

1 CHAPTER XX.

2 HIGHWAY CONSTRUCTION CONTRACTS AND SUITS; HIGHWAY
3 CONTRACTORS ASSOCIATION.

4 Article 1.

5 Highway Construction Contracts, Limitations on Suits, and Adjustment of Claims.

6 **Drafting note: This proposed article contains several sections dealing with closely**
7 **related subjects, some from distinct chapters, that are here combined in a single article,**
8 **and others culled from an article containing a wide assortment of miscellaneous sections.**

9 § ~~33.1-191~~ 33.2-xxx. ~~Contracts~~ Highway construction contracts.

10 A. Every contractor whose bid is accepted shall, before commencing work, enter into a
11 contract with the Commissioner of Highways, which shall fully set out the time when work shall
12 commence and when the contract shall be completed, as well as the time and manner for the
13 payment for the work. Whenever the Commissioner of Highways or his designee publicly opens
14 and announces all bids received for each invitation to bid, it shall be announced at the same time
15 if the lowest read bid exceeds the maximum tolerance of the Department's estimate for the work
16 represented by that bid.

17 B. The contract shall require that the contractor comply with all requirements,
18 conditions, and terms of the contract, including ~~but not limited to~~ environmental permits that are
19 part of the contract. If the contractor violates a contract provision and the violation results in
20 environmental damage or if the contractor violates environmental laws or environmental
21 permits, the Department may suspend the contractor from future bidding or initiate debarment.
22 In addition, the Department may recover either (i) the loss or damage that the Department
23 suffers as a result of such violation or (ii) any liquidated damages established in such contract
24 plus (iii) reasonable ~~attorney's~~ attorney fees and expert witness fees. Any damages and costs
25 collected under this section shall be deposited into the Transportation Trust Fund and used for
26 transportation purposes as determined by the ~~Commonwealth Transportation~~ Board.

54 to appear before him, either in person or through counsel, and present any additional facts and
55 arguments in support of his claim as previously filed.

56 C. The Commissioner of Highways shall schedule such appearance to be held within
57 ~~thirty 30~~ days of receiving the claimant's written request. The claimant and the Commissioner of
58 Highways may, however, mutually agree to schedule such appearance to be held after ~~thirty 30~~
59 days but before ~~sixty 60~~ days from the receipt of the claimant's written request.

60 D. Within ~~forty five 45~~ days from the date of the appearance before him, the
61 Commissioner of Highways shall make an investigation of the claim and notify the contractor in
62 writing of his decision. The claimant and the Commissioner of Highways may, however,
63 mutually agree to extend such ~~forty five day 45-day~~ period for another ~~thirty 30~~ days. If the
64 Commissioner of Highways deems that all or any portion of a claim is valid, he shall have the
65 authority to negotiate a settlement with the contractor, but any such settlement shall be subject
66 to the provisions of § 2.2-514.

67 E. Failure of the Department or the Commissioner of Highways to render a decision
68 within the time period specified in subsections A and D, or within such other period as has been
69 mutually agreed upon as provided in this section, shall be deemed a denial of the claim. Any
70 mutual agreements for time extension permitted herein shall in no way extend the limitations set
71 out in § ~~33.1-192 33.2-XXX~~.

72 If the Commissioner of Highways determines that a claim has been denied as the result
73 of an administrative oversight, then the Department reserves the right to reconsider the claim.

