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HOUSE BILL NO. 563

Offered January 19, 1996

A BILL to amend the Code of Virginia by adding a section numbered 11-41.2:02 and by adding in Title 66 a chapter numbered 2.1 consisting of sections numbered 66-25.3 through 66-25.7, relating to the Juvenile Corrections Private Management Act.

Patron—Hamilton

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 11-41.2:02 and by adding in Title 66 a chapter numbered 2.1 consisting of sections numbered 66-25.3 through 66-25.7, as follows:

§ 11-41.2:02. Fixed-price or not-to-exceed-price design-build and construction management contracts for juvenile correctional facilities authorized.

Notwithstanding the provisions of § 11-41.2, but subject to the procedures adopted by the Secretary of Administration to implement the provisions of that section, the Commonwealth may enter into contracts for juvenile correctional facilities on a fixed-price or not-to-exceed-price design-build basis or construction management basis, including related leases, lease/purchase contracts, agreements relating to the sale of securities to finance such facilities, and similar financing agreements; however, there shall be no limitation on the type of construction project and no need for justification to, or prior approval by, the Department of General Services for initiating procurement of such contract. The contract shall be awarded to the lowest-price offeror, unless the Department of Youth and Family Services has received the approval of the Director of the Division of Engineering and Buildings to award on an alternate basis.

CHAPTER 2.1.

Juvenile Corrections Private Management Act.

§ 66-25.3. Definitions.

As used in this chapter unless the context requires otherwise or it is otherwise provided:

"Correctional services" means the following functions, services and activities when provided within a juvenile correctional facility or otherwise:

1. Operation of facilities, including management, custody of juveniles and provision of security;

2. Food services, commissary, medical services, transportation, sanitation or other ancillary services;

3. Development and implementation assistance for classification, management information systems or other information systems or services;

4. Education, training and employment programs;

5. Recreational, religious and other activities; and

6. Counseling, special treatment programs, or other programs for special needs.

"Juvenile correction facility" or "center" or "facility" means any institution operated by or under the authority of the Department and shall include, whether obtained by purchase, lease, lease/purchase, construction, reconstruction, restoration, improvement, alteration, repair or other means, any physical betterment or improvement related to the housing of juveniles or any preliminary plans, studies or survey relative thereto; land or rights to land; and any furnishings, machines, vehicles, apparatus, or equipment for use in connection with any juvenile correctional facility.

"Contractor" means any entity entering into or offering or proposing to enter into a contractual agreement to provide any juvenile correctional facility for or correctional services to juveniles under the custody of the Commonwealth.

§66-25.4. State juvenile correctional facilities; private contracts.

The Director, subject to any applicable regulations which may be promulgated by the Board pursuant to § 66-10, is hereby authorized to enter into contracts for the financing, site selection, design, acquisition, construction, maintenance, leasing, leasing/purchasing, management or operation of juvenile correctional facilities or any combination of those services subject to the requirements and limitations set out below.

1. Contracts entered into under the terms of this chapter shall be with an entity submitting an acceptable response pursuant to a request for proposals. An acceptable response shall be one which meets all the requirements in the request for proposals. However, no contract for juvenile correctional facilities or correctional services may be entered into unless the private contractor demonstrates to the satisfaction of the Director that it has:

a. The qualifications, experience and management personnel necessary to carry out the terms of this contract;

b. The financial resources to provide indemnification for liability arising from the management of juvenile correctional projects;

c. Evidence of past performance of similar contracts; and

d. The ability to comply with all applicable federal and state constitutional standards; federal, state, and local laws, court orders; and juvenile correctional standards.

2. Contracts awarded under the provision of this chapter, including contracts for the provision of juvenile correctional services, the construction of juvenile correctional facilities, or for the lease, lease/purchase or use of public or private lands or buildings for use in the operation of facilities, may be entered into for a period of up to thirty years, subject to the requirements for annual appropriation of funds by the Commonwealth.

3. Contracts awarded under the provisions of this chapter shall, at a minimum, comply with the following:

a. Provide for internal and perimeter security to protect the public, employees and committed juveniles;

b. Provide juveniles with work or training opportunities while incarcerated; however, the contractor shall not benefit financially from the labor of committed juveniles;

c. Impose discipline on committed juveniles only in accordance with applicable regulations; and

d. Provide proper food, clothing, housing and medical care for juveniles.

