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HOUSE BILL NO. 2051

Offered January 12, 2005

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A BILL to amend and reenact §§ 2.2-4303 and 2.2-4304 of the Code of Virginia, relating to the Virginia Public Procurement Act; methods of procurement.

 Patron—Nixon

 Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That §§ 2.2-4303 and 2.2-4304 of the Code of Virginia are amended and reenacted as follows:**

§ 2.2-4303. Methods of procurement.

A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or competitive negotiation as provided in this section, unless otherwise authorized by law.

B. Professional services shall be procured by competitive negotiation.

C. Upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, goods, services, or insurance may be procured by competitive negotiation. The writing shall document the basis for this determination.

Upon a written determination made in advance by (i) the Governor or his designee in the case of a procurement by the Commonwealth or by a department, agency or institution thereof or (ii) the local governing body in the case of a procurement by a political subdivision of the Commonwealth, that competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured through a licensed agent or broker selected in the manner provided for the procurement of things other than professional services in subdivision 3 b of the definition of "competitive negotiation" in § 2.2-4301. The basis for this determination shall be documented in writing.

D. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:

1. By the Commonwealth, its departments, agencies and institutions on a fixed price design-build basis or construction management basis under § 2.2-4306;

2. By any public body for the construction, alteration, repair, renovation or demolition of buildings when the contract is not expected to cost more than \$1 million;

3. By any public body for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property; or

4. As otherwise provided in § 2.2-4308.

E. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The public body shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area or published in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first. Public notice may also be published on the Department of General Services' central electronic procurement website and other appropriate websites.

F. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The public body shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area or published in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may also be published on the Department of General Services' central electronic procurement website and other appropriate websites.

G. A public body may establish purchase procedures, if adopted in writing, not requiring competitive

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59 sealed bids or competitive negotiation for single or term contracts for goods and services other than
60 professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000;
61 however, such small purchase procedures shall provide for competition wherever practicable. Purchases
62 under this subsection that are expected to exceed \$30,000 shall require the written informal solicitation
63 of a minimum of four bidders or offerors.

64 H. A public body may establish purchase procedures, if adopted in writing, not requiring competitive
65 negotiation for single or term contracts for professional services if the aggregate or the sum of all phases
66 is not expected to exceed \$30,000; however such small purchase procedures shall provide for
67 competition wherever practicable.

68 I. Upon a determination made in advance by a public body and set forth in writing that the purchase
69 of goods, products or commodities from a public auction sale is in the best interests of the public, such
70 items may be purchased at the auction, including online public auctions. *Purchase of information
71 technology and telecommunications goods and nonprofessional services from a public auction sale shall
72 be permitted by any authority, department, agency, or institution of the Commonwealth if approved by
73 the Chief Information Officer of the Commonwealth.* The writing shall document the basis for this
74 determination. However, bulk purchases of commodities used in road and highway construction and
75 maintenance, and aggregates shall not be made by online public auctions.

76 J. The purchase of goods or nonprofessional services, but not construction or professional services,
77 may be made by reverse auctioning. However, bulk purchases of commodities used in road and highway
78 construction and maintenance, and aggregates shall not be made by reverse auctioning.

79 § 2.2-4304. Cooperative procurement.

80 A. Any public body may participate in, sponsor, conduct, or administer a cooperative procurement
81 agreement on behalf of or in conjunction with one or more other public bodies, or public agencies or
82 institutions or localities of the several states, of the United States or its territories, the District of
83 Columbia, or the U.S. General Services Administration, for the purpose of combining requirements to
84 increase efficiency or reduce administrative expenses in any acquisition of goods and services. Except
85 for contracts for professional services, a public body may purchase from another public body's contract
86 even if it did not participate in the request for proposal or invitation to bid, if the request for proposal
87 or invitation to bid specified that the procurement was being conducted on behalf of other public bodies.
88 *In instances where any authority, department, agency, or institution of the Commonwealth desires to
89 purchase information technology and telecommunications goods and services from another public body's
90 contract and the procurement was conducted on behalf of other public bodies, such purchase shall be
91 permitted if approved by the Chief Information Officer of the Commonwealth.* Any public body that
92 enters into a cooperative procurement agreement with a county, city, or town whose governing body has
93 adopted alternative policies and procedures pursuant to subdivisions 9 and 10 of § 2.2-4343 shall comply
94 with the alternative policies and procedures adopted by the governing body of such county, city, or
95 town.

96 B. Subject to the provisions of §§ 2.2-1110, 2.2-1111, 2.2-1120 and 2.2-2012, any authority,
97 department, agency, or institution of the Commonwealth may participate in, sponsor, conduct, or
98 administer a cooperative procurement arrangement on behalf of or in conjunction with public bodies,
99 private health or educational institutions or with public agencies or institutions of the several states,
100 territories of the United States, or the District of Columbia, for the purpose of combining requirements
101 to effect cost savings or reduce administrative expense in any acquisition of goods and services, other
102 than professional services. A public body may purchase from any authority, department, agency or
103 institution of the Commonwealth's contract even if it did not participate in the request for proposal or
104 invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being
105 conducted on behalf of other public bodies. In such instances, deviation from the procurement
106 procedures set forth in this chapter and the administrative policies and procedures established to
107 implement this chapter shall be permitted, if approved by the Director of the Division of Purchases and
108 Supply.

109 Pursuant to § 2.2-2012, such approval is not required if the procurement arrangement is for
110 telecommunications and information technology goods and services of every description. In instances
111 where the procurement arrangement is for telecommunications and information technology goods and
112 services, such arrangement shall be permitted if approved by the Chief Information Officer of the
113 Commonwealth. However, such acquisitions shall be procured competitively.

114 Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that
115 will allow for participation in any such arrangement.

116 C. As authorized by the United States Congress and consistent with applicable federal regulations,
117 and provided the terms of the contract permit such purchases:

118 1. Any authority, department, agency, or institution of the Commonwealth may purchase goods and
119 nonprofessional services, other than telecommunications and information technology, from a U.S.
120 General Services Administration contract or a contract awarded by any other agency of the U.S.

121 government, upon approval of the director of the Division of Purchases and Supply of the Department
122 of General Services;
123 2. Any authority, department, agency, or institution of the Commonwealth may purchase
124 telecommunications and information technology goods and nonprofessional services from a U.S. General
125 Services Administration contract or a contract awarded by any other agency of the U.S. government,
126 upon approval of the Chief Information Officer *of the Commonwealth*; and
127 3. Any county, city, town, or school board may purchase goods and nonprofessional services from a
128 U.S. General Services Administration contract or a contract awarded by any other agency of the U.S.
129 government.

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