



COMMONWEALTH of VIRGINIA

Department of General Services

Division of Purchases and Supply

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July 1, 2011

MEMORANDUM

TO: Purchasing Offices
Departments, Institutions, Agencies
Commonwealth of Virginia

FROM: Ron Bell
Director

A handwritten signature in black ink, appearing to read "Ron Bell".

SUBJECT: Changes to the *Virginia Public Procurement Act*, Effective July 1, 2011

The 2011 session of the General Assembly made some changes to the *Virginia Public Procurement Act (VPPA)* which took effect July 1, 2011. Attached is an unofficial copy of the *VPPA* incorporating those changes. Changes are indicated by an arrow (—▶) in the margin. After June 30, 2011, the 2010 version of the *VPPA* issued by the Division is obsolete.

The following is a brief summary of the significant changes made by the 2011 General Assembly, which are reflected in this copy. For judicial or other legal uses, consult the *Code of Virginia*.

2.2-4301. *Competitive negotiation 2. Public notice of the Request for Proposal.*

Clarifies posting requirements of the Request for Proposal and encourages local government to utilize the Department of General Services' central electronic procurement website or other appropriate websites.

Competitive negotiation 3.a. Procurement of professional services.

Includes metropolitan planning organizations or planning district commissions in local public bodies.

Clarifies contract term and fees for contracts for environmental location, design and inspection work regarding highways and bridges by the Commissioner of Highways.

Competitive sealed bidding. 2. Public notice of the Invitation to Bid.

Clarifies posting requirements of the Invitation to Bid and encourages local government to utilize the Department of General Services' central electronic procurement website or other appropriate websites.

5. "*Public body*"

Includes metropolitan planning organizations or planning district commissions in local public bodies.

2.2-4303. *Methods of procurement.*

D.4. Eliminates the one –time determination by the Design-Build/Construction Management Review Board that any governing body of a locality with a population in excess of 100,000 has the personnel, procedures, and expertise to enter into a contract for construction on a fixed price or not-to-exceed price design –build or construction management basis.

E. Posting for Sole Source procurement.

Requires the use of the Department of General Services' central electronic procurement website or other appropriate websites for public notice of all sole source procurements.

F. Posting for Emergency procurement.

Requires the use of the Department of General Services' central electronic procurement website or other appropriate websites for public notice of all emergency procurements.

G. Small Purchase Threshold Increase.

Increases the threshold of small purchases from \$50,000 to \$100,000 and requires public posting by state agencies of small purchases expected to exceed \$30,000. Requires the use of the Department of General Services' central electronic procurement website or other appropriate websites for public notice of small purchases.

2.2-4308.1 *A.* Replaces approval of Design-Build/Construction Management Review Board with implemented procedures consistent with the procedures adopted by the Secretary of Administration for utilizing design-build or construction management contracts.

A.1.a. Replaces Review Board's regulations with standards established by the Division of Engineering and Buildings of the Department of General Services for state agencies.

A.1.b. Replaces Review Board's regulations with procedures as adopted by the Secretary of Administration.

2.B.and C. Deletes reference to the Review Board

2.2-4308.2 (Effective December 1, 2013). *Registration and use of federal employment eligibility verification program.*

Adds language to define and establish the E-Verify program

2.2-4317.E. (Effective December 1, 2013). *Denying prequalification to any contractor.*

States that a state public body shall deny prequalification to any contractor who fails to register and participate in the E-Verify program as required by § 2.2-4308.2.

2.2-4323.B. *Purchase programs for recycled goods; agency responsibilities.*

Removes the Virginia Recycling Markets Development council as advisor to the Department of Environmental Quality concerning the designation of recycled goods.

2.2-4324.B. *Preference for Virginia products with recycled content and for Virginia firms.*

Adds that if the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a price-matching preference, a like preference shall be allowed to responsive and responsible bidders who are residents of Virginia.

D. *Defines the residency of a Virginia person, firm or corporation.*

Adds that for the purposes of this section, a Virginia person, firm or corporation shall be deemed to be a resident of Virginia if such person, firm or corporation has been organized pursuant to Virginia law or maintains a principal place of business within Virginia.

2.2-4330.B. *Procedures for withdrawal of a bid due to error.*

Changes the language concerning procedures for the work papers where the public body opens the bids one day following the time fixed for the submission of bids,

G. *Notification to bidder concerning request to withdraw bid.*

Adds that the public body shall notify the bidder in writing within five business days of its decision regarding the bidder's request to withdraw its bid. Adds that if the bid withdrawal is denied, the public body shall state in such notice the reasons for its decision and at the same time that the notice is provided, shall return all work papers and copies that have been submitted by the bidder

2.2-4336.A. *Bid bonds. Nontransportation-related construction contracts in excess of \$500,000.*

Changes the minimum amount for bid bonds from \$100,000 to \$500,000.

B. *Nontransportation-related construction contracts in excess of \$100,000.*

Adds a statement that contractors must be prequalified if bond requirements are waived.

D. *Nontransportation-related construction contracts less than \$500,000.*

Changes the minimum amount for bonds on construction projects from \$100,000 to \$500,000

2.2-4337.A. *Performance and payment bonds. Public construction contract exceeding \$500,000.*

Changes the minimum amount for performance and payment bonds from \$100,000 to \$500,000

B. *Nontransportation-related construction contracts in excess of \$100,000 but less than \$500,000.*

Adds a statement that contractors must be prequalified if bond requirements are waived.

F. *Construction contracts below \$500,000.*

Changes the amount from \$100,000 to \$500,000 for construction contracts which require payment or performance bonds for nontransportation-related projects.

2.2-4341.A. *Actions on payment bonds;waiver of right to sue. Claimant contractual relationship.*

Adds additional description of any claimant as one who has a direct contractual relationship with the contractor.

B. *Claimant's written notice to the contractor.*

Changes the written notice to the contractor from within 90 days to from within 180 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment.

2.2-4343.A.12.*Exemptions from operation of chapter for certain transactions.*

Changes the threshold for the method for procurement of professional services from \$30,000 to \$50,000 for all counties, cities and school divisions, and to all towns having a population greater than 3,500.

Notes that subsection H of 2.2-4303 shall apply for procurements where the cost of the professional service is not expected to exceed \$50,000 the aggregate or for the sum of all phases of a contract or project.

2.2-4344.D. (Effective July 1, 2012). *Exemptions from competition for certain transactions.*

Replaces the Inspector General for Behavioral Health and Development Services with the State Inspector General as person who may enter into contracts without

competition to obtain the services of licensed health care professionals or other experts to assist in carrying out the duties of the Office of the State Inspector General.

2.2-4345.B. *Exemptions from competitive sealed bidding and competitive negotiation for certain transactions; limitations.*

Changes the threshold of state funds from \$30,000 to \$50,000 for building construction or addition to or improvement of existing building contracts as the amount to be let after competitive negotiation.

2.2-4376.1.A. *Contributions and gifts; prohibition during procurement process.*

Specifies that the bid or proposal that the bidder or offeror submits has to be to an executive branch agency that is directly responsible to the Governor.

B. Adds that any person who knowingly violates the section shall be subject to a civil penalty.