

BUSINESS AND NONINSTRUCTIONAL OPERATIONS

The superintendent shall see that all employees of the board engaged in the procurement of goods and services are aware of Article 4 of the Virginia Public Procurement Act, entitled "Ethics in Public Contracting."

These employees shall also be informed that the board requires compliance with both the word and intent of the law.

Legal Reference:

Virginia Public Procurement Act, Article 4, Ethics in Public Contracting.

Code of Va., § 11.72. Purpose.--"The provisions of this article supplement, but do not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act (§ 2.1-639.1 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 apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act." (1987)

Code of Va., § 11-73. Definitions.--"The words defined in this section shall have the meanings set forth below throughout this article.

"Immediate family" shall mean a spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee.

"Official responsibility" shall mean administrative or operating authority, whether intermediate or final, to initiate, approve, disapprove or otherwise affect a procurement transaction, or any claim resulting therefrom.

"Pecuniary interest arising from the procurement" shall mean a personal interest in a contract as defined in the State and Local Government Conflict of Interests Act (§ 2.1-639.1 et seq.).

"Procurement transaction" shall mean 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" shall mean any person employed by a public body, including elected officials or appointed members of governing bodies." (1987)

Code of Va., § 11-74. Proscribed participation by public employees in procurement transactions.--"Except as may be specifically allowed by provisions of the State and Local Government Conflict of Interests Act (§ 2.1-639.1 et seq.), no public employee having official responsibility for a procurement transaction shall participate in that

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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; 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." (1987)

Code of Va., § 11.75. Solicitation or acceptance of gifts.--"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 section." (1982)

Code of Va., § 11-76. Disclosure of subsequent employment.--"No public employee or former public 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 public body unless the employee or former employee provides written notification to the public body, or a public official if designated by the public body, or both, prior to commencement of employment by that bidder, offeror or contractor." (1982)

Code of Va., § 11-77. Gifts by bidders, offerors, contractors or subcontractors.--"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." (1982)

Code of Va., § 11-78. Kickbacks. – A. No contractor or subcontractor shall demand or receive from any of his suppliers or his subcontractors, as an inducement for the award

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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.

B. No subcontractor or supplier shall make, or offer to make, kickbacks as described in this section.

C. 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.

D. If a subcontractor or supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the public body and will be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties. (1982)

Code of Va., § 11-79. 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 a public body shall be sold by or purchased from any person employed as an independent contractor by the public body to furnish architectural or engineering services, but not construction, for such building or structure, from any 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 building or structure to the independent contractor employed by the 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." (1993)

Code of Va., § 11-79. (continued) "A. No building materials, supplies or equipment for any building or structure constructed by or for a public body shall be sold by or purchased from any person employed as an independent contractor by the public body to furnish architectural or engineering services, but not construction, for such building or structure or from any partnership, association or corporation in which such architect or engineer has a personal interest as defined in § 2.1-639.2.

B. No building materials, supplies or equipment for any building or structure constructed by or for a public body shall be sold by or purchased from any person which has provided or is currently providing design services specifying a sole source for such materials, supplies or equipment to be used in such building or structure to the independent contractor employed by the public body to furnish architectural or engineering services in which such person has a personal interest as defined in §2.1-639.2.

C. The provisions of subsections A and B shall not apply in cases of emergency" . . .

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(1996)

Code of Va., § 11-79.1. Certification of compliance required; penalty for false statements.--"A. Public bodies may require public employees having official responsibility for procurement transactions in which they participated to annually submit for such transactions a written certification that they complied with the provisions of this article.

B. Any public employee required to submit a certification as provided in subsection A of this section who knowingly makes a false statement in such certification shall be punished as provided in § 11-80." (1992)

Code of Va., § 11-79.2. 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 the same to contain any false, fictitious or fraudulent statement or entry." (1992)

Code of Va., § 11-80. Penalty for violation.--"Willful violation of any provision of this article shall constitute a Class 1 misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, shall forfeit his employment." (1982)

Adopted by School Board: June 5, 1973

Revised by School Board: August 2, 1983