

(I) ACTED IN GOOD FAITH;

(II) DID NOT DIRECTLY CONTRIBUTE TO A VIOLATION OF THIS DIVISION II; AND

(III) HAD NO KNOWLEDGE OF THE VIOLATION BEFORE THE PROCUREMENT CONTRACT WAS AWARDED.

(C) CONTRACTS VOIDABLE FOR NONCOMPLIANCE.

(1) WHENEVER A PROCUREMENT VIOLATES THIS DIVISION II, THE BOARD MAY DETERMINE THAT THE PROCUREMENT CONTRACT IS VOIDABLE, RATHER THAN VOID, IF THE BOARD DETERMINES THAT:

(I) ALL PARTIES ACTED IN GOOD FAITH;

(II) RATIFICATION OF THE PROCUREMENT CONTRACT WOULD NOT UNDERMINE THE PURPOSES OF THIS DIVISION II; AND

(III) THE VIOLATION OR SERIES OF VIOLATIONS WAS INSIGNIFICANT OR OTHERWISE DID NOT PREVENT SUBSTANTIAL COMPLIANCE WITH THIS DIVISION II.

(2) WHENEVER A PROCUREMENT CONTRACT IS VOIDABLE UNDER THIS SUBSECTION AND THE CONTRACTOR HAS NOT ACTED IN VIOLATION OF THIS DIVISION II, THE UNIT MAY:

(I) RATIFY THE PROCUREMENT CONTRACT IF THE UNIT DETERMINES THAT RATIFICATION IS IN THE BEST INTERESTS OF THE STATE; OR

(II) VOID THE PROCUREMENT CONTRACT AND AWARD THE CONTRACTOR COMPENSATION FOR ACTUAL EXPENSES REASONABLY INCURRED UNDER THE CONTRACT, PLUS A REASONABLE PROFIT.

(3) WHENEVER A PROCUREMENT CONTRACT IS VOIDABLE UNDER THIS SUBSECTION AND THE CONTRACTOR HAS ACTED IN VIOLATION OF THIS DIVISION II, THE UNIT:

(I) MAY VOID THE PROCUREMENT CONTRACT; OR

(II) WITHOUT PREJUDICE TO THE STATE'S RIGHT TO APPROPRIATE DAMAGES, MAY RATIFY THE PROCUREMENT CONTRACT IF THE UNIT DETERMINES THAT RATIFICATION IS IN THE BEST INTERESTS OF THE STATE.

REVISOR'S NOTE: This section is new language derived without substantive change from former SF § 11-107.

In subsection (c)(1) of this section, the words "voidable, rather than void" are substituted for the former words "merely voidable", for clarity.