

VIRGINIA ACTS OF ASSEMBLY -- 2011 RECONVENED SESSION

CHAPTER 789

An Act to amend and reenact §§ 2.2-1839, 2.2-4336, and 2.2-4337 of the Code of Virginia, relating to the Virginia Public Procurement Act; bid, performance, and payment bonds.

[H 1951]

Approved April 6, 2011

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-1839, 2.2-4336, and 2.2-4337 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-1839. Risk management plans administered by the Department of the Treasury's Risk Management Division for political subdivisions, constitutional officers, etc.

A. The Division shall establish one or more risk management plans specifying the terms and conditions for coverage, subject to the approval of the Governor, and which plans may be purchased insurance, self-insurance or a combination of self-insurance and purchased insurance to provide protection against liability imposed by law for damages and against incidental medical payments resulting from any claim made against any county, city or town; authority, board, or commission; sanitation, soil and water, planning or other district; public service corporation owned, operated or controlled by a locality or local government authority; constitutional officer; state court-appointed attorney; any attorney for any claim arising out of the provision of pro bono legal services for custody and visitation to an eligible indigent person under a program approved by the Supreme Court of Virginia or the Virginia State Bar; any receiver for an attorney's practice appointed under § 54.1-3900.01 or 54.1-3936; affiliate or foundation of a state department, agency or institution; any clinic that is organized in whole or primarily for the delivery of health care services without charge; volunteer drivers for any nonprofit organization providing transportation for persons who are elderly, disabled, or indigent to medical treatment and services, provided the volunteer driver has successfully completed training approved by the Division; any local chapter or program of the Meals on Wheels Association of America or any area agency on aging, providing meal and nutritional services to persons who are elderly, homebound, or disabled, and volunteer drivers for such entities who have successfully completed training approved by the Division; any individual serving as a guardian or limited guardian as defined in § 37.2-1000 for any consumer of a community services board or behavioral health authority or any patient or resident of a state facility operated by the Department of Behavioral Health and Developmental Services; *for nontransportation-related state construction contracts less than \$500,000, where the bid bond requirements are waived, prospective contractors shall be prequalified for each individual project in accordance with § 2.2-4317;* or the officers, agents or employees of any of the foregoing for acts or omissions of any nature while in an authorized governmental or proprietary capacity and in the course and scope of employment or authorization.

For the purposes of this section, "delivery of health care services without charge" shall be deemed to include the delivery of dental, medical or other health services when a reasonable minimum fee is charged to cover administrative costs.

For purposes of this section, a sheriff or deputy sheriff shall be considered to be acting in the scope of employment or authorization when performing any law-enforcement-related services authorized by the sheriff, and coverage for such service by the Division shall not be subject to any prior notification to or authorization by the Division.

B. Participation in the risk management plan shall be voluntary and shall be approved by the participant's respective governing body or by the State Compensation Board in the case of constitutional officers, by the office of the Executive Secretary of the Virginia Supreme Court in the case of state court-appointed attorneys, including attorneys appointed to serve as receivers under § 54.1-3900.01 or 54.1-3936, or attorneys under Virginia Supreme Court or Virginia State Bar approved programs, by the Commissioner of the Department of Behavioral Health and Developmental Services for any individual serving as a guardian or limited guardian for any patient or resident of a state facility operated by such Department or by the executive director of a community services board or behavioral health authority for any individual serving as a guardian or limited guardian for a consumer of such board or authority, and by the Division. Upon such approval, the Division shall assume sole responsibility for plan management, compliance, or removal. The Virginia Supreme Court shall pay the cost for coverage of eligible persons performing services in approved programs of the Virginia Supreme Court or the Virginia State Bar. The Department of Behavioral Health and Developmental Services shall be responsible for paying the cost of coverage for eligible persons performing services as a guardian or limited guardian for any patient or resident of a state facility operated by the Department. The applicable community services board or behavioral health authority shall be responsible for paying the cost of

coverage for eligible persons performing services as a guardian or limited guardian for consumers of such board or authority.

