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HOUSE BILL NO. 2286

Offered January 14, 2009

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A *BILL to amend and reenact §§ 2.2-1111 and 2.2-2622 of the Code of Virginia, relating to the procurement of nonprofessional services by certain state agencies; commercial activities.*

Patrons—Cline, Athey and Lingamfelter

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That §§ 2.2-1111 and 2.2-2622 of the Code of Virginia are amended and reenacted as follows:**

§ 2.2-1111. Purchases to be made in accordance with the Virginia Public Procurement Act (§ 2.2-4300 et seq.) and regulations of Division; exempt purchases.

A. All purchases made by any department, division, officer or agency of the Commonwealth shall be made in accordance with the Virginia Public Procurement Act (§ 2.2-4300 et seq.) and such regulations as the Division may prescribe.

B. The regulations adopted by the Division shall:

1. Include a purchasing plan that shall be on file at the Division and shall be available to the public upon request;

2. Require that before any public body procures any computer system, equipment or software, it shall consider whether the proposed system, equipment or software is capable of producing products that facilitate the rights of the public to access official records under the Freedom of Information Act (§ 2.2-3700 et seq.) or other applicable law;

3. Require state public bodies to procure only shielded outdoor light fixtures and provide for waivers of this requirement when the Division determines that a bona fide operational, temporary, safety or specific aesthetic need is indicated or that such fixtures are not cost effective over the life cycle of the fixtures. For the purposes of this subdivision, "shielded outdoor light fixture" means an outdoor light fixture that is (i) fully shielded so that no light rays are emitted by the installed fixture above the horizontal plane or (ii) constructed so that no more than two percent of the total luminaire lumens in the zone of 90 to 180 degrees vertical angle is permitted, if the related output of the luminaire is greater than 3200 lumens. In adopting regulations under this subdivision, the Division shall consider national standards for outdoor lighting as adopted by the Illuminating Engineering Society of North America (IESNA).

For any project initiated on or after July 1, 2003, the Virginia Department of Transportation shall design all lighting systems in accordance with current IESNA standards and recommended practices. The lighting system shall utilize fixtures that minimize glare, light trespass, and skyglow, all as defined by the IESNA, while still providing a comfortable, visually effective, safe, and secure outdoor environment in a cost-effective manner over the life cycle of the lighting system.

4. Establish the conditions under which a public body may use, as a basis for the procurement of goods and nonprofessional services, a particular vendor's contract-pricing that has been negotiated and accepted by the U.S. General Services Administration;

5. Establish procurement preferences for products containing recycled oil (including reprocessed and rerefined oil products) and recycled antifreeze no later than December 31, 2002;

6. Establish conditions under which a public body shall demonstrate a good faith effort to ensure that state contracts or subcontracts for goods or services that involve the manual packaging of bulk supplies or the manual assemblage of goods where individual items weigh less than 50 pounds be offered to nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported employment services serving the handicapped; and

7. Require that on or before October 1, 2009, and every two years thereafter, the Director of the Department of General Services shall solicit from each state agency and public institution of higher education a list of procurements falling under the Department's authority that were competed with the private sector that appear on the Commonwealth Competition Council's commercial activities list and were, until that time, being performed by each state agency and public institution of higher education during the previous two years, and the outcome of that competition. The Director shall make the lists available to the public on the Department of General Services' website; and

8. *Require all state agencies, except as provided in this subdivision, to procure nonprofessional services from the private sector if the services are listed as a commercial activity on the commercial activities list developed by the Commonwealth Competition Council in accordance with § 2.2-2622. The*

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59 *provisions of this subdivision shall not apply to the hiring of law-enforcement personnel of any state*
60 *agency or institution. Upon a written determination made in advance by a state agency that the*
61 *procurement of services from a commercial source is either not practicable or not fiscally advantageous,*
62 *such service may continue to be performed by the state agency. For the purposes of this subdivision,*
63 *"nonprofessional services" means work performed by persons not within the scope of the practice of*
64 *accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry,*
65 *medicine, optometry, pharmacy, or professional engineering.*

66 C. The Division may make, alter, amend or repeal regulations relating to the purchase of materials,
67 supplies, equipment, nonprofessional services, and printing, and may specifically exempt purchases
68 below a stated amount or particular agencies or specified materials, equipment, nonprofessional services,
69 supplies and printing.

70 § 2.2-2622. Duties of Council; acceptance of gifts and grants; annual report.

71 A. The Council shall:

72 1. Examine and promote methods of providing a portion or all of select government-provided or
73 government-produced programs and services through the private sector by a competitive contracting
74 program, and advise the Governor, the General Assembly, and executive branch agencies of the
75 Council's findings and recommendations.

76 2. Develop an institutional framework for a statewide competitive program to encourage innovation
77 and competition within state government.

78 3. Establish a system to encourage the use of feasibility studies and innovation to determine where
79 competition could reduce government costs without harming the public.

80 4. Monitor the products and services of state agencies to bring an element of competition and to
81 ensure a spirit of innovation and entrepreneurship to compete with the private sector.

82 5. Advocate, develop and accelerate implementation of a competitive program for state entities to
83 ensure competition for the provision or production of government services, or both, from both public
84 and private sector entities.

85 6. Establish approval, planning, and reporting processes required to carry out the functions of the
86 Council.

87 7. Determine the privatization potential of a program or activity; perform cost/benefit analyses; and
88 conduct public and private performance analyses. The Secretary of Finance shall independently certify
89 the results of the comparison.

90 8. Devise, in consultation with the Secretary of Finance, evaluation criteria to be used in conducting
91 performance reviews of any program or activity that is subject to a privatization recommendation.

92 9. To the extent practicable and to the extent that resources are available, make its services available
93 for a fair compensation to any political subdivision of the Commonwealth.

94 10. Review the practices of government agencies and nonprofit organizations that may constitute
95 inappropriate competition with private enterprise. The Council shall develop proposals for (i) preserving
96 the traditional role of private enterprise; (ii) encouraging the expansion of existing, and the creation of
97 new, private enterprise; and (iii) monitoring inappropriate competition by nonprofit organizations.

98 11. Review the procurement process under the Public-Private Transportation Act of 1995 (§ 56-556 et
99 seq.) and the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) and
100 make recommendations for (i) improving the use and efficiency of process, (ii) releasing information to
101 the public during all stages of the process, and (iii) ensuring accountability on the part of public officials
102 and employees involved in projects under the Acts.

103 B. The commercial activities list developed by the Council in accordance with this section shall be
104 updated ~~every two years~~ *annually*.

105 C. The Council may apply for, accept, and expend gifts, grants, or donations from public or private
106 sources to enable it to better carry out its objectives. No entity that provides a gift, donation or grant
107 shall be eligible for a contract award that results from action of a Council recommendation.

108 D. The Council shall not impose unreasonable burdens or costs in connection with requests of
109 agencies.

110 E. The Council shall annually by December 1 report its findings and recommendations to the
111 Governor, the General Assembly and the Small Business Commission created pursuant to § 30-182. The
112 Council may make interim reports to the Governor, the General Assembly and the Small Business
113 Commission as it deems advisable.