

## CHAPTER 630

*An Act to amend and reenact §§ 2.2-1111, 2.2-2012, 2.2-2622, and 23-9.9:01 of the Code of Virginia, relating to the procurement of services by certain state agencies; commercial activities.*

[H 2137]

Approved March 20, 2007

**Be it enacted by the General Assembly of Virginia:****1. That §§ 2.2-1111, 2.2-2012, 2.2-2622, and 23-9.9:01 of the Code of Virginia are amended and reenacted as follows:**

§ 2.2-1111. Purchases to be made in accordance with the Virginia Public Procurement Act (§ 2.2-4300 et seq.) and regulations of Division; exempt purchases.

A. All purchases made by any department, division, officer or agency of the Commonwealth shall be made in accordance with the Virginia Public Procurement Act (§ 2.2-4300 et seq.) and such regulations as the Division may prescribe.

B. The regulations adopted by the Division shall:

1. Include a purchasing plan that shall be on file at the Division and shall be available to the public upon request;

2. Require that before any public body procures any computer system, equipment or software, it shall consider whether the proposed system, equipment or software is capable of producing products that facilitate the rights of the public to access official records under the Freedom of Information Act (§ 2.2-3700 et seq.) or other applicable law;

3. Require state public bodies to procure only shielded outdoor light fixtures and provide for waivers of this requirement when the Division determines that a bona fide operational, temporary, safety or specific aesthetic need is indicated or that such fixtures are not cost effective over the life cycle of the fixtures. For the purposes of this subdivision, "shielded outdoor light fixture" means an outdoor light fixture that is (i) fully shielded so that no light rays are emitted by the installed fixture above the horizontal plane or (ii) constructed so that no more than two percent of the total luminaire lumens in the zone of 90 to 180 degrees vertical angle is permitted, if the related output of the luminaire is greater than 3200 lumens. In adopting regulations under this subdivision, the Division shall consider national standards for outdoor lighting as adopted by the Illuminating Engineering Society of North America (IESNA).

For any project initiated on or after July 1, 2003, the Virginia Department of Transportation shall design all lighting systems in accordance with current IESNA standards and recommended practices. The lighting system shall utilize fixtures that minimize glare, light trespass, and skyglow, all as defined by the IESNA, while still providing a comfortable, visually effective, safe, and secure outdoor environment in a cost-effective manner over the life cycle of the lighting system.

4. Establish the conditions under which a public body may use, as a basis for the procurement of goods and nonprofessional services, a particular vendor's contract-pricing that has been negotiated and accepted by the U.S. General Services Administration;

5. Establish procurement preferences for products containing recycled oil (including reprocessed and rerefined oil products) and recycled antifreeze no later than December 31, 2002; ~~and~~

6. Establish conditions under which a public body shall demonstrate a good faith effort to ensure that state contracts or subcontracts for goods or services that involve the manual packaging of bulk supplies or the manual assemblage of goods where individual items weigh less than 50 pounds be offered to nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported employment services serving the handicapped; *and*

7. *Require that on or before October 1, 2009, and every two years thereafter, the Director of the Department of General Services shall solicit from each state agency and public institution of higher education a list of procurements falling under the Department's authority that were competed with the private sector that appear on the Commonwealth Competition Council's commercial activities list and were, until that time, being performed by each state agency and public institution of higher education during the previous two years, and the outcome of that competition. The Director shall make the lists available to the public on the Department of General Services' website.*

C. The Division may make, alter, amend or repeal regulations relating to the purchase of materials, supplies, equipment, nonprofessional services, and printing, and may specifically exempt purchases below a stated amount or particular agencies or specified materials, equipment, nonprofessional services, supplies and printing.

§ 2.2-2012. Procurement of information technology and telecommunications goods and services; computer equipment to be based on performance-based specifications.

A. Information technology and telecommunications goods and services of every description shall be procured by (i) VITA for its own benefit or on behalf of other state agencies and institutions or (ii) such other agencies or institutions to the extent authorized by VITA. Such procurements shall be made in accordance with the Virginia Public Procurement Act (§ 2.2-4300 et seq.), regulations that implement the electronic and information technology accessibility standards of the Rehabilitation Act of 1973 (29 U.S.C. § 794d), as amended, and any regulations as may be prescribed by VITA. In no case shall such procurements exceed the requirements of the regulations that implement the electronic and information technology accessibility standards of the Rehabilitation Act of 1973, as amended.

The CIO shall disapprove any procurement that does not conform to the statewide information technology plan or to the individual plans of state agencies or public institutions of higher education.