C. The Division shall provide for the legal defense of participating entities and shall reserve the right to settle or defend claims presented under the plan. All prejudgment settlements shall be approved in advance by the Division.

D. The risk management plan established pursuant to this section shall provide for the establishment of a trust fund for the payment of claims covered under such plan. The funds shall be invested in the manner provided in § 2.2-1806 and interest shall be added to the fund as earned.

The trust fund shall also provide for payment of legal defense costs, actuarial costs, administrative costs, contractual costs and all other expenses related to the administration of such plan.

E. The Division shall, in its sole discretion, set the premium and administrative cost to be paid to it for providing a risk management plan established pursuant to this section. The premiums and administrative costs set by the Division shall be payable in the amounts at the time and in the manner that the Division in its sole discretion shall require. The premiums and administrative costs need not be uniform among participants, but shall be set so as to best ensure the financial stability of the plan.

F. Notwithstanding any provision to the contrary, a sheriff's department of any city or county, or a regional jail shall not be precluded from securing excess liability insurance coverage beyond the coverage provided by the Division pursuant to this section.

§ 2.2-4336. Bid bonds.

A. Except in cases of emergency, all bids or proposals for nontransportation-related construction contracts in excess of ~~\$100,000~~ \$500,000 or transportation-related projects authorized under § 33.1-12 that are in excess of \$250,000 and partially or wholly funded by the Commonwealth shall be accompanied by a bid bond from a surety company selected by the bidder that is authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent of the amount bid.

B. *For nontransportation-related construction contracts in excess of \$100,000 but less than \$500,000, where the bid bond requirements are waived, prospective contractors shall be prequalified for each individual project in accordance with § 2.2-4317.*

C. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

~~C.~~ D. Nothing in this section shall preclude a public body from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than ~~\$100,000~~ \$500,000 for nontransportation-related projects or \$250,000 for transportation-related projects authorized under § 33.1-12 and partially or wholly funded by the Commonwealth.

§ 2.2-4337. Performance and payment bonds.

A. Upon the award of any (i) public construction contract exceeding ~~\$100,000~~ \$500,000 awarded to any prime contractor; (ii) construction contract exceeding ~~\$100,000~~ \$500,000 awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structures or other improvements to real property owned or leased by a public body; (iii) construction contract exceeding ~~\$100,000~~ \$500,000 in which the performance of labor or the furnishing of materials will be paid with public funds; or (iv) transportation-related projects exceeding \$250,000 that are partially or wholly funded by the Commonwealth, the contractor shall furnish to the public body the following bonds:

1. A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract. For transportation-related projects authorized under § 33.1-12, such bond shall be in a form and amount satisfactory to the public body.

2. A payment bond in the sum of the contract amount. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or performed in the furtherance of the work. For transportation-related projects authorized under § 33.1-12 and partially or wholly funded by the Commonwealth, such bond shall be in a form and amount satisfactory to the public body.

"Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

B. *For nontransportation-related construction contracts in excess of \$100,000 but less than \$500,000, where the bid bond requirements are waived, prospective contractors shall be prequalified for each individual project in accordance with § 2.2-4317.*

C. Each of the bonds shall be executed by one or more surety companies selected by the contractor that are authorized to do business in Virginia.

~~C.~~ D. If the public body is the Commonwealth, or any agency or institution thereof, the bonds shall be payable to the Commonwealth of Virginia, naming also the agency or institution thereof. Bonds

required for the contracts of other public bodies shall be payable to such public body.

~~D.~~ *E.* Each of the bonds shall be filed with the public body that awarded the contract, or a designated office or official thereof.

~~E.~~ *F.* Nothing in this section shall preclude a public body from requiring payment or performance bonds for construction contracts below ~~\$100,000~~ *\$500,000* for nontransportation-related projects or \$250,000 for transportation-related projects authorized under § 33.1-12 and partially or wholly funded by the Commonwealth.

~~F.~~ *G.* Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.

2. That, on or before December 31, 2012, the Secretary of Administration shall report to the chairs of the House Committee on General Laws and the Senate Committee on General Laws and Technology on the efficacy of the program for nontransportation-related construction projects established pursuant to this act.