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HOUSE BILL NO. 223

Offered January 8, 2014

Prefiled December 27, 2013

A BILL to amend and reenact §§ 2.2-1111, 2.2-1605, and 2.2-2012 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.2-4310.1, relating to the Virginia Public Procurement Act; establishment of historically underutilized business zones.

Patron—Dance

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-1111, 2.2-1605, and 2.2-2012 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.2-4310.1 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 employment services organizations as defined in § 2.2-4301 that offer transitional or supported employment services serving individuals with disabilities; and

7. Establish the conditions under which state public bodies may procure diesel fuel containing, at a minimum, two percent, by volume, biodiesel fuel or green diesel fuel, as defined in § 59.1-284.25, for use in on-road internal combustion engines. The conditions shall take into consideration the availability of such fuel and the variability in cost of biodiesel fuel with respect to unblended diesel fuel; and

8. Establish procurement regulations for the utilization of small businesses located in historically underutilized business zones (HUB zones) in Virginia in accordance with the provisions of § 2.2-4310.1.

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

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59 below a stated amount or particular agencies or specified materials, equipment, nonprofessional services,  
60 supplies and printing.

61 **§ 2.2-1605. Powers and duties of Department.**

62 A. The Department shall have the following powers and duties:

63 1. Coordinate as consistent with prevailing law the plans, programs, and operations of the state  
64 government that affect or may contribute to the establishment, preservation, and strengthening of small,  
65 women-owned, and minority-owned businesses;

66 2. Promote the mobilization of activities and resources of state and local governments, businesses and  
67 trade associations, universities, foundations, professional organizations, and volunteer and other groups  
68 towards the growth of small businesses and businesses owned by women and minorities, and facilitate  
69 the coordination of the efforts of these groups with those of state departments and agencies;

70 3. Establish a center for the development, collection, summarization, and dissemination of  
71 information that will be helpful to persons and organizations throughout the nation in undertaking or  
72 promoting procurement from small, women-owned, and minority-owned businesses;

73 4. Consistent with prevailing law and availability of funds, and according to the Director's discretion,  
74 provide technical and management assistance to small, women-owned, and minority-owned businesses  
75 and defray all or part of the costs of pilot or demonstration projects that are designed to overcome the  
76 special problems of small, women-owned, and minority-owned businesses;

77 5. Manage the Capital Access Fund for Disadvantaged Businesses created pursuant to § 2.2-2311 and,  
78 in cooperation with the Small Business Financing Authority, determine the qualifications, terms, and  
79 conditions for the use of such Fund; and

80 6. Implement any remediation or enhancement measure for small, women-owned, or minority-owned  
81 businesses as may be authorized by the Governor pursuant to subsection C of § 2.2-4310 *or* § 2.2-4310.1  
82 and develop regulations, consistent with prevailing law, for program implementation. Such regulations  
83 shall be developed in consultation with the state agencies with procurement responsibility and  
84 promulgated by those agencies in accordance with applicable law.

85 B. In addition, the Department shall serve as the liaison between the Commonwealth's existing  
86 businesses and state government in order to promote the development of Virginia's economy. To that  
87 end, the Department shall:

88 1. Provide for training or retraining of individuals for specific employment opportunities at new or  
89 expanding business facilities in the Commonwealth;

90 2. Develop and implement programs to assist small businesses in the Commonwealth in order to  
91 promote their growth and the creation and retention of jobs for Virginians;

92 3. Establish an industry program that is the principal point of communication between basic  
93 employers in the Commonwealth and the state government that will address issues of significance to  
94 business;

95 4. Make available to existing businesses, in conjunction and cooperation with localities, chambers of  
96 commerce, and other public and private groups, basic information and pertinent factors of interest and  
97 concern to such businesses;

98 5. Develop statistical reports on job creation and the general economic conditions in the  
99 Commonwealth; and

100 6. Administer any programs established under the Virginia Jobs Investment Program described in  
101 Article 2 (§ 2.2-1611 et seq.) of this chapter.

102 C. All agencies of the Commonwealth shall assist the Department upon request and furnish such  
103 information and assistance as the Department may require in the discharge of its duties.

104 **§ 2.2-2012. Procurement of information technology and telecommunications goods and services;  
105 computer equipment to be based on performance-based specifications.**

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

114 The CIO shall disapprove any procurement that does not conform to the Commonwealth strategic  
115 plan for information technology developed and approved pursuant to § 2.2-2007 or to the individual  
116 strategic plans of state agencies or public institutions of higher education.

117 B. (Effective until July 1, 2014) All statewide contracts and agreements made and entered into by  
118 VITA for the purchase of communications services, telecommunications facilities, and information  
119 technology goods and services shall provide for the inclusion of counties, cities, and towns in such  
120 contracts and agreements. Notwithstanding the provisions of § 2.2-4301, VITA may enter into multiple

121 vendor contracts for the referenced services, facilities, and goods and services.

122 B. (Effective July 1, 2014) All statewide contracts and agreements made and entered into by VITA  
123 for the purchase of communications services, telecommunications facilities, and information technology  
124 goods and services shall provide for the inclusion of counties, cities, and towns in such contracts and  
125 agreements. Notwithstanding the provisions of § 2.2-4301, 2.2-4302.1, or 2.2-4302.2, VITA may enter  
126 into multiple vendor contracts for the referenced services, facilities, and goods and services.

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

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

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

142 F. *The CIO of VITA shall establish procurement regulations for utilization of small businesses*  
143 *located in historically underutilized business zones (HUB zones) in Virginia in accordance with the*  
144 *provisions of § 2.2-4310.1.*

145 **§ 2.2-4310.1. Establishment of historically underutilized business zones (HUB zones) in Virginia.**

146 A. *All public bodies may establish programs consistent with this chapter to facilitate the participation*  
147 *of small businesses as defined in § 2.2-4310 located in historically underutilized business zones (HUB*  
148 *zones) in Virginia in procurement transactions. The programs established shall be in writing and shall*  
149 *comply with the provisions of any enhancement or remedial measures authorized by the Governor*  
150 *pursuant to subsection C of § 2.2-4310 or as otherwise authorized by law, or by the chief executive of a*  
151 *local governing body pursuant to § 15.2-965.1, and shall include specific plans to achieve any goals*  
152 *established therein.*

153 B. *The Department of Minority Business Enterprise shall certify eligible small businesses for*  
154 *participation in the program in accordance with subdivision 6 of § 2.2-1605.*

155 C. *For the purposes of this section:*

156 *"HUB zone" means an area in Virginia as determined by the U.S. Small Business Administration*  
157 *pursuant to relevant federal law. For purposes of determining HUB zone locations for inclusion in*  
158 *programs established to facilitate the participation of small businesses, a public body may rely upon the*  
159 *accuracy of the information made available by the U.S. Small Business Administration.*