

BUSINESS AND NONINSTRUCTIONAL OPERATIONS

Ethics in Public Contracting

A. Generally

The ~~S~~school ~~B~~board demands compliance with both the word and the intent of Article ~~6~~4 of the Virginia Public Procurement Act, entitled "Ethics in Public Contracting." This ~~R~~regulation details certain ~~the~~ provisions of this law.

B. Definitions

The following words utilized in this ~~R~~regulation shall have the meanings as set forth in Article 6 of the Virginia Public Procurement Act, Code of Virginia § 11-73. (See legal reference to Policy 3-2 for relevant text.)

1. "Immediate family" - means a spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee.
2. "Official responsibility" - means administrative or operating authority, whether intermediate or final, to initiate, approve, disapprove or otherwise affect a procurement transaction, or any claim resulting therefrom.
- ~~3.~~ "Pecuniary interest arising from the procurement" - means a personal interest in a contract as defined in the State and Local Government Conflict of Interests Act (§ ~~2-2-3100~~2.2-3100 *et seq.*).
- ~~3.~~ "Procurement transaction" - means all functions that pertain to the obtaining of any goods, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
- ~~4.~~
4. "Public employee" - means any person employed by a public body, including elected officials or appointed members of governing bodies.

~~C.~~

~~D.C.~~ Proscribed Participation by Employees in Procurement Transactions

Except as may be specifically allowed by provisions of the Virginia State and Local Government Conflict of Interests Act~~Comprehensive Conflict of Interests Act~~, no public employee having

official responsibility for a procurement transaction shall participate in that transaction on behalf of the school board when the employee knows that:

1. The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction; ~~or~~
2. The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent; ~~or~~
3. The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; ~~or~~
4. The employee, the employee's partner, or any member of the employee's immediate family is negotiating, or has an arrangement concerning, prospective employment with a bidder, offeror or contractor.

E.D. Solicitation or Acceptance of Gifts

1. No employee having official responsibility for a procurement transaction shall solicit, demand, accept, or agree to accept from a bidder, offeror, contractor or subcontractor any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged. The school board may recover the value of anything conveyed in violation of this section.
2. No bidder, offeror, contractor or subcontractor shall confer upon any public employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

F.E. Disclosure of Subsequent Employment

No employee or former employee having official responsibility for procurement transactions shall accept employment with any bidder, offeror or contractor with whom the employee or former employee dealt in an official capacity concerning procurement transactions for a period of one year from the cessation of employment by the school board unless the employee, or former employee, provides written notification to the superintendent prior to commencement of employment by that bidder, offeror or contractor.

~~G. Gifts by Bidders, Offerors, Contractors or Subcontractors~~

~~No bidder, offeror, contractor or subcontractor shall confer upon any employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.~~

F. Participation in Bid Preparation: limitation on bidding

No person who has been retained or who has been paid to draft, or who has otherwise participated in drafting, specifications, requirements, statements of work, invitations for bids, or requests for proposals for a procurement transaction shall submit a bid or proposal for the same procurement transaction without approval of the School Board.

H. G. Kickbacks

1. No contractor or subcontractor shall demand or receive from any of his suppliers or his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.
2. No subcontractor or supplier shall make, or offer to make, kickbacks as described in this ~~R~~regulation.
3. No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a public contract.
4. If a subcontractor or supplier makes a kickback or other prohibited payment as described in this regulation, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the school board and will be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

I. H. Purchase of Building Materials, etc., from Architect or Engineer Prohibited

Except in cases of emergency, no building materials, supplies or equipment for any building or structure constructed by or for the ~~S~~school ~~B~~board shall be sold by or purchased from any person employed as an independent contractor by the ~~S~~school ~~B~~board to furnish architectural or engineering services, but not construction, for such building or structure; entity which has provided or is currently providing design services specifying a sole source for such materials, supplies or equipment to be used in such buildings or structure to the independent contractor employed by the ~~School Board~~public body to furnish architectural or engineering service; or from any partnership, association, or corporation in which such architect or engineer has a pecuniary interest.

I. Certification of compliance and prohibition on misrepresentation

1. The School Division may require employees having official responsibility for procurement transactions in which they participated to annually submit for such transactions a written certification that they complied with this Regulation and the applicable law.
2. Employees shall not knowingly falsify, conceal, or misrepresent a material fact; knowing may any false, fictitious or fraudulent statements or representations or make or used any false writing or document knowing it to contain any false, fictitious or fraudulent statement or entry.

J. Penalty for Violation

Willful violation of any provision of Article 6 of the Ethics in Public Contracting of the Virginia Public Procurement Act may constitute a misdemeanor and will be referred to law enforcement and the Commonwealth's Attorney's Office for review.~~this regulation shall constitute a Class 1 misdemeanor.~~ Upon conviction for a violation of the Virginia Public Procurement Act, any employee, in addition to any other fine or penalty provided by law; shall forfeit his/her employment.

Regulatory Authority

Code of Va., § 11-72 thru 11-80. "Virginia Public Procurement Act."

Related Links

School Board [Policy 3-2](#)

Legal Reference

Code of Virginia § 2.2-4367 - 2.2-3-4377, et seq., as amended. Virginia Public Procurement Act.

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Policy and Regulation Approval page attachment

Regulation 3-2.1 Ethics in Public Contracting

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