4. No contract for juvenile correctional facilities or juvenile correctional services shall be entered into unless the following requirements are met:

a. The contractor provides audited financial statements for the previous five years or for each of the years the contractor has been in operation, if fewer than five years and provides other financial information as requested; and

b. The contractor provides an adequate plan of indemnification, specifically including indemnity for civil rights claims. The indemnification plan shall be adequate to protect the Commonwealth and public officials from all claims and losses incurred as a result of the contract. Nothing herein is intended to deprive a contractor or the Commonwealth of the benefits of any law limiting exposure to liability or setting a limit on damages.

5. No contract for juvenile correctional facilities or correctional services shall be executed by the Director nor shall any funds be expended for the contract unless:

a. The proposed contract complies with any applicable regulations which may be promulgated by the Board pursuant to § 66-10;

b. An appropriation for the facilities or the services to be provided under the contract has been expressly approved as is otherwise provided by law;

c. The juvenile correctional facilities or the correctional services proposed by the contract are of at least the same quality as those routinely provided by the Department to similar types of committed juveniles;

d. An evaluation of the proposed contract demonstrates a cost benefit to the Commonwealth when compared to alternative means of providing the facilities or the services through governmental agencies;

e. If a contract for acquiring facilities requires or otherwise contemplates that the Commonwealth, whether subject to appropriation or not, will make payments beyond the current biennium that are expected to pay debt service on any bonds or other obligations issued to finance such facilities, regardless of the issuer thereof, then (i) the Treasury Board shall approve the terms and structure of such bonds or other obligations and (ii) the appropriation for such facilities acknowledges that payments for the acquisition of such facilities are expected to be made beyond the current biennium under a capital lease, lease/purchase, or similar arrangement. Any contract that is for two years or less, or is cancelable by the Commonwealth without cause after such a period, shall not be deemed a contract as described herein; and

f. Nothing herein shall be construed to constitute a waiver for the Department or contractor from complying with the provisions of § 66-3(4).

§ 66-25.5. Powers and duties not delegable to contractor.

No contract for juvenile correctional services shall authorize, allow, or imply a delegation of authority or responsibility of the Director to a contractor for any of the following:

1. Developing and implementing procedures for calculating release and parole eligibility dates for committed juveniles;

2. Approving juveniles for furlough and work release;

3. Approving the type of work juveniles may perform and the wages which may be given the juveniles engaging in such work;

4. Classifying a committed juvenile or placing a committed juvenile in less restrictive custody or more restrictive custody;

5. Transferring a committed juvenile; however, the contractor may make written recommendations regarding the transfer of a committed juvenile;

6. Formulating rules of behavior for committed juveniles, violations of which may subject committed juveniles to sanctions; however, the contractor may propose such rules to the Director for his review and adoption, rejection, or modification as otherwise provided by law or regulation; and

7. Disciplining committed juveniles in any manner which requires a discretionary application of rules of behavior for committed juveniles or a discretionary imposition of a sanction for violations of such rules.

§ 66-25.6. Board shall promulgate regulations.

The Board shall make, adopt and promulgate regulations governing the following aspects of private management and operation of juvenile correctional facilities:

1. Contingency plans for state operation of a contractor-operated facility in the event of a termination of the contract;

2. Use of physical force and mechanical restraint by the contractors' security personnel;

3. Methods of monitoring a contractor-operated facility by the Department or the Board;

4. Public access to a contractor-operated facility; and

5. Such other regulations as may be necessary to carry out the provisions of this chapter.

§ 66-25.7. Fixed-price or not-to-exceed-price design-build-operate and related contracts authorized.

Notwithstanding any other provisions of law to the contrary, but in accordance with the procedures consistent with those described in the Virginia Public Procurement Act (§ 11-35 et. seq.) for procurement of nonprofessional services through competitive negotiation, the Director may enter into design-build-operate contracts for juvenile correctional facilities on a fixed-price or not-to-exceed price basis, including related leases, lease/purchase contracts, agreements relating to the sale of securities to finance such facilities, and similar financing agreements and agreements for correctional services. For the purposes of this section, "design-build-operate" contract shall mean a contract between the Commonwealth and another party in which the party contracting with the Commonwealth agrees to (i) design, build and operate the juvenile correctional facility or (ii) design and build the juvenile correctional facility where the facility is to be operated by a third party.

The Director shall maintain adequate records to allow post-project evaluation.