

VIRGINIA ACTS OF ASSEMBLY -- 2022 SESSION

CHAPTER 96

An Act to amend and reenact § 23.1-1017 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.2-4376.2, relating to the Virginia Public Procurement Act; public institutions of higher education; disclosure required by certain offerors; civil penalty.

[S 210]

Approved April 5, 2022

Be it enacted by the General Assembly of Virginia:

1. That § 23.1-1017 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.2-4376.2 as follows:

§ 2.2-4376.2. Disclosure of contributions and gifts during procurement process; civil penalty.

A. As used in this section:

"Contribution" means the donation of money or in-kind contributions.

"In-kind contribution" means the donation of goods, services, property, or other thing of value, other than money. The basis for arriving at the dollar value of an in-kind contribution is as follows: new items are valued at retail value, used items are valued at fair market value, and services rendered are valued at the actual cost of service per hour.

"Offeror" includes the offeror's owner and any agent, managing member, officer, director, or spouse of the offeror.

"Public institution of higher education" means the same as that term is defined in § 23.1-100.

B. Every offeror awarded a contract by a public institution of higher education for any construction project that has a total cost of \$5 million or more shall disclose any contributions the offeror has made within the previous five-year period totaling \$25,000 or more to the public institution of higher education or any private foundation that exists solely to support the public institution of higher education. Any offeror who desires to protest the award or decision to award a contract pursuant to this section shall do so in accordance with the provisions of § 2.2-4360; however, no protest shall lie for a claim that the selected offeror was awarded a contract solely based on such offeror's contribution to the public institution of higher education.

C. Any offeror that knowingly fails to submit the disclosure required by this section shall be subject to a civil penalty of \$500. The attorney for the Commonwealth shall initiate civil proceedings to enforce the civil penalties. Any civil penalties collected shall be payable to the State Treasurer for deposit to the general fund.

§ 23.1-1017. Covered institutions; operational authority; procurement.

A. Subject to the express provisions of the management agreement, each covered institution may be exempt from the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.), except for §§ 2.2-4340, 2.2-4340.1, 2.2-4340.2, and 2.2-4342, and 2.2-4376.2, which shall not be construed to require compliance with the prequalification application procedures of subsection B of § 2.2-4317, provided, however, that (i) any deviations from the Virginia Public Procurement Act in the management agreement shall be uniform across all covered institutions and (ii) the governing board of the covered institution shall adopt, and the covered institution shall comply with, policies for the procurement of goods and services, including professional services, that shall (a) be based upon competitive principles; (b) in each instance seek competition to the maximum practical degree; (c) implement a system of competitive negotiation for professional services pursuant to §§ 2.2-4303.1 and 2.2-4302.2; (d) prohibit discrimination in the solicitation and award of contracts on the basis of the bidder's or offeror's race, religion, color, sex, sexual orientation, gender identity, national origin, age, or disability or on any other basis prohibited by state or federal law; (e) incorporate the prompt payment principles of §§ 2.2-4350 and 2.2-4354; (f) consider the impact on correctional enterprises under § 53.1-47; and (g) provide that whenever solicitations are made seeking competitive procurement of goods or services, it shall be a priority of the institution to provide for fair and reasonable consideration of small, women-owned, and minority-owned businesses and to promote and encourage a diversity of suppliers.

B. Such policies may (i) provide for consideration of the dollar amount of the intended procurement, the term of the anticipated contract, and the likely extent of competition; (ii) implement a prequalification procedure for contractors or products; and (iii) include provisions for cooperative arrangements with other covered institutions, other public or private educational institutions, or other public or private organizations or entities, including public-private partnerships, public bodies, charitable organizations, health care provider alliances or purchasing organizations or entities, state agencies or institutions of the Commonwealth or the other states, the District of Columbia, the territories, or the United States, and any combination of such organizations and entities.

C. Nothing in this section shall preclude a covered institution from requesting and utilizing the

assistance of the Virginia Information Technologies Agency for information technology procurements and covered institutions are encouraged to utilize such assistance.

D. Each covered institution shall post on the Department of General Services' central electronic procurement website all Invitations to Bid, Requests for Proposal, sole source award notices, and emergency award notices to ensure visibility and access to the Commonwealth's procurement opportunities on one website.

E. As part of any procurement provisions of the management agreement, the governing board of a covered institution shall identify the public, educational, and operational interests served by any procurement rule that deviates from procurement rules in the Virginia Public Procurement Act (§ 2.2-4300 et seq.).

2. That the provisions of § 2.2-4376.2 of the Code of Virginia, as created by this act, shall expire on June 30, 2027.