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HOUSE BILL NO. 1358

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws
on February 5, 2008)

(Patron Prior to Substitute—Delegate Cline)

A BILL to amend and reenact §§ 2.2-1111, 2.2-2622, and 2.2-5513 of the Code of Virginia, relating to the procurement of nonprofessional services by certain state agencies; commercial activities.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-1111, 2.2-2622, and 2.2-5513 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;

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; ~~and~~

8. *Require all state agencies, except as provided in subsection D of § 2.2-5513, to procure nonprofessional services from the private sector if the services are listed as a commercial activity on the commercial activities list developed by the Commonwealth Competition Council in accordance with § 2.2-2622. The provisions of this subdivision shall not apply to two- and four-year public institutions of higher education nor to the hiring of law-enforcement personnel of any state agency or institution. For*

60 *the purposes of this subdivision "nonprofessional services" means work performed by persons other than*
61 *an independent contractor within the scope of the practice of accounting, actuarial services,*
62 *architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or*
63 *professional engineering. -*

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

68 § 2.2-2622. Duties of Council; acceptance of gifts and grants; annual report.

69 A. The Council shall:

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

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

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

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

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

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

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

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

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

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

96 11. Review the procurement process under the Public-Private Transportation Act of 1995 (§ 56-556 et
97 seq.) and the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) and
98 make recommendations for (i) improving the use and efficiency of process, (ii) releasing information to
99 the public during all stages of the process, and (iii) ensuring accountability on the part of public officials
100 and employees involved in projects under the Acts.

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

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

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

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

112 § 2.2-5513. Responsibilities of Governor to ensure efficiency in government.

113 A. The Governor shall cause to be conducted an examination of the commercial activities that are
114 being performed by state employees at state agencies and institutions to ensure such activities are being
115 accomplished in the most cost-efficient and effective manner.

116 B. The examination required by subsection A shall be completed at least once in every two-year
117 period and may be conducted entirely by a commercial source through a solicitation process as provided
118 in the Virginia Public Procurement Act (§ 2.2-4300 et seq.) or the Public-Private Education Facilities
119 and Infrastructure Act of 2002 (§ 56-575.1 et seq.).

120 C. The examination required by subsection A shall consider at least three commercial activities as the
121 Governor or the commercial source may identify.

122 D. Upon determination that outsourcing a commercial activity may result in reduced costs or
123 otherwise provide a measurable benefit to the Commonwealth and to assure such activities are being
124 accomplished in the most cost efficient and effective manner, the Governor shall cause that commercial
125 activity to be competed in accordance with the Virginia Public Procurement Act or by using the
126 processes described in the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1
127 et seq.). *However, upon a written determination made in advance by a state agency that the*
128 *procurement of services from a commercial source is either not practicable or fiscally advantageous,*
129 *such service may continue to be performed by the state agency.*