B. All statewide contracts and agreements made and entered into by VITA for the purchase of communications services, telecommunications facilities, and information technology goods and services shall provide for the inclusion of counties, cities, and towns in such contracts and agreements. Notwithstanding the provisions of § 2.2-4301, VITA may enter into multiple vendor contracts for the referenced services, facilities, and goods and services.

B1. The Department may establish contracts for the purchase of personal computers and related devices by licensed teachers employed in a full-time teaching capacity in Virginia public schools or in state educational facilities for use outside the classroom. The computers and related devices shall not be purchased with public funds, but shall be paid for and owned by teachers individually provided that no more than one such computer and related device per year shall be so purchased.

C. If VITA, or any agency or institution authorized by VITA, elects to procure personal computers and related peripheral equipment pursuant to any type of blanket purchasing arrangement under which public bodies, as defined in § 2.2-4301, may purchase such goods from any vendor following competitive procurement but without the conduct of an individual procurement by or for the using agency or institution, it shall establish performance-based specifications for the selection of equipment. Establishment of such contracts shall emphasize performance criteria including price, quality, and delivery without regard to "brand name." All vendors meeting the Commonwealth's performance requirements shall be afforded the opportunity to compete for such contracts.

D. This section shall not be construed or applied so as to infringe upon, in any manner, the responsibilities for accounting systems assigned to the Comptroller under § 2.2-803.

*E. The CIO of VITA shall, on or before October 1, 2009, and every two years thereafter, solicit from each state agency and public institution of higher education a list of procurements that were competed with the private sector that appear on the Commonwealth Competition Council's commercial activities list and were, until that time, being performed by each state agency and public institution of higher education during the previous two years, and the outcome of that competition. The CIO shall make the lists available to the public on VITA's website.*

§ 2.2-2622. Duties of Council; acceptance of gifts and grants; annual report.

A. The Council shall:

1. Examine and promote methods of providing a portion or all of select government-provided or government-produced programs and services through the private sector by a competitive contracting program, and advise the Governor, the General Assembly, and executive branch agencies of the Council's findings and recommendations.

2. Develop an institutional framework for a statewide competitive program to encourage innovation and competition within state government.

3. Establish a system to encourage the use of feasibility studies and innovation to determine where competition could reduce government costs without harming the public.

4. Monitor the products and services of state agencies to bring an element of competition and to ensure a spirit of innovation and entrepreneurship to compete with the private sector.

5. Advocate, develop and accelerate implementation of a competitive program for state entities to ensure competition for the provision or production of government services, or both, from both public and private sector entities.

6. Establish approval, planning, and reporting processes required to carry out the functions of the Council.

7. Determine the privatization potential of a program or activity; perform cost/benefit analyses; and conduct public and private performance analyses. The Secretary of Finance shall independently certify the results of the comparison.

8. Devise, in consultation with the Secretary of Finance, evaluation criteria to be used in conducting performance reviews of any program or activity that is subject to a privatization recommendation.

9. To the extent practicable and to the extent that resources are available, make its services available for a fair compensation to any political subdivision of the Commonwealth.

10. Review the practices of government agencies and nonprofit organizations that may constitute inappropriate competition with private enterprise. The Council shall develop proposals for (i) preserving the traditional role of private enterprise; (ii) encouraging the expansion of existing, and the creation of new, private enterprise; and (iii) monitoring inappropriate competition by nonprofit organizations.

*B. The commercial activities list developed by the Council in accordance with this section shall be updated every two years.*

C. The Council may apply for, accept, and expend gifts, grants, or donations from public or private sources to enable it to better carry out its objectives. No entity that provides a gift, donation or grant shall be eligible for a contract award that results from action of a Council recommendation.

~~C.~~ D. The Council shall not impose unreasonable burdens or costs in connection with requests of agencies.

~~D.~~ E. The Council shall annually by December 1 report its findings and recommendations to the Governor, the General Assembly and the Small Business Commission created pursuant to § 30-182. The Council may make interim reports to the Governor, the General Assembly and the Small Business Commission as it deems advisable.

§ 23-9.9:01. Reports of expenditures of state funds.

A. The governing body of each public institution of higher education shall provide the State Council of Higher Education annual data indicating the apportionment and amounts of expenditures that the relevant institution expends by category, including academic costs, administration, research, and public service, as defined by the Council. The Council shall compile and submit a report of such data annually to the Governor and the General Assembly.

*B. The Director of the State Council of Higher Education shall, on or before October 1, 2009, and every two years thereafter, solicit from each public institution of higher education that has received restructured financial and operational authority a list of procurements that were competed with the private sector that appear on the Commonwealth Competition Council's commercial activities list and were, until that time, being performed by each public institution of higher education during the previous two years, and the outcome of that competition. The Director shall make the lists available to the public on the State Council of Higher Education's website.*