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HOUSE BILL NO. 789

Offered January 13, 2010

Prefiled January 12, 2010

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

Patrons—Villanueva and Keam

Referred to Committee on General Laws**Be it enacted by the General Assembly of Virginia:****1. That § 2.2-4303 of the Code of Virginia is 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 (a) public body for the construction, alteration, repair, renovation or demolition of buildings or structures when the contract is not expected to cost more than \$410 million and (b) local governing body on a fixed price design-build basis or construction management basis under § 2.2-4308 when the contract is not expected to cost more than \$410 million;

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

4. By any governing body of a locality with a population in excess of 100,000 that the Design-Build/Construction Management Review Board has made a one-time determination that the locality has the personnel, procedures, and expertise to enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis, provided that projects undertaken by the local governing body shall be exempt only from approval of the Design-Build/Construction Management Review Board and shall otherwise be in compliance with the provisions of this section, § 2.2-4308, and other applicable law governing design-build or construction management contracts for public bodies other than the Commonwealth. The procedures of the local governing body shall be consistent with the two-step competitive negotiation process established in § 2.2-4301; or

5. 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

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59 General Services' central electronic procurement website and other appropriate websites.

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

70 G. A public body may establish purchase procedures, if adopted in writing, not requiring competitive
71 sealed bids or competitive negotiation for single or term contracts for goods and services other than
72 professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000;
73 however, such small purchase procedures shall provide for competition wherever practicable. Purchases
74 under this subsection that are expected to exceed \$30,000 shall require the written informal solicitation
75 of a minimum of four bidders or offerors.

76 H. A public body may establish purchase procedures, if adopted in writing, not requiring competitive
77 negotiation for single or term contracts for professional services if the aggregate or the sum of all phases
78 is not expected to exceed \$50,000; however such small purchase procedures shall provide for
79 competition wherever practicable.

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

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