

VIRGINIA PUBLIC PROCUREMENT ACT

ARTICLE 1-GENERAL PROVISIONS

§ 2.2-4300. Short title; purpose; declaration of intent. -- A. This chapter may be cited as the *Virginia Public Procurement Act*.

B. The purpose of this chapter is to enunciate the public policies pertaining to governmental procurement from nongovernmental sources, to include governmental procurement that may or may not result in monetary consideration for either party. This chapter shall apply whether the consideration is monetary or nonmonetary and regardless of whether the public body, the contractor, or some third party is providing the consideration.

To the end that public bodies in the Commonwealth obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to public business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the General Assembly that competition be sought to the maximum feasible degree, that procurement procedures involve openness and administrative efficiency, that individual public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered. Public bodies may consider best value concepts when procuring goods and nonprofessional services, but not construction or professional services. The criteria, factors, and basis for consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation.

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ARTICLE 6: ETHICS IN PUBLIC CONTRACTING

§ 2.2-4367. Purpose. -- The provisions of **this article supplement, but shall not supersede, other provisions of law including, but not limited to, the *State and Local Government Conflict of Interests Act* (§ 2.2-3100 et seq.), the *Virginia Governmental Frauds Act* (§ 18.2-498.1 et seq.), and Articles 2 (§ 18.2-438 et seq.) and 3 (§ 18.2-446 et seq.) of Chapter 10 of Title 18.2.**

The provisions of this article shall apply notwithstanding the fact that the conduct described may not constitute a violation of the *State and Local Government Conflict of Interests Act*.

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ETHICS-DEFINITIONS

“Immediate family” means a spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee.

“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.

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ETHICS-DEFINITIONS CONTINUED

“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.

“Public employee” means any person employed by a public body, including elected officials or appointed members of governing bodies.

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ETHICS-NO NO

§ 2.2-4369. Proscribed participation by public employees in procurement transactions. --

Except as may be specifically allowed by subdivisions A. 2, 3 and 4 of § 2.2-3112, **no public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the public body when the employee knows that:**

1. The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction;
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;
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.

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ETHICS-NO NO CONTINUED

§ 2.2-4371. Prohibition on solicitation or acceptance of gifts; gifts by bidders, offerors, contractor or subcontractors prohibited. -- A. No public 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 public body may recover the value of anything conveyed in violation of this subsection.

B. 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.

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ETHICS-NO NO CONTINUED

- § 2.2-4376. Misrepresentations prohibited.** -- No public employee having official responsibility for a procurement transaction shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make any false, fictitious or fraudulent statements or representations; or make or use any false writing or document knowing it to contain any false, fictitious or fraudulent statement or entry.
- § 2.2-4377. Penalty for violation.** -- Any person convicted of a willful violation of any provision of this article shall be guilty of a Class 1 misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, shall forfeit his employment.