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SENATE BILL NO. 445

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws
on March 2, 1998)

(Patron Prior to Substitute—Senator Norment)

*A BILL to amend and reenact §§ 9-97 and 11-45 of the Code of Virginia, relating to the Jamestown-Yorktown Foundation; exemptions from the Public Procurement Act.***Be it enacted by the General Assembly of Virginia:****1. That §§ 9-97 and 11-45 of the Code of Virginia are amended and reenacted as follows:**

§ 9-97. Powers and duties.

The Foundation shall have the following powers and duties:

1. To do all things necessary and proper to further an appreciation of the contributions of the first permanent English-speaking settlers of Virginia and the United States to the building of our Commonwealth and nation, to commemorate the winning of American independence on the battlefield at Yorktown, and to enhance our understanding of the making of the United States Constitution and Bill of Rights, including Virginia's role in shaping the fundamental principles of the American constitutional system.

2. To administer, develop and maintain at Jamestown and Yorktown permanent commemorative shrines and historical museums.

3. To enter into contracts to further the purposes of the Foundation, which have been approved by the Attorney General.

4. To establish a nonprofit corporation as an instrumentality to assist in the details of administering the affairs of the Foundation.

5. With the consent of the Governor to acquire lands, property and structures deemed necessary to the purposes of the Foundation by purchase, lease, gift, devise or condemnation proceedings. The title to land and property acquired shall be in the name of the Commonwealth. In the exercise of the power of eminent domain granted under this section, the Foundation may proceed in the manner provided by law for the Commonwealth Transportation Commissioner in §§ 33.1-89 through 33.1-132.

6. With the consent of the Governor, to convey by lease land to any person, association, firm or corporation for such term and on such conditions as the Foundation may determine.

7. To receive and expend gifts, grants and donations from whatever source derived for the purposes of the Foundation.

8. To adopt names, flags, seals and other emblems for use in connection with such shrines and to copyright the same in the name of the Commonwealth.

9. To employ an executive director and such deputies and assistants as may be required.

10. *To enter into agreements or contracts with private entities for the promotion of tourism through marketing without competitive sealed bidding or competitive negotiation provided a demonstrable cost savings, as reviewed by the Secretary of Education, can be realized by the Foundation and such agreements or contracts are based on competitive principles.*

§ 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.

60 Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted
61 from the requirements of § 11-41.

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

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

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

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

84 K. (Effective until July 1, 1999) The State Health Commissioner may enter into agreements or
85 contracts without competitive sealed bidding or competitive negotiation for the compilation, storage,
86 analysis, evaluation, and publication of certain data submitted by health care providers and for the
87 development of a methodology to measure the efficiency and productivity of health care providers
88 pursuant to Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1, if the Commissioner has made a
89 determination in advance, after reasonable notice to the public and set forth in writing, that competitive
90 sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public.
91 The writing shall document the basis for this determination. Such agreements and contracts shall be
92 based on competitive principles.

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

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

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

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

109 P. *The Jamestown-Yorktown Foundation may enter into agreements or contracts with private entities*
110 *without competitive sealed bidding or competitive negotiation for the promotion of tourism through*
111 *marketing provided a demonstrable cost savings, as reviewed by the Secretary of Education, can be*
112 *realized by the Foundation and such agreements or contracts are based on competitive principles.*