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## HOUSE BILL NO. 1761

Offered January 9, 2019

Prefiled December 21, 2018

*A BILL to amend and reenact §§ 2.2-614.4, 23.1-1017, 23.1-3138, 53.1-45, 53.1-45.1, 53.1-47, 53.1-53, 53.1-54, and 62.1-132.6 of the Code of Virginia and to repeal §§ 53.1-48 through 53.1-52 of the Code of Virginia, relating to state correctional facilities; prohibition on procurement by public bodies of articles produced or manufactured and services provided by persons confined in state correctional facilities.*

Patron—Carter

Referred to Committee on Militia, Police and Public Safety

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 2.2-614.4, 23.1-1017, 23.1-3138, 53.1-45, 53.1-45.1, 53.1-47, 53.1-53, 53.1-54, 53.1-55, and 62.1-132.6 of the Code of Virginia are amended and reenacted as follows:**

**§ 2.2-614.4. Commercial activities list; publication of notice; opportunity to comment.**

A. As used in this section, unless the context requires a different meaning:

"Commercial activities list" means the list developed by the Department of Planning and Budget in accordance with § 2.2-1501.1.

"Governmental agency" means any authority, board, department, instrumentality, institution, agency, or other unit of state government and any county, city, or town or local or regional governmental authority.

B. Any state governmental agency that intends to purchase services for an amount over \$25,000 from another governmental agency, which service is found on the commercial activities list, shall post notice on the Department of General Services' central electronic procurement system under the "Future Procurement" listing.

C. Any local governmental agency that intends to purchase services for an amount over \$25,000 from another governmental agency, which service is found on the commercial activities list, shall post notice on its public government website where all public notices for procurement opportunities are located or on the Department of General Services' central electronic procurement system under the "Future Procurement" listing.

D. In addition to the notice requirement in subsection C, any such governmental agency shall provide the opportunity for comment by or the submission of information from the private sector on each such intended purchase.

E. Any state governmental agency that purchases goods or services from another governmental agency, including those found on the commercial activities list, shall place the purchase orders for such goods and services on the Department of General Services' central electronic procurement system. Institutions of higher education authorized in accordance with the Restructured Higher Education Financial and Administrative Operations Act (§ 23.1-1000 et seq.) shall provide government-to-government purchase order data through interface or integration with the Department of General Services' central electronic procurement system. The Department of General Services shall publish on its central electronic procurement system website a government- to-government transaction transparency report.

F. The provisions of this section shall not apply to ~~mandatory purchases pursuant to § 53.1-47 or~~ contracts specifically exempted pursuant to Article 3 (§ 2.2-4343 et seq.) of the Virginia Public Procurement Act.

G. The provisions of subsections B and C shall not apply to services provided by central service state agencies, activities operated as an internal service fund of the Commonwealth, or purchases from public institutions of higher education.

**§ 23.1-1017. Covered institutions; operational authority; procurement.**

A. Subject to the express provisions of the management agreement, each covered institution may be exempt from the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.), except for § 2.2-4342, which shall not be construed to require compliance with the prequalification application procedures of subsection B of § 2.2-4317, provided, however, that (i) any deviations from the Virginia Public Procurement Act in the management agreement shall be uniform across all covered institutions and (ii) the governing board of the covered institution shall adopt, and the covered institution shall comply with, policies for the procurement of goods and services, including professional services, that shall (a) be based upon competitive principles, (b) in each instance seek competition to the maximum

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HB1761

59 practical degree, (c) implement a system of competitive negotiation for professional services pursuant to  
60 §§ 2.2-4303.1 and 2.2-4302.2, (d) prohibit discrimination in the solicitation and award of contracts based  
61 on the bidder's or offeror's race, religion, color, sex, national origin, age, or disability or on any other  
62 basis prohibited by state or federal law, (e) incorporate the prompt payment principles of §§ 2.2-4350  
63 and 2.2-4354, ~~and (f) consider the impact on correctional enterprises under § 53.1-47, and (g) provide~~  
64 that whenever solicitations are made seeking competitive procurement of goods or services, it shall be a  
65 priority of the institution to provide for fair and reasonable consideration of small, women-owned, and  
66 minority-owned businesses and to promote and encourage a diversity of suppliers.