74 **Drafting note: Technical changes.**

75 ~~§ 33.1-192. Limitation of suits on such contracts entered into prior to July 1, 1976.~~

76 ~~No suit or action shall be brought against the Department of Transportation,~~
77 ~~Commonwealth of Virginia, by any contractor or any persons claiming under him, on any~~
78 ~~contract executed pursuant to this chapter or by others on any claim arising from the prosecution~~
79 ~~of the project by the contractor, unless the same shall be brought within one year after the~~

80 ~~completion of the work on the project to the satisfaction of the chief engineer, Department of~~
81 ~~Transportation.~~

82 ~~No suit or action shall be brought against the contractor or surety on any such contract or~~
83 ~~claim unless the same shall be brought within five years after the completion of the work on the~~
84 ~~project to the satisfaction of the chief engineer, Department of Transportation.~~

85 **Drafting note: This section is deleted as obsolete because it dealt with limiting suits**
86 **on contracts executed before July 1, 1976 and such suits were required to be brought**
87 **within five years after the completion of work.**

88 § ~~33.1-192.1~~ 33.2-xxx. Limitation of suits on contracts ~~executed after June 30, 1976~~.

89 No suit or action shall be brought against the Department ~~of Transportation~~ by a
90 contractor or any persons claiming under him or on behalf of a subcontractor of the contractor
91 or a person furnishing materials for the contract to the contractor, on any contract executed
92 pursuant to this ~~chapter article, after June 30, 1976~~, or by others on any claim arising from the
93 performance of the contract by the contractor, subcontractor, or person furnishing materials to
94 the contractor, unless the claimant ~~shall have~~ has exhausted the review process provided by §
95 ~~33.1-386~~ 33.2-XXX. Further, no such suit or action shall be brought unless ~~the same shall be~~
96 such suit or action is brought within ~~twelve~~ 12 months from receipt of the decision of the
97 Commissioner of ~~the Department of Transportation~~ Highways. In no event shall any delay
98 therein on the part of the contractor, subcontractor, or person furnishing materials be construed
99 as a reason for extending the time within which such suit or action must be brought. In any case
100 brought against the Department ~~of Transportation~~ on behalf of a subcontractor or person
101 furnishing materials to the contractor, lack of privity between the parties shall be no defense;
102 however, any such case brought on behalf of a subcontractor or person furnishing materials to
103 the contractor shall only be brought for costs and expenses caused by the acts or omissions of
104 the Department ~~of Transportation~~ and shall not be brought for costs and expenses caused by the
105 contractor.

106 ~~Section 33.1-192 shall continue in force as to contracts entered into prior to July 1, 1976,~~
107 ~~or claims arising therefrom.~~

108 **Drafting note: Technical changes are made. References to suits from contracts**
109 **executed before 1976 are deleted as obsolete since § 33.1-192 requires all suits to be filed**
110 **within five years of the completion of a project and that section is being deleted as**
111 **obsolete.**

112 § ~~33.1-387~~ 33.2-xxx. Civil action.

113 As to such portion of the claim as is denied by the Commissioner of Highways, the
114 contractor may institute a civil action for such sum as he claims to be entitled to under the
115 contract for himself or for his subcontractors or for persons furnishing materials for the contract
116 by the filing of a petition in the Circuit Court of the City of Richmond or where the highway
117 project ~~which~~ that is the subject of the contract is located. Any civil action brought on behalf of
118 a subcontractor or person furnishing materials for the contract shall only be brought for costs
119 and expenses caused by the acts or omissions of the Department ~~of Transportation~~ and shall not
120 be brought for costs and expenses caused by the contractor. Trial shall be by the court without a
121 jury. The submission of the claim to the Department ~~of Transportation~~ within the time and as set
122 out in § ~~33.1-386~~ 33.2-XXX shall be a condition precedent to bringing an action under this
123 ~~chapter article~~ and the Department ~~of Transportation~~ shall be allowed to assert any and all
124 defenses in a case brought by or on behalf of the subcontractor or a person furnishing materials
125 to the contractor which are available to the contractor.

126 **Drafting note: Technical changes.**

127 § ~~33.1-388~~ 33.2-xxx. Application of ~~chapter XXX~~; existing contracts.

128 The provisions of this chapter shall apply to all contracts executed and proceedings
129 initiated after June 30, 1976, and may be made applicable to existing contracts by mutual
130 consent of the contracting parties.

