



This painting by tintoretto called the procurator shows the respect the word procure has had in history. The crimson velvet robe lined with ermine and richly patterned stole identifies the subject as a procurator – in this instance a venetian civic official similar to a chancellor or senator. This is what I strive to be when I think about procurement. A respectable civil servant attending to public goods in a fair way.

However, the word procure also has a dark side in history. This is called the procuracy by the famous dutch painter vermeer. As you can see it shows the scene of a brothel. The word procure used here means to pimp out the prostitute in yellow. Note the hand placement and the beer and music. This is not what I want you to think about when you hear procurement. (Secret service in columbia did not get memo). But I show you this to demonstrate why we have procurement laws. Because government officials were pimping out contracts to their friends and getting kick backs and in the end the citizens and public suffered. Today I am going to talk about what those procurement rules and how they ensure that government buys goods at a fair and impartial price.

To start off, I want to show you a video which should get you interested and demonstrate what happens when you do not follow the rules and fox tv starts investigating.

A Short History of the VPPA



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Who is covered?

- **All public bodies in Virginia:**

- Cities, Counties, Towns, Schools, Authorities, Commissions, etc.

- **Limited exceptions:**

- **Towns under 3,500 are exempt from most of the VPPA's requirements;**
 - however, some requirements, such as bonding and retainage for construction projects as well as the ethical standards, apply.
- **EDA Purchases for facilities**
- **county, city or town whose governing body has adopted, by ordinance or resolution, alternative policies and procedures which are based on competitive principles**

What is covered?

PRETTY MUCH EVERYTHING

EXCEPT REAL ESTATE;
PURCHASES FROM OTHER GOVERNMENTS;
AND LAWYERS.



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Methods of Procurement

1. Competitive Sealed Bidding (“IFB”)
2. Competitive Negotiation (“RFP”)
3. Other
 - Sole Source
 - Emergency
 - Small Purchase
 - Cooperative procurement

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Construction Projects

- Design-bid-build
- Design-build
- CM at risk
- PPEA

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Protests

Unsuccessful bidders have 10 days from notice of award to file a protest in writing.

Cancellation of award, not a right to the contract.

No damages.

No attorneys fees.

Citizens cant file protests.

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What happens when the rules are violated. Bidders have 10 days from the notice of award to lodge a protest that the procurement rules have not been followed. Must be by unsuccessful bidder or offeror. Must demonstrate that decision to award was arbitrary and capricious – ignored procurement rules. Locality has 10 days to respond. If denies the protest, then bidder has 10 days to appeal to panel or court. If the contract has not been awarded then the protest stays any further action (unless the locality determines that would be harmful) and if there was a violation then the award is cancelled. Have to start over again. If the contract was awarded then the remainder of the contract MAY be cancelled, but does not necessarily have to be. Depends on what court says.

The protest is filed with someone designated by the locality, normally the head of the purchasing department. That person has 10 days to answer the protest. If it is denied, the bidder or offeror has the opportunity either to go to circuit court to challenge the decision, or to appeal to an administrative panel if one has been set up by the locality. Not every locality has an administrative appeal panel; if there is none (and one is not required), the only option of the bidder or offeror is to go straight to court. The court should normally rule in the locality's favor unless the decision was "arbitrary and capricious."

While local officials often indicate a desire to award contracts to the local bidder or offeror, the VPPA does not allow a locality to grant a preference to a local firm.

While concepts such as response time may be taken into account, a contract cannot be awarded to a firm just because it is from the local community, and a protest on that basis would likely be successful.

Typical substantive protest grounds include failure to follow the solicitation evaluation criteria, failure to document the source selection decision and other critical determinations, improper cost/technical trade-offs, improper exclusion from the competitive range, lack of meaningful discussions, errors in the cost evaluation; improper disclosure of competitive information and unmitigated conflicts of interest

For sealed bid procurements, a frequent protest issue is bid responsiveness.

No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror.

Natural check on companies filing protests. 1. remedy is cancellation of award. So have to start over and no guarantee to the company that protests that they will be the winner. 2. protests will likely upset the government who is doing the purchasing. Generally do not want the potential buyer mad at you. Could effect future relationships as well.

FOIA

All records are Open to public after award of contract

Except Records marked proprietary and confidential

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Bidders and Offerors can inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award, except in the event that the public body decides not to accept any of the proposals and to reopen the contract

Ethics

Strict Anti-corruption standards

Parallels conflicts of interests act

- Prohibits financial interests
- No acceptance of gifts more than nominal value

Violation is a crime

- class 1 misdemeanor – fine up to \$2500 and up to 1 year in jail.
- And forfeit employment.

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