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HOUSE BILL NO. 139

Offered January 15, 1998

A BILL to amend and reenact § 11-45 of the Code of Virginia, relating to the Public Procurement Act; exemptions.

Patrons—Dickinson, Councill and Van Landingham

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That § 11-45 of the Code of Virginia is amended and reenacted as follows:**

§ 11-45. Exceptions to requirement for competitive procurement.

A. Any public body may enter into contracts without competition for the purchase of goods or services (i) which are performed or produced by persons, or in schools or workshops, under the supervision of the Virginia Department for the Visually Handicapped; or (ii) which are performed or produced by nonprofit sheltered workshops or other nonprofit organizations which offer transitional or supported employment services serving the handicapped.

B. Any public body may enter into contracts without competition for (i) legal services, provided that the pertinent provisions of Chapter 11 (§ 2.1-117 et seq.) of Title 2.1 remain applicable; or (ii) expert witnesses and other services associated with litigation or regulatory proceedings.

C. Any public body may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.

D. An industrial development authority may enter into contracts without competition with respect to any item of cost of "authority facilities" or "facilities" as defined in § 15.1-1374 (d).

E. The Department of Alcoholic Beverage Control may procure alcoholic beverages without competitive sealed bidding or competitive negotiation.

F. Any public body administering public assistance programs as defined in § 63.1-87, the fuel assistance program, community services boards as defined in § 37.1-1, or any public body purchasing services under the Comprehensive Services Act for At-Risk Youth and Families (§ 2.1-745 et seq.) may procure goods or personal services for direct use by the recipients of such programs without competitive sealed bidding or competitive negotiations if the procurement is made for an individual recipient. Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted from the requirements of § 11-41.

G. Any public body may enter into contracts without competitive sealed bidding or competitive negotiation for insurance if purchased through an association of which it is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance by use of competitive principles and provided that the public body has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.

H. The Department of Health may enter into contracts with laboratories providing cytology and related services without competitive sealed bidding or competitive negotiation if competitive sealed bidding and competitive negotiations are not fiscally advantageous to the public to provide quality control as prescribed in writing by the Commissioner of Health.

I. The Director of the Department of Medical Assistance Services may enter into contracts without competitive sealed bidding or competitive negotiation for special services provided for eligible recipients pursuant to § 32.1-325 E, provided that the Director has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public, or would constitute an imminent threat to the health or welfare of such recipients. The writing shall document the basis for this determination.

J. The Virginia Code Commission may enter into contracts without competitive sealed bidding or competitive negotiation when procuring the services of a publisher, pursuant to §§ 9-77.7 and 9-77.8, to publish the Code of Virginia or the Virginia Administrative Code.

K. (Effective until July 1, 1999) The State Health Commissioner may enter into agreements or contracts without competitive sealed bidding or competitive negotiation for the compilation, storage, analysis, evaluation, and publication of certain data submitted by health care providers and for the development of a methodology to measure the efficiency and productivity of health care providers

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60 pursuant to Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1, if the Commissioner has made a
61 determination in advance, after reasonable notice to the public and set forth in writing, that competitive
62 sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public.
63 The writing shall document the basis for this determination. Such agreements and contracts shall be
64 based on competitive principles.

65 L. A community development authority formed pursuant to subsection B of § 15.1-1241, with
66 members selected pursuant to subdivision 5 of that subsection, may enter into contracts without
67 competition with respect to the exercise of any of its powers permitted by § 15.1-1250.03; however, this
68 exception shall not apply in cases where any public funds other than special assessments and
69 incremental real property taxes levied pursuant to § 15.1-1250.03 are used as payment for such contract.

70 M. Virginia Correctional Enterprises may enter into contracts without competitive sealed bidding or
71 competitive negotiation when procuring materials, supplies, or services for use in and support of its
72 production facilities, provided such procurement is accomplished using procedures which ensure the
73 efficient use of funds as practicable and, at a minimum, shall include obtaining telephone quotations.
74 Such procedures shall require documentation of the basis for awarding contracts under this section.

75 N. The Virginia Baseball Stadium Authority may enter into agreements or contracts without
76 competitive sealed bidding or competitive negotiation for the operation of any facilities developed under
77 the provisions of Chapter 5.3 (§ 15.1-227.70 et seq.) of Title 15.1, including contracts or agreements
78 with respect to the sale of food, beverages and souvenirs at such facilities.

79 O. The Department of Health may procure child restraint devices, pursuant to § 46.2-1097, without
80 competitive sealed bidding or competitive negotiation.

81 P. *The Jamestown-Yorktown Foundation may enter into agreements or contracts without competitive*
82 *sealed bidding or competitive negotiation for the promotion of tourism, provided a demonstrable cost*
83 *saving can be realized by the Foundation and such agreements or contracts are based on competitive*
84 *principles.*