67 B. Such policies may (i) provide for consideration of the dollar amount of the intended procurement,  
68 the term of the anticipated contract, and the likely extent of competition; (ii) implement a  
69 prequalification procedure for contractors or products; and (iii) include provisions for cooperative  
70 arrangements with other covered institutions, other public or private educational institutions, or other  
71 public or private organizations or entities, including public-private partnerships, public bodies, charitable  
72 organizations, health care provider alliances or purchasing organizations or entities, state agencies or  
73 institutions of the Commonwealth or the other states, the District of Columbia, the territories, or the  
74 United States, and any combination of such organizations and entities.

75 C. Nothing in this section shall preclude a covered institution from requesting and utilizing the  
76 assistance of the Virginia Information Technologies Agency for information technology procurements  
77 and covered institutions are encouraged to utilize such assistance.

78 D. Each covered institution shall post on the Department of General Services' central electronic  
79 procurement website all Invitations to Bid, Requests for Proposal, sole source award notices, and  
80 emergency award notices to ensure visibility and access to the Commonwealth's procurement  
81 opportunities on one website.

82 E. As part of any procurement provisions of the management agreement, the governing board of a  
83 covered institution shall identify the public, educational, and operational interests served by any  
84 procurement rule that deviates from procurement rules in the Virginia Public Procurement Act (§  
85 2.2-4300 et seq.).

#### 86 § 23.1-3138. Procurement and information technology.

87 A. The Authority shall be exempt from the provisions of the Virginia Public Procurement Act  
88 (§ 2.2-4300 et seq.), except for § 2.2-4342, which shall not be construed to require compliance with the  
89 prequalification application procedures of subsection B of § 2.2-4317, if it adopts and complies with  
90 policies for the procurement of goods and services, including professional services, that (i) are based  
91 upon competitive principles; (ii) in each instance seek competition to the maximum practical degree; (iii)  
92 implement a system of competitive negotiation for professional services pursuant to §§ 2.2-4303.1 and  
93 2.2-4302.2; (iv) prohibit discrimination in the solicitation and award of contracts based on the bidder's or  
94 offeror's race, religion, color, sex, national origin, age, or disability or on any other basis prohibited by  
95 state or federal law; (v) incorporate the prompt payment principles of §§ 2.2-4350 and 2.2-4354; (vi)  
96 ~~consider the impact on correctional enterprises under § 53.1-47;~~ (vii) provide that whenever solicitations  
97 are made seeking competitive procurement of goods or services, it shall be a priority of the Authority to  
98 provide for fair and reasonable consideration of small, women-owned, and minority-owned businesses  
99 and to promote and encourage a diversity of suppliers; and ~~(viii)~~ (vii) identify the public, educational,  
100 and operational interests served by any procurement rule that deviates from procurement rules in the  
101 Virginia Public Procurement Act (§ 2.2-4300 et seq.).

102 B. The Authority shall be exempt from the provisions governing the Virginia Information  
103 Technologies Agency in Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2 and the provisions governing the  
104 Information Technology Advisory Council in Article 35 (§ 2.2-2699.5 et seq.) of Chapter 26 of Title  
105 2.2, if it adopts and complies with policies and professional best practices regarding strategic planning  
106 for information technology, project management, security, budgeting, infrastructure, and ongoing  
107 operations.

#### 108 § 53.1-45. Sale of prison goods and services; print shop.

109 A. Articles produced or manufactured and services provided by prisoners sentenced to state  
110 correctional facilities may be disposed of by the Director ~~only~~ by sale ~~only to municipal and county~~  
111 ~~agencies in Virginia and to federal, state and local public agencies within or without the Commonwealth~~  
112 ~~or as the Director, with the approval of the Governor, may deem to be in the best interests of the~~  
113 ~~Commonwealth. Except as otherwise provided, no articles produced or manufactured nor services~~  
114 ~~provided by prisoners may be bought, sold or acquired by or exchange on the open market.~~

115 B. The products of any printing shop in any state correctional facility shall be sold only to the  
116 departments, institutions and agencies of the Commonwealth which are supported in whole or in part  
117 with funds from the state treasury and to offices or agencies of the counties, cities and towns of the  
118 Commonwealth. Such products shall not be sold on the ~~on the~~ open market except as provided in  
119 § 53.1-45.1.

120 C. The Department shall not offer manufactured goods for resale to any department, agency or

institution of the state unless those goods (i) have been incorporated into a finished product produced or manufactured by prisoners; (ii) are necessary for use with a product produced or manufactured by prisoners; or (iii) are a component part of a product system, a portion of which comprises goods produced or manufactured by prisoners.

