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## SENATE BILL NO. 441

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws

on February 7, 1996)

(Patron Prior to Substitute—Senator Lambert)

A *BILL to amend and reenact § 11-41 of the Code of Virginia, relating to the Virginia Public Procurement Act.*

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

**1. That § 11-41 of the Code of Virginia is amended and reenacted as follows:**

§ 11-41. 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. 1. 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 § 11-37. The basis for this determination shall be documented in writing.

2. 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:

(i) By the Commonwealth, its departments, agencies and institutions on a fixed price design-build basis or construction management basis under § 11-41.2;

(ii) By any public body for the alteration, repair, renovation or demolition of buildings when the contract is not expected to cost more than \$500,000;

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

(iv) As otherwise provided in § 11-41.2:1.

D. 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.

E. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The public body shall issue a written notice stating that the contract is being awarded on an emergency basis, 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, or as soon thereafter as is practicable.

F. A public body may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts not expected to exceed \$15,000 and for contracts for microcomputers and related peripheral equipment and services not expected to exceed \$30,000; however, such small purchase procedures shall provide for competition wherever practicable. *Those senior institutions of higher education which confer doctoral degrees in more than two fields of study and have received authority (i) to make sole source procurements or (ii) to develop purchasing*

60 *policies locally as approved by the Department of General Services, may establish purchase procedures,*  
61 *if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term*  
62 *contracts not expected to exceed \$100,000.*

63 G. Any local school board may authorize any of its public schools or its school division to enter into  
64 contracts providing that caps and gowns, photographs, class rings, yearbooks and graduation  
65 announcements will be available for purchase or rental by students, parents, faculty or other persons  
66 using nonpublic money through the use of competitive negotiation as provided in this chapter,  
67 competitive sealed bidding not necessarily being required for such contracts. The Superintendent of  
68 Public Instruction may provide assistance to public school systems regarding this chapter and other  
69 related laws.

70 H. Upon a determination made in advance by the local governing body and set forth in writing that  
71 the purchase of goods, products or commodities from a public auction sale is in the best interests of the  
72 public, such items may be purchased at the auction. The writing shall document the basis for this  
73 determination.