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GOVERNMENT CONTRACTS & CONSTRUCTION UPDATE

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New Virginia Laws Affecting the Construction Industry

The following new laws affecting the construction industry were passed in the 2011 session of the Virginia General Assembly and take effect July 1, 2011.

1. Failure to Register and Participate in the Federal E-Verify Program Will Result in Debarment.

Contractors with more than fifty (50) employees entering into a contract in excess of Fifty Thousand Dollars (\$50,000) with an agency of the Commonwealth to perform work or provide services must register and participate in the federal E-Verify program. The federal E-Verify program is an electronic verification of work authorization program put in place as part of the Illegal Immigration Reform and Immigrant Responsibility Act and operated by the U.S. Department of Homeland Security. The E-Verify program verifies the work authorization status of newly hired employees. Failure to comply with this requirement will result in a contractor's debarment from contracting with any agency of the Commonwealth for up to one year which will cease once the contractor registers and participates in the E-Verify program.

The E-Verify law is Va. Code § 2.2-4308.2 which can be viewed by clicking [here](#).

2. Revised Bid Withdrawal Procedure

The Virginia Public Procurement Act provides that public bodies shall select one of two procedures for withdrawal of a bid for a mistake and these procedures should be set forth in the invitation for bids. First, a bidder can give notice in writing of its claim to withdraw its bid within two (2) business days after bid opening and then shall submit its original work papers. Second, the revised statute provides that if a public body selects the process for the public body to open bids one day after the time fixed for submission of bids, then the bidder must now submit to the public body at or prior to the time for the opening of bids a copy of its original work papers.

Contractors should check invitations for bid to confirm which bid withdrawal procedure has been selected. If the procedure for opening bids one day after the time fixed for submission of bids is selected, a contractor should submit its work papers either with its bid or prior to bid opening if it wants to be able to take advantage of the bid withdrawal process.

The revised bid withdrawal law is Va. Code § 2.2-4330 which can be viewed by clicking [here](#).

3. Revisions to Notice Provisions in the Virginia Little Miller Act

The Virginia Little Miller Act allows unpaid subcontractors and suppliers to file a legal action on the payment bond provided by the general contractor. A claimant who has a direct contractual relationship with a subcontractor, but no contractual relationship with the prime contractor, may only bring an action against the contractor's payment bond if it has given written notice to the contractor within ninety (90) days from the day on which the claimant performed the last of the labor or furnished the last of materials for which it claims payment. The revised statute reduced this notice provision from one hundred eighty (180) days to ninety (90) days. Subcontractors and suppliers need to be certain that timely notice is provided to file a Little Miller Act claim against a contractor's bond and contractors should be sure to check if timely notice has been provided as a defense to any subcontractor or supplier claims.

The revised Little Miller Act law is Va. Code § 2.2-4341 which can be viewed by clicking [here](#).

4. Bid Preference for Virginia Firms

The Virginia Public Procurement Act provides a preference to Virginia firms in the case of a tie bid. The Procurement Act also provides that if the low responsive and responsible bidder is a resident of another state, and the other state allows a resident contractor of that state a percentage preference, a like preference must be provided to a low responsive and responsible bidder who is a Virginia resident and is the next low bidder. This preference statute has been amended to now provide that if the low responsive and responsible bidder is a resident of another state and that state allows that resident contractor a “price-matching preference” in that state, the Procurement Act now requires that a similar preference be allowed to a responsive and responsible bidder who is a Virginia resident.

A website is maintained by the Virginia Department of General Services that lists in detail all states that have bid preferences. Contractors and owners should be sure to check the DGS website when the successful bidder is a non-Virginia entity.

The revised bid preference is Va. Code § 2.2-4324 which can be viewed by clicking [here](#).

For more information or if you have any questions please contact [Terry Murphy](#) or [Ellen Coley](#) of the K&C Government Contracts & Construction Practice Group.

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