

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 2.2-4303 of the Code of Virginia and to repeal the second enactment of Chapter 395 of the Acts of Assembly of 2001, relating to the Virginia Public Procurement Act; reverse auctioning.

[H 2192]

Approved

Be it enacted by the General Assembly of Virginia:**1. That § 2.2-4303 of the Code of Virginia is amended and reenacted as follows:**

§ 2.2-4303. 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. 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 § 2.2-4301. The basis for this determination shall be documented in writing.

D. 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:

1. By the Commonwealth, its departments, agencies and institutions on a fixed price design-build basis or construction management basis under § 2.2-4306;

2. 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;

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

4. As otherwise provided in § 2.2-4308.

E. 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. Public notice may also be published on the Department of General Services' central electronic procurement Web site and other appropriate Web sites.

F. 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. Public notice may also be published on the Department of General Services' central electronic procurement Web site and other appropriate Web sites.

G. A public body may establish purchase procedures, if adopted in writing, not requiring competitive

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57 sealed bids or competitive negotiation for single or term contracts for goods and services other than
58 professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000;
59 however, such small purchase procedures shall provide for competition wherever practicable. Purchases
60 under this subsection that are expected to exceed \$30,000 shall require the written informal solicitation
61 of a minimum of four bidders or offerors.

62 H. A public body may establish purchase procedures, if adopted in writing, not requiring competitive
63 negotiation for single or term contracts for professional services if the aggregate or the sum of all phases
64 is not expected to exceed \$30,000; however such small purchase procedures shall provide for
65 competition wherever practicable.

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

70 J. (~~Expires July 1, 2003~~) The purchase of goods or nonprofessional services, but not construction or
71 professional services, may be made by reverse auctioning. *However, bulk purchases of commodities used*
72 *in road and highway construction and maintenance, and aggregates shall not be made by reverse*
73 *auctioning.*

74 **2. That the second enactment of Chapter 395 of the Acts of Assembly of 2001 is repealed.**