

## VIRGINIA ACTS OF ASSEMBLY — CHAPTER

*An Act to amend and reenact § 11-45 of the Code of Virginia as it is currently effective and as it may become effective and to amend the Code of Virginia by adding a section numbered 11-47.5, relating to the Public Procurement Act; exceptions.*

[S 383]

Approved

**Be it enacted by the General Assembly of Virginia:**

**1. That § 11-45 of the Code of Virginia as it is currently effective and as it may become effective is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 11-47.5 as follows:**

§ 11-45. Exceptions to requirement for competitive procurement.

A. Any public body may enter into contracts without competition for the purchase of goods or services (i) which are performed or produced by persons, or in schools or workshops, under the supervision of the Virginia Department for the Visually Handicapped; or (ii) which are performed or produced by nonprofit sheltered workshops or other nonprofit organizations which offer transitional or supported employment services serving the handicapped.

B. Any public body may enter into contracts without competition for (i) legal services, provided that the pertinent provisions of Chapter 11 (§ 2.1-117 et seq.) of Title 2.1 remain applicable; or (ii) expert witnesses and other services associated with litigation or regulatory proceedings.

C. Any public body may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.

D. An industrial development authority may enter into contracts without competition with respect to any item of cost of "authority facilities" or "facilities" as defined in § 15.2-4902.

E. The Department of Alcoholic Beverage Control may procure alcoholic beverages without competitive sealed bidding or competitive negotiation.

F. Any public body administering public assistance programs as defined in § 63.1-87, the fuel assistance program, community services boards as defined in § 37.1-1, or any public body purchasing services under the Comprehensive Services Act for At-Risk Youth and Families (§ 2.1-745 et seq.) or the Virginia Juvenile Community Crime Control Act (§ 16.1-309.2 et seq.) may procure goods or personal services for direct use by the recipients of such programs without competitive sealed bidding or competitive negotiations if the procurement is made for an individual recipient. Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted from the requirements of § 11-41.

G. Any public body may enter into contracts without competitive sealed bidding or competitive negotiation for insurance *or electric utility services* if purchased through an association of which it is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance *or electric utility services* by use of competitive principles and provided that the public body has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.

H. The Department of Health may enter into contracts with laboratories providing cytology and related services without competitive sealed bidding or competitive negotiation if competitive sealed bidding and competitive negotiations are not fiscally advantageous to the public to provide quality control as prescribed in writing by the Commissioner of Health.

I. The Director of the Department of Medical Assistance Services may enter into contracts without competitive sealed bidding or competitive negotiation for special services provided for eligible recipients pursuant to § 32.1-325 E, provided that the Director has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public, or would constitute an imminent threat to the health or welfare of such recipients. The writing shall document the basis for this determination.

J. The Virginia Code Commission may enter into contracts without competitive sealed bidding or competitive negotiation when procuring the services of a publisher, pursuant to §§ 9-77.7 and 9-77.8, to publish the Code of Virginia or the Virginia Administrative Code.

K. (Effective until July 1, 2003) The State Health Commissioner may enter into agreements or

ENROLLED

SB383ER

contracts without competitive sealed bidding or competitive negotiation for the compilation, storage, analysis, evaluation, and publication of certain data submitted by health care providers and for the development of a methodology to measure the efficiency and productivity of health care providers pursuant to Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1, if the Commissioner has made a determination in advance, after reasonable notice to the public and set forth in writing, that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public. The writing shall document the basis for this determination. Such agreements and contracts shall be based on competitive principles.

L. A community development authority formed pursuant to Article 6 (§ 15.2-5152 et seq.) of Chapter 51 of Title 15.2, with members selected pursuant to such article, may enter into contracts without competition with respect to the exercise of any of its powers permitted by § 15.2-5158; however, this exception shall not apply in cases where any public funds other than special assessments and incremental real property taxes levied pursuant to § 15.2-5158 are used as payment for such contract.

M. Virginia Correctional Enterprises may enter into contracts without competitive sealed bidding or competitive negotiation when procuring materials, supplies, or services for use in and support of its production facilities, provided such procurement is accomplished using procedures which ensure the efficient use of funds as practicable and, at a minimum, shall include obtaining telephone quotations. Such procedures shall require documentation of the basis for awarding contracts under this section.

