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## HOUSE BILL NO. 469

Offered January 24, 1994

A BILL to amend and reenact §§ 11-69 and 11-70 of the Code of Virginia, relating to the Virginia Public Procurement Act.

Patrons—Woodrum and DeBoer

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 11-69 and 11-70 of the Code of Virginia are amended and reenacted as follows:**

§ 11-69. Contractual disputes.

A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment; however, written notice of the contractor's intention to file such claim, for himself, his subcontractors or for persons furnishing materials for the contract to the contractor, shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

B. Each public body shall include in its contracts a procedure for consideration of contractual claims. Such procedure, which may be incorporated into the contract by reference, shall establish a time limit for a final decision in writing by the public body.

C. A contractor, in his name or on behalf of his subcontractors or a person furnishing materials for the contract to the contractor, may not invoke administrative procedures meeting the standards of § 11-71, if available, or institute legal action as provided in § 11-70, prior to receipt of the public body's decision on the claim, unless the public body fails to render such decision within the time specified in the contract.

D. The decision of the public body shall be final and conclusive unless the contractor, in his name or on behalf of his subcontractors or a person furnishing materials for the contract to the contractor, appeals within six months of the date of the final decision on the claim by the public body 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.

§ 11-70. Legal actions.

A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was arbitrary or capricious.

B. A bidder denied withdrawal of a bid under § 11-64 may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the public body was clearly erroneous.

C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis in the manner provided in § 11-41, whose protest of an award or decision to award under § 11-66 is denied, may bring an action in the appropriate circuit court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not an honest exercise of discretion, but rather is arbitrary or capricious or not in accordance with the Constitution of Virginia, statutes, regulations or the terms and conditions of the Invitation to Bid or Request for Proposal.

D. If injunctive relief is granted, the court, upon request of the public body, shall require the posting of reasonable security to protect the public body.

E. A contractor may bring, in his name or on behalf of his subcontractors or a person furnishing materials for the contract to the contractor, an action involving a contract dispute with a public body in the appropriate circuit court. In any case brought against the public body on behalf of a subcontractor of the contractor or a person furnishing materials for the contract to the contractor, lack of privity between the parties shall be no defense. However, any such case brought on behalf of such subcontractor or person furnishing materials to the contractor shall only be brought for costs and expenses caused by acts or omissions of the public body and shall not be brought for costs and expenses caused by the contractor.

F. A bidder, offeror or contractor, in his name or on behalf of his subcontractors or a person

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60 *furnishing materials for the contract to the contractor*, need not utilize administrative procedures  
61 meeting the standards of § 11-71, if available, but if those procedures are invoked by the bidder, offeror  
62 or contractor, *in his name or on behalf of his subcontractors or a person furnishing materials for the*  
63 *contract to the contractor*, the procedures shall be exhausted prior to instituting legal action concerning  
64 the same procurement transaction unless the public body agrees otherwise.

65 G. Nothing herein shall be construed to prevent a public body from instituting legal action against a  
66 contractor.