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SENATE BILL NO. 1425

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on January 26, 2011)

(Patron Prior to Substitute—Senator Locke)

A BILL to amend and reenact § 2.2-4330 of the Code of Virginia, relating to the Virginia Public Procurement Act; process for withdrawal of bid due to error.

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-4330 of the Code of Virginia is amended and reenacted as follows:

§ 2.2-4330. Withdrawal of bid due to error.

A. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

B. One of the following procedures for withdrawal of a bid shall be selected by the public body and stated in the advertisement for bids:

~~(i) 1.~~ The bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice; or

~~(ii) 2.~~ Where the public body opens the bids one day following the time fixed for the submission of bids, the bidder shall submit to the public body or designated official his original work papers, documents and materials used in the preparation of the bid ~~within one day after the date fixed for submission of bids at or prior to the time fixed for the opening of bids.~~ The work papers shall be delivered by the bidder in person or by registered mail. ~~at or prior to the time fixed for the opening of bids. In either instance, the work papers, documents and materials may be considered as trade secrets or proprietary information subject to the conditions of subsection F of § 2.2-4342. The bids shall be opened one day following the time fixed by the public body for the submission of bids. Thereafter, the~~ The bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the public body until the two-hour period has elapsed.

~~The~~ Under these procedures, the mistake shall be proved only from the original work papers, documents and materials delivered as required herein. ~~The work papers, documents and materials submitted by the bidder shall, at the bidder's request, be considered trade secrets or proprietary information subject to the conditions of subsection F of § 2.2-4342.~~

BC. A public body may establish procedures for the withdrawal of bids for other than construction contracts.

CD. No bid shall be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.

DE. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed to be the low bid.

EF. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

F. G. The public body shall notify the bidder in writing within five business days of its decision regarding the bidder's request to withdraw its bid. If the public body denies the withdrawal of a bid under the provisions of this section, it shall ~~notify the bidder in writing stating~~ state in such notice the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a

60 responsible and responsive bidder. *At the same time that the notice is provided, the public body shall*
61 *return all work papers and copies thereof that have been submitted by the bidder.*