N. The Virginia Baseball Stadium Authority may enter into agreements or contracts without competitive sealed bidding or competitive negotiation for the operation of any facilities developed under the provisions of Chapter 58 (§ 15.2-5800 et seq.) of Title 15.2, including contracts or agreements with respect to the sale of food, beverages and souvenirs at such facilities.

O. The Department of Health may procure child restraint devices, pursuant to § 46.2-1097, without competitive sealed bidding or competitive negotiation.

P. With the consent of the Governor, the Jamestown-Yorktown Foundation may enter into agreements or contracts with private entities without competitive sealed bidding or competitive negotiation for the promotion of tourism through marketing provided a demonstrable cost savings, as reviewed by the Secretary of Education, can be realized by the Foundation and such agreements or contracts are based on competitive principles.

Q. The Virginia Racing Commission may designate an entity to administer and promote the Virginia Breeders Fund created pursuant to § 59.1-372.

R. The Chesapeake Hospital Authority may enter into contracts without competitive sealed bidding or competitive negotiation in the exercise of any power conferred under Chapter 271, as amended, of the Acts of Assembly of 1966.

S. The Hospital Authority of Norfolk may enter into contracts without competitive sealed bidding or competitive negotiation in the exercise of any power conferred under Chapter 53 (§ 15.2-5300 et seq.) of Title 15.2. The Authority shall not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability in the procurement of goods and services.

T. The Department of Health may enter into contracts without competitive sealed bidding or competitive negotiation for health care services with Virginia corporations granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code and operating as clinics for the indigent and uninsured that are organized for the delivery of primary health care services in a community (i) as federally qualified health centers designated by the Health Care Financing Administration or (ii) at a reduced or sliding fee scale or without charge.

U. The Department for the Aging may enter into contracts with not-for-profit Virginia corporations granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code with statewide experience in Virginia in conducting a state long-term care ombudsman program or designated area agencies on aging without competitive sealed bidding or competitive negotiation for the administration of elder rights programs.

§ 11-45. (Contingent effective date) Exceptions to requirement for competitive procurement.

A. Any public body may enter into contracts without competition for the purchase of goods or services (i) which are performed or produced by persons, or in schools or workshops, under the supervision of the Virginia Department for the Visually Handicapped; or (ii) which are performed or produced by nonprofit sheltered workshops or other nonprofit organizations which offer transitional or supported employment services serving the handicapped.

B. Any public body may enter into contracts without competition for (i) legal services, provided that the pertinent provisions of Chapter 11 (§ 2.1-117 et seq.) of Title 2.1 remain applicable; or (ii) expert witnesses and other services associated with litigation or regulatory proceedings.

C. Any public body may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.

D. An industrial development authority may enter into contracts without competition with respect to any item of cost of "authority facilities" or "facilities" as defined in § 15.2-4902.

E. The Department of Alcoholic Beverage Control may procure alcoholic beverages without competitive sealed bidding or competitive negotiation.

F. Any public body administering public assistance programs as defined in § 63.1-87, the fuel assistance program, community services boards as defined in § 37.1-1, or any public body purchasing services under the Comprehensive Services Act for At-Risk Youth and Families (§ 2.1-745 et seq.) or the Virginia Juvenile Community Crime Control Act (§ 16.1-309.2 et seq.) may procure goods or personal services for direct use by the recipients of such programs without competitive sealed bidding or competitive negotiations if the procurement is made for an individual recipient. Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted from the requirements of § 11-41.

G. Any public body may enter into contracts without competitive sealed bidding or competitive negotiation for insurance *or electric utility services* if purchased through an association of which it is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance *or electric utility services* by use of competitive principles and provided that the public body has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.

H. The Department of Health may enter into contracts with laboratories providing cytology and related services without competitive sealed bidding or competitive negotiation if competitive sealed bidding and competitive negotiations are not fiscally advantageous to the public to provide quality control as prescribed in writing by the Commissioner of Health.

I. The Director of the Department of Medical Assistance Services may enter into contracts without competitive sealed bidding or competitive negotiation for special services provided for eligible recipients pursuant to § 32.1-325 H, provided that the Director has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public, or would constitute an imminent threat to the health or welfare of such recipients. The writing shall document the basis for this determination.

J. The Virginia Code Commission may enter into contracts without competitive sealed bidding or competitive negotiation when procuring the services of a publisher, pursuant to §§ 9-77.7 and 9-77.8, to publish the Code of Virginia or the Virginia Administrative Code.

K. (Effective until July 1, 2003) The State Health Commissioner may enter into agreements or contracts without competitive sealed bidding or competitive negotiation for the compilation, storage, analysis, evaluation, and publication of certain data submitted by health care providers and for the development of a methodology to measure the efficiency and productivity of health care providers pursuant to Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1, if the Commissioner has made a determination in advance, after reasonable notice to the public and set forth in writing, that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public. The writing shall document the basis for this determination. Such agreements and contracts shall be based on competitive principles.

L. A community development authority formed pursuant to Article 6 (§ 15.2-5152 et seq.) of Chapter 51 of Title 15.2, with members selected pursuant to such article, may enter into contracts without competition with respect to the exercise of any of its powers permitted by § 15.2-5158; however, this exception shall not apply in cases where any public funds other than special assessments and incremental real property taxes levied pursuant to § 15.2-5158 are used as payment for such contract.

M. Virginia Correctional Enterprises may enter into contracts without competitive sealed bidding or competitive negotiation when procuring materials, supplies, or services for use in and support of its production facilities, provided such procurement is accomplished using procedures which ensure the efficient use of funds as practicable and, at a minimum, shall include obtaining telephone quotations. Such procedures shall require documentation of the basis for awarding contracts under this section.

N. The Virginia Baseball Stadium Authority may enter into agreements or contracts without competitive sealed bidding or competitive negotiation for the operation of any facilities developed under the provisions of Chapter 58 (§ 15.2-5800 et seq.) of Title 15.2, including contracts or agreements with respect to the sale of food, beverages and souvenirs at such facilities.

O. The Department of Health may procure child restraint devices, pursuant to § 46.2-1097, without competitive sealed bidding or competitive negotiation.

P. With the consent of the Governor, the Jamestown-Yorktown Foundation may enter into agreements or contracts with private entities without competitive sealed bidding or competitive

negotiation for the promotion of tourism through marketing provided a demonstrable cost savings, as reviewed by the Secretary of Education, can be realized by the Foundation and such agreements or contracts are based on competitive principles.

Q. The Virginia Racing Commission may designate an entity to administer and promote the Virginia Breeders Fund created pursuant to § 59.1-372.

R. The Chesapeake Hospital Authority may enter into contracts without competitive sealed bidding or competitive negotiation in the exercise of any power conferred under Chapter 271, as amended, of the Acts of Assembly of 1966.

S. The Hospital Authority of Norfolk may enter into contracts without competitive sealed bidding or competitive negotiation in the exercise of any power conferred under Chapter 53 (§ 15.2-5300 et seq.) of Title 15.2. The Authority shall not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability in the procurement of goods and services.

T. The Department of Health may enter into contracts without competitive sealed bidding or competitive negotiation for health care services with Virginia corporations granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code and operating as clinics for the indigent and uninsured that are organized for the delivery of primary health care services in a community (i) as federally qualified health centers designated by the Health Care Financing Administration or (ii) at a reduced or sliding fee scale or without charge.

U. The Department for the Aging may enter into contracts with not-for-profit Virginia corporations granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code with statewide experience in Virginia in conducting a state long-term care ombudsman program or designated area agencies on aging without competitive sealed bidding or competitive negotiation for the administration of elder rights programs.

*§ 11-47.5. Procurement of certain information technology-related goods or services in high unemployment localities.*

*In awarding contracts for the procurement of information technology-related goods or services, other than professional services or construction, state agencies, departments and institutions may give consideration to the beneficial effect of the award on local employment in localities where the average unemployment rate is 100 percent higher than the final statewide unemployment average for the preceding calendar year, as determined by the Virginia Employment Commission. If stated in the terms and conditions of the solicitation, state agencies, departments and institutions may award evaluation points, not to exceed the difference between the state unemployment average and that of the locality, to contractors located in, or performing contracted functions from, such high unemployment locality. In no event, however, shall such evaluation points exceed the points awarded for the price of such goods or services.*

*For the purposes of this section, "information technology-related goods or services" include telecommunications, automated data processing, word processing, the global information system known as the Internet, management information systems, and related information, equipment, goods, and services, other than professional services or construction.*

**2. That the provisions of § 11-47.5 of this act shall expire on July 1, 2002.**

**3. That the Department of General Services, in consultation with the Department of Information Technology and the Virginia Employment Commission, shall prepare a report on the impact of § 11-47.5 to be delivered to the Governor and the General Assembly on or before November 1, 2002.**