO. 1209

Offered January 24, 2000

A *BILL to amend and reenact § 11-66 of the Code of Virginia, relating to the Virginia Public Procurement Act; protest of awards.*

Patrons—Cantor, Albo, Armstrong and Woodrum

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That § 11-66 of the Code of Virginia is amended and reenacted as follows:

§ 11-66. Protest of award or decision to award.

A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall submit such protest in writing to the public body, or an official designated by the public body, no later than ten days after *public notice of the award or the announcement of the decision to award*, whichever occurs first. *Public notice of the award or the announcement of the decision to award shall be given by the public body in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal.* Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit such protest in the same manner no later than ten days after posting or publication of the notice of such contract as provided in § 11-41. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction which are subject to inspection under § 11-52, then the time within which the protest must be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under § 11-52, or at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The public body or designated official shall issue a decision in writing within ten days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten days *of receipt* of the written decision by invoking administrative procedures meeting the standards of § 11-71, if available, or in the alternative by instituting legal action as provided in § 11-70. Nothing in this subsection shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation to Bid or Request for Proposal.

B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The public body shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the public body may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

C. Where a public body, an official designated by that public body, or an appeals board determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of Article 4 (§ 11-72 et seq.) of this chapter, the public body, designated official or appeals board may enjoin the award of the contract to a particular bidder.

INTRODUCED

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