**§ 53.1-45.1. Work programs; agreements with other entities.**

A. The Director, with the prior approval of the Governor, may enter into an agreement with a public or private entity to operate a work program in a state correctional facility for prisoners confined therein.

B. Articles produced or manufactured and services provided by prisoners participating in such a program may be purchased as provided in § 53.1-47 and may be bought, sold, or acquired by exchange on the open market through the participating public or private entity.

C. The Director shall arrange for compensation for such employment. Wages earned by prisoners shall be paid to the Director who shall deduct from such wages, in the following order of priority, an amount to:

1. Meet the obligation of any judicial or administrative order to provide support and such funds shall be disbursed according to the terms of such order;

2. Pay any fines, restitution or costs as ordered by the court; and

3. Defray a portion of the prisoner's keep.

The balance shall be credited to the prisoner's account in accordance with § 53.1-42.

**§ 53.1-47. Purchases by agencies, localities, and certain nonprofit organizations prohibited.**

Articles and services produced or manufactured by persons confined in state correctional facilities shall not be purchased by:

1. Shall be purchased by all departments, institutions, and agencies Any department, institution, or agency of the Commonwealth that are is supported in whole or in part with funds from the state treasury for their its use or the use of persons whom they assist it assists financially. Except as provided in § 53.1-48, no such articles or services shall be purchased by any department, institution, or agency of the Commonwealth from any other source; and

2. May be purchased by any county, district of any county, city, or town and by any Any locality or nonprofit organization, including volunteer emergency medical services agencies, fire departments, sheltered workshops, and community service organizations.

**§ 53.1-53. Transfer or sale of by-products of manufacturing processes.**

In those industries operated by the Department in which saleable by-products are generated while producing primary products, such by-products shall not be classified as surplus supplies or equipment. Such by-products shall be disposed of as provided in § 2.2-1124 only by sale or exchange on the open market. Proceeds from the sale of such by-products shall be paid into the state treasury and credited to the special funds account of the generating industry.

**§ 53.1-54. Charges and catalogue; annual estimates of requirements by departments, etc.**

A. The Director shall establish charges for articles produced or manufactured and services provided by prison labor that will, in his judgment, defray the administration, operation and maintenance costs and make allowances for depreciation, return on capital and contingencies.

B. A catalogue shall be prepared by the Department on a periodic basis which describes all articles and supplies manufactured and produced by persons confined in state correctional facilities. Copies of the catalogue shall be sent to all departments, institutions and agencies of the Commonwealth mandated to purchase such articles and supplies. At least thirty days before the commencement of each fiscal year, the proper official of each department, institution and agency of the Commonwealth shall report to the Division of Purchases and Supply estimates of the kinds and amounts of articles and supplies required by it for the ensuing year. Such estimates shall refer to the catalogue issued by the Director insofar as the articles and supplies indicated are included within the catalogue.

**§ 62.1-132.6. Powers not restrictive; exemptions from Public Procurement Act and the Virginia Personnel Act.**

A. The Authority shall have the power to perform any act or carry out any function not inconsistent with state law, whether included in the provisions of this chapter, which may be, or tend to be, useful in carrying out the provisions of this chapter. The provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to the Authority in the exercise of any of its powers in accordance with this chapter, provided the Authority implement, by policy or regulation adopted by the Board of Commissioners, procedures to ensure fairness and competitiveness in the procurement of goods and services and in the administration of its capital outlay program. This exemption shall be applicable only so long as such policies and procedures meeting the requirements remain in effect.

B. The provisions of Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2 shall not apply to the Authority.

C. Additionally, the provisions of §§ 2.2-1124, 2.2-1131.1, 2.2-1136, 2.2-1149, 2.2-1150, and 2.2-1153 through 2.2-1156 shall not apply to the Authority provided that (i) the Authority adopts and the Board approves policies or regulations governing the acquisition, lease, or sale of surplus and real

182 property consistent with the provisions of the above-referenced sections; and (ii) any acquisition, lease,  
183 or sale of real property valued in excess of \$20 million shall be approved by the Governor.  
184 D. Additionally, the provisions of §§ § 2.2-1117 and ~~53.1-47~~ shall not apply to the Authority.  
185 **2. That §§ 53.1-48 through 53.1-52 of the Code of Virginia are repealed.**