

VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

CHAPTER 662

An Act to amend and reenact §§ 2.2-2244, 2.2-2325, and 2.2-2364 of the Code of Virginia, relating to Virginia Economic Development Partnership Authority; Virginia Tourism Authority; Commonwealth of Virginia Innovation Partnership Authority; adoption of procurement policies; exemptions.

[H 2113]

Approved March 26, 2023

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-2244, 2.2-2325, and 2.2-2364 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-2244. Exemption of Authority from personnel and procurement procedures; adoption of procurement policies.

A. The provisions of the Virginia Personnel Act (§ 2.2-2900 et seq.) and the Virginia Public Procurement Act (§ 2.2-4300 et seq.) of this title shall not apply to the Authority in the exercise of any power conferred under this article.

B. The governing board of the Authority shall adopt policies for the procurement of goods and services. Such policies shall:

1. Seek competition to the maximum practical degree;

2. Require competitive negotiation for professional services, which includes the requirements of §§ 2.2-4302.2 and 2.2-4303.1, unless there is only one source practically available and the Authority has complied with the requirements of subsection C;

3. Prohibit discrimination against a bidder or offeror based on race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by federal or state law relating to discrimination in employment; and

4. Incorporate the prompt payment principles of § 2.2-4350 and the payment clauses of § 2.2-4354. The Authority shall include provisions for the inspection of public records in § 2.2-4342.

C. For purchases of (i) goods or nonprofessional services under \$200,000 or (ii) professional services or non-transportation-related construction under \$80,000, the Authority shall not be required to comply with subdivisions B 1 and 2. For purchases of (a) goods or nonprofessional services for \$200,000 or more or (b) professional services or non-transportation-related construction of \$80,000 or more, the Authority shall not be required to comply with subdivisions B 1 and 2 if the Authority determines in writing that such purchase contributes to the public purpose and mission of the Authority as described in § 2.2-2234. The Authority shall state in such writing (1) an explanation of such determination, (2) that which is being purchased, (3) the contractor selected for such purchase, (4) the date of the award of such contract, and (5) the relationship of such purchase to the public purpose and mission of the Authority. Such notice shall be posted on the Department of General Services' central electronic procurement website or the Authority's website on the day the Authority awards or announces its decision to award such contract, whichever occurs first. The Authority shall incorporate the procedures effectuating the provisions of this subsection in the policies required by subsection B.

D. In case of emergency, the Authority shall not be required to comply with subdivisions B 1 and 2 if the Authority determines in writing that an emergency exists and makes the purchase needed with such competition as is practicable under the circumstances. The Authority shall state in such writing (i) that the contract is being awarded on an emergency basis, (ii) that which is being purchased, (iii) the contractor selected, (iv) the date of the award of such contract, and (v) the relationship between the selection of such contract to the circumstances constituting an emergency. Such notice shall be posted on the Department of General Services' central electronic procurement website or the Authority's website on the day the Authority awards or announces its decision to award such contract, whichever occurs first. The Authority shall incorporate the procedures effectuating the provisions of this subsection in the policies required by subsection B.

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 negotiation. The writing shall document the basis for this determination. The Authority 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 on the Department of General Services' central electronic procurement website or the Authority's website and may be 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.

F. The Authority shall submit the policies established in accordance with subsection B to the

Governor, the Department of General Services, and the Chairs of the Senate Committee on General Laws and Technology and the House Committee on General Laws every five years by November 1, beginning November 1, 2024.

§ 2.2-2325. Exemptions from personnel and procurement procedures; adoption of procurement policies.

A. The provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) and the Virginia Personnel Act (§ 2.2-2900 et seq.) shall not apply to the Authority.

B. *The governing board of the Authority shall adopt policies for the procurement of goods and services. Such policies shall:*

1. Seek competition to the maximum practical degree;

2. Require competitive negotiation for professional services, which includes the requirements of §§ 2.2-4302.2 and 2.2-4303.1, unless there is only one source practically available and the Authority has complied with the requirements of subsection C;

3. Prohibit discrimination against a bidder or offeror based on race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by federal or state law relating to discrimination in employment; and

4. Incorporate the prompt payment principles of § 2.2-4350 and the payment clauses of § 2.2-4354. The Authority shall include provisions for the inspection of public records in § 2.2-4342.

C. For purchases of (i) goods or nonprofessional services under \$200,000 or (ii) professional services or non-transportation-related construction under \$80,000, the Authority shall not be required to comply with subdivisions B 1 and 2. For purchases of (i) goods or nonprofessional services for \$200,000 or more or (ii) professional services or non-transportation-related construction of \$80,000 or more, the Authority shall not be required to comply with subdivisions B 1 and 2 if the Authority determines in writing that such purchase contributes to the public purpose and mission of the Authority as described in § 2.2-2315. The Authority shall state in such writing (a) an explanation of such determination, (b) that which is being purchased, (c) the contractor selected for such purchase, (d) the date of the award of such contract, and (e) the relationship of such purchase to the public purpose and mission of the Authority. Such notice shall be posted on the Department of General Services' central electronic procurement website or the Authority's website on the day the Authority awards or announces its decision to award such contract, whichever occurs first. The Authority shall incorporate the procedures effectuating the provisions of this subsection in the policies required by subsection B.

D. In case of emergency, the Authority shall not be required to comply with subdivisions B 1 and 2 if the Authority determines in writing that an emergency exists and makes the purchase needed with such competition as is practicable under the circumstances. The Authority shall state in such writing (i) that the contract is being awarded on an emergency basis, (ii) that which is being purchased, (iii) the contractor selected, (iv) the date of the award of such contract, (v) and the relationship between the selection of such contract to the circumstances constituting an emergency. Such notice shall be posted on the Department of General Services' central electronic procurement website or the Authority's website on the day the Authority awards or announces its decision to award such contract, whichever occurs first. The Authority shall incorporate the procedures effectuating the provisions of this subsection in the policies required by subsection B.

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 negotiation. The writing shall document the basis for this determination. The Authority 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 on the Department of General Services' central electronic procurement website or the Authority's website and may be 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.

F. The Authority shall submit the policies established in accordance with subsection B to the Governor, the Department of General Services, and the Chairs of the Senate Committee on General Laws and Technology and the House Committee on General Laws every five years by November 1, beginning November 1, 2024.

§ 2.2-2364. Exemption of Authority from personnel and procurement procedures; adoption of procurement policies.

A. The provisