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HOUSE BILL NO. 2924

Offered January 21, 2005

A *BILL to amend and reenact § 2.2-4345 of the Code of Virginia, relating to the Virginia Public Procurement Act; exemption from competitive sealed bidding and competitive negotiation.*

Patron—Morgan

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That § 2.2-4345 of the Code of Virginia is amended and reenacted as follows:**

§ 2.2-4345. Exemptions from competitive sealed bidding and competitive negotiation for certain transactions; limitations.

A. The following public bodies may enter into contracts without competitive sealed bidding or competitive negotiation:

1. The Director of the Department of Medical Assistance Services for special services provided for eligible recipients pursuant to subsection H of § 32.1-325, 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.

2. (Effective until July 1, 2008) The State Health Commissioner 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.

3. The Virginia Code Commission when procuring the services of a publisher, pursuant to §§ 30-146 and 30-148, to publish the Code of Virginia or the Virginia Administrative Code.

4. The Department of Alcoholic Beverage Control for the purchase of alcoholic beverages.

5. The Department for the Aging, for the administration of elder rights programs, with (i) nonprofit 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 (ii) designated area agencies on aging.

6. The Department of Health for (a) child restraint devices, pursuant to § 46.2-1097; (b) 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; or (c) contracts with laboratories providing cytology and related services 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.

7. Virginia Correctional Enterprises, when procuring materials, supplies, or services for use in and support of its production facilities, provided the procurement is accomplished using procedures that ensure as efficient use of funds as practicable and, at a minimum, includes obtaining telephone quotations. Such procedures shall require documentation of the basis for awarding contracts under this section.

8. The Virginia Baseball Stadium Authority 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.

9. With the consent of the Governor, the Jamestown-Yorktown Foundation for the promotion of tourism through marketing with private entities 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.

10. The Chesapeake Hospital Authority in the exercise of any power conferred under Chapter 271, as amended, of the Acts of Assembly of 1966.

11. The Hospital Authority of Norfolk in the exercise of any power conferred under Chapter 53

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59 (§ 15.2-5300 et seq.) of Title 15.2. The Authority shall not discriminate against any person on the basis
60 of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age,
61 marital status, or disability in the procurement of goods and services.

62 12. The Patrick Hospital Authority sealed in the exercise of any power conferred under the Acts of
63 Assembly of 2000.

64 13. Public bodies for ~~insurance or electric utility~~ services if *provided by or* purchased through an
65 association of which it is a member if the association was formed and is maintained for the purpose of
66 promoting the interest and welfare of and developing close relationships with similar public bodies,
67 ~~provided such association has procured the insurance or electric utility services by use of competitive~~
68 ~~principles and provided~~ that the public body has made a determination in advance after reasonable notice
69 to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not
70 fiscally advantageous to the public *and provided further that if the services are purchased through such*
71 *an association, the association has procured the services by use of competitive principles.* The writing
72 shall document the basis for ~~this~~ *the determination required by this subdivision.*

73 14. Public bodies administering public assistance and social services programs as defined in
74 § 63.2-100, community services boards as defined in § 37.1-1, or any public body purchasing services
75 under the Comprehensive Services Act for At-Risk Youth and Families (§ 2.2-5200 et seq.) or the
76 Virginia Juvenile Community Crime Control Act (§ 16.1-309.2 et seq.) for goods or personal services
77 for direct use by the recipients of such programs if the procurement is made for an individual recipient.
78 Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted
79 from the requirements of § 2.2-4303.

80 15. The Eastern Virginia Medical School in the exercise of any power conferred pursuant to Chapter
81 471, as amended, of the Acts of Assembly of 1964.

82 B. No contract for the construction of any building or for an addition to or improvement of an
83 existing building by any local government or subdivision of local government for which state funds of
84 not more than \$30,000 in the aggregate or for the sum of all phases of a contract or project either by
85 appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction
86 shall be let except after competitive sealed bidding or after competitive negotiation as provided under of
87 subsection D of § 2.2-4303. The procedure for the advertising for bids or for proposals and for letting of
88 the contract shall conform, mutatis mutandis, to this chapter.