

§ 2.2-4364. Legal actions.

A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in subsection B of § [2.2-4317](#). In the event the apparent low bidder, having been previously determined by the public body to be not responsible in accordance with § [2.2-4301](#), is found by the court to be a responsible bidder, the court may direct the public body to award the contract to such bidder in accordance with the requirements of this section and the Invitation to Bid.

B. A bidder denied withdrawal of a bid under § [2.2-4358](#) may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the public body was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid.

C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis in the manner provided in § [2.2-4303](#), whose protest of an award or decision to award under § [2.2-4360](#) is denied, may bring an action in the appropriate circuit court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.

D. If injunctive relief is granted, the court, upon request of the public body, shall require the posting of reasonable security to protect the public body.

E. A contractor may bring an action involving a contract dispute with a public body in the appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be named as a defendant in any action brought pursuant to this chapter or § [33.1-387](#), except for disputes involving contracts of the Office of the Comptroller or the Department of Accounts.

F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of § [2.2-4365](#), if available, but if those procedures are invoked by the bidder, offeror or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the public body agrees otherwise.

G. Nothing herein shall be construed to prevent a public body from instituting legal action against a contractor.

(1982, c. 647, § 11-70; 1985, c. 164; 1994, c. [918](#); 1995, c. [527](#); 1997, c. [864](#); 1998, cc. [205](#), [753](#); 1999, c. [1008](#); 2001, c. [844](#).)