131 **Drafting note: No change.**

132 § ~~33.1-389~~ 33.2-xxx. Provisions of ~~chapter article~~ deemed part of contract.

133 The provisions of this ~~chapter article~~ shall be deemed to enter into and form a part of
 134 every contract entered into between the ~~Commonwealth Transportation~~ Board and any
 135 contractor on or after July 1, 1976, and no provision in said contracts shall be valid that is in
 136 conflict herewith.

137 **Drafting note: Technical changes.**

138 ~~CHAPTER 10~~

139 ~~DIRECTORATE OF PUBLIC TRANSPORTATION.~~

140 ~~§§ 33.1-390., 33.1-391.~~

141 Repealed by Acts 1992, c. 167.

142 ~~CHAPTER 5.~~

143 ~~HIGHWAY CONTRACTORS' ASSOCIATION.~~

144 ~~Article 2.~~

145 ~~Highway Contractors' Association.~~

146 ~~§ 33.1-336 33.2-xxx. "Highway contractors' association" defined Definitions.~~

147 For the purposes of this ~~chapter article~~:

148 ~~"highway Highway~~ contractors' association" ~~shall mean means~~ any association, bureau,
 149 agency, or other medium, incorporated or unincorporated, whose object or work is to promote
 150 the common welfare of, to furnish information to, to promote cooperation among, to stimulate
 151 the demand for the services of, or to advertise the members thereof.

152 ~~§ 33.1-337 "Member of highway contractors' association" defined.~~

153 ~~For the purposes of this chapter "member Member~~ of highway contractors' association"
 154 ~~shall mean means~~ any individual, ~~copartnership partnership,~~ or corporation engaged in
 155 contracting for the construction, repair, and maintenance of highways and highway bridges and
 156 for supplying labor, material, machinery, and supplies for use in highways and ~~highway~~ bridges;
 157 ~~who are members that is a member~~ of, ~~stockholders stockholder~~ in, ~~subscribers subscriber~~ of,
 158 ~~contributors or contributor~~ to, or ~~that is~~ in any way affiliated with, any highway contractors'
 159 association.

160 **Drafting note: Two separate definitional sections are combined in a single section.**

161 **There are also technical changes.**

162 § ~~33.1-338~~ 33.2-xxx. Statements to be furnished.

163 Every highway contractors' association domiciled in ~~this the~~ Commonwealth shall, upon
164 request from the Secretary of the Commonwealth, within ~~thirty~~ 30 days of such request, but no
165 more often than once a calendar year, furnish in writing to the Secretary of the Commonwealth
166 the following information:

167 ~~(1)~~ 1. The names and ~~post-office~~ post office addresses of all of its members. When any
168 ~~such~~ member is a firm, the names and addresses of the members of the firm shall be furnished.
169 When any ~~such~~ member is a corporation, the names of the officers of ~~such the~~ corporation shall
170 be furnished.

171 ~~(2)~~ 2. The names and ~~post-office~~ post office addresses of the officers of ~~such the~~
172 highway contractors' association and the duties and salaries of ~~such the~~ officers ~~and their~~
173 salaries.

174 ~~(3)~~ 3. The property and income of ~~such the~~ highway contractors' association and by
175 whom the same is paid.

176 ~~(4)~~ 4. An itemized statement of the expenditures of such association.

177 ~~(5)~~ 5. A copy of the charter and bylaws, if incorporated, and a copy of the constitution
178 and bylaws, if unincorporated, of such association.

179 Such statements shall become public records.

180 **Drafting note: Technical changes.**

181 § ~~33.1-339~~ 33.2-xxx. Papers, accounts, and records open to examination by certain
182 officers.

183 All papers, accounts, and records of every nature, of every highway contractors'
184 association, a member of which submits a bid for any construction, maintenance, or repair of
185 any public highway or bridge or for the supplying of labor, material, or supplies for any such
186 construction, repair, or maintenance, whether such highway association ~~be is~~ domiciled in

187 Virginia or ~~be is~~ a foreign highway contractors' association doing business in Virginia, shall be
188 at all times during ~~the ordinary~~ business hours ~~of the day~~ open to examination and inspection by
189 the Governor, the Attorney General, the Comptroller, the Auditor of Public Accounts, the
190 ~~Commonwealth Transportation~~ Board and any member thereof, and the duly authorized agent or
191 representative of any of such officers or of the Board.

192 **Drafting note: Technical changes.**

193 § ~~33.1-340~~ 33.2-542. Effect of refusal to permit or withholding from examination of
194 papers, etc.

195 If any highway contractors' association, whether domiciled in Virginia or not, on
196 application of any person authorized by this ~~chapter article~~ to examine and inspect its records,
197 ~~shall refuse~~ refuses to permit such examination and inspection of its papers, accounts, and
198 records, or ~~fail fails~~ to produce at its principal office for examination and inspection any of its
199 papers, accounts, or records when requested so to do, or ~~shall~~ knowingly ~~withhold~~ withholds
200 from examination and inspection any of its papers, accounts, and records, for the purpose of
201 secreting any of its acts or activities, or the amount or sources of, or the use made of its revenue,
202 the person requesting or making such examination and inspection shall report the fact to the
203 Governor, who shall certify the fact to the Commissioner of Highways.

204 No contract for highway or highway bridge construction, repair, or maintenance or for
205 the supplying of any labor, materials, or supplies for such construction, repair, or maintenance
206 shall be thereafter let to any member of such association until the Governor ~~shall have~~ has
207 certified to the Board that a full examination and inspection of the papers, accounts, and records
208 of such association has been made with the free consent and cooperation of such association and
209 that such examination and inspection discloses nothing in the purposes, methods, or activities of
210 such association detrimental to the public interest or tending to prevent competition in or
211 increase the cost of highway and highway bridge construction, repair, or maintenance in ~~this~~ the
212 Commonwealth and that none of its revenue has been used for political purposes.

213 **Drafting note: Technical changes.**

214 § ~~33.1-341~~ 33.2-543. Effect of using certain methods or engaging in certain activities.
215 If upon any such inspection or examination as is ~~herein~~ provided for, in § 33.2-XXX it
216 ~~shall be~~ is found that any highway contractors' association of which any individual, partnership,
217 or corporation holding a contract for the construction, maintenance, or repair of any public
218 highway or bridge or for supplying any labor, materials, or supplies for any such construction,
219 repair, or maintenance, is a member, has made use of methods or engaged in activities tending
220 to prevent competition in the bidding on such contract or to increase the cost of such contract to
221 the Commonwealth or county or has brought to bear or endeavored to bring to bear political
222 influence to secure for such member such contract, then the ~~Commonwealth Transportation~~
223 Board may, at its option, cancel and annul such contract, paying thereon for the work done or
224 labor, material, and supplies furnished only the reasonable value of the work done or labor,
225 material, and supplies furnished.

226 **Drafting note: Technical changes.**

227 § ~~33.1-342~~ 33.2-544. Certificate to be filed with bid for highway or bridge construction,
228 etc.

229 Every individual, partnership, or corporation bidding upon any proposed contract for the
230 construction, repair, or maintenance of any part of any public highway or bridge and for
231 supplying any labor, material, or supplies to be used in any such construction, repair, or
232 maintenance shall file with such bid a sworn statement giving the name and location of the
233 principal office of every highway contractors' association of which ~~he~~ it is or has been a member
234 during the preceding ~~twelve~~ 12 months; ~~and no.~~ No bid not accompanied by such certificate
235 shall be considered by the ~~Commonwealth Transportation~~ Board in letting any contract bid
236 upon, nor shall any such contract be let by the Board to any bidder failing to file the certificate
237 required by this section.

238 **Drafting note: Technical changes.**

239 § ~~33.1-343~~ 33.2-545. Affidavit to be filed with bid upon work.

