

VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

CHAPTER 897

An Act to amend and reenact § 11-54 of the Code of Virginia, relating to the Virginia Public Procurement Act; withdrawal of bids.

[H 493]

Approved April 20, 1994

Be it enacted by the General Assembly of Virginia:

1. That § 11-54 of the Code of Virginia is amended and reenacted as follows:

§ 11-54. 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 therein, 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drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. 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) 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) 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. 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, such work papers, documents and materials may be considered as trade secrets or proprietary information subject to the conditions of subsection D of § 11-52.* The bids shall be opened one day following the time fixed by the public body for the submission of bids. Thereafter, 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. Such mistake shall be proved only from the original work papers, documents and materials delivered as required herein.

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

C. No bid may 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.

D. If a bid is withdrawn under the authority of this section, the lowest remaining bid shall be deemed to be the low bid.

E. 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. If the public body denies the withdrawal of a bid under the provisions of this section, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder.