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HOUSE BILL NO. 407

Offered January 8, 2020

Prefiled January 2, 2020

A *BILL to amend and reenact § 2.2-4321.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.2-4321.3, relating to the Virginia Public Procurement Act; failure to pay unemployment taxes.*

Patrons—Delaney, Jenkins and Levine; Senator: McClellan

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-4321.1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.2-4321.3 as follows:

§ 2.2-4321.1. Prohibited contracts; exceptions; determination by Department of Taxation; appeal; remedies.

A. No state agency shall contract for goods or services with a nongovernmental source if the source, or any affiliate of the source, is subject to the provisions of (i) § 58.1-612 and fails or refuses to collect and remit the tax on its sales delivered by any means to locations within the Commonwealth or; (ii) Article 2 (§ 58.1-320 et seq.) or Article 10 (§ 58.1-400 et seq.) of Chapter 3 of Title 58.1 and fails or refuses to remit any tax due thereunder; or (iii) Article 1 (§ 60.2-500 et seq.), 2 (§ 60.2-511 et seq.), 3 (§ 60.2-519 et seq.), or 4 (§ 60.2-525 et seq.) of Chapter 5 of Title 60.2 and fails or refuses to remit any tax due thereunder. The provisions of clause (ii) shall not apply to any person that has (a) entered into a payment agreement with the Department of Taxation to pay the tax and is not delinquent under the terms of the agreement or (b) appealed the assessment of the tax in accordance with law and such appeal is pending. *The provisions of clause (iii) shall not apply to any person that has (1) entered into a payment agreement with the Virginia Employment Commission to pay the tax and is not delinquent under the terms of the agreement or (2) appealed the assessment of the tax in accordance with law and such appeal is pending.*

B. A state agency may contract for goods or services with a source prohibited under subsection A in the event of an emergency or where the nongovernmental source is the sole source of such goods or services.

C. The determination of whether a source is a prohibited source *under clause (i) or (ii) of subsection A shall be made by the Department of Taxation after providing the prohibited source with notice and an opportunity to respond to the proposed determination. The determination of whether a source is a prohibited source under clause (iii) of subsection A shall be made by the Virginia Employment Commission after providing the prohibited source with notice and an opportunity to respond to the proposed determination.* The Department of Taxation or the Virginia Employment Commission shall notify the Department of General Services of its determination.

D. The Department of General Services shall post public notice of all prohibited sources on its public internet procurement website and on other appropriate websites *the secure portal of the Commonwealth's statewide electronic procurement system, known as eVA, which is accessible with buyer login credentials.*

E. The remedies provided in Article 5 (§ 2.2-4357 et seq.) ~~of this chapter~~ shall not apply to any determination made pursuant to this section and the sole remedy for any adverse determination shall be as provided in subsection F.

F. Any source aggrieved by a determination of the Department of Taxation made under ~~this section~~ *subsection C* may apply to the Tax Commissioner for correction of the determination, ~~and any source aggrieved by a determination of the Virginia Employment Commission under subsection C may apply to the Commissioner of the Virginia Employment Commission for correction of the determination.~~ The Tax Commissioner or Commissioner of the Virginia Employment Commission shall respond within 30 days of receipt of the application for corrective action. Within 10 days after receipt of the Tax Commissioner's response or Commissioner of the Virginia Employment Commission's response, as applicable, the aggrieved source may appeal to the Circuit Court for the City of Richmond. If it is determined that the determination of the Department of Taxation or Virginia Employment Commission was arbitrary, capricious, or not in accordance with law, the sole relief shall be restoration of the source's eligibility to contract with state agencies. No claim for damages or ~~attorney's attorney~~ fees shall be awarded.

G. Any action of the Department of Taxation, *the Virginia Employment Commission*, the Department

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59 of General Services, or of any state agency under this section shall be exempt from the provisions of the
60 Administrative Process Act (§ 2.2-4000 et seq.).

61 H. For the purposes of this section, "state agency" means any authority, board, department,
62 instrumentality, institution, agency, or other unit of state government. State agency ~~shall~~ *does* not include
63 any public institution of higher education ~~or~~; any county, city, or town; or any local or regional
64 governmental authority.

65 ***§ 2.2-4321.3. Failure to remit taxes due under Title 60.2.***

66 *Any nongovernmental source that fails to remit taxes due under Article 1 (§ 60.2-500 et seq.), 2 (§*
67 *60.2-511 et seq.), 3 (§ 60.2-519 et seq.), or 4 (§ 60.2-525 et seq.) of Chapter 5 of Title 60.2 for more*
68 *than 10 covered employees shall be a prohibited source under § 2.2-4321.1 for a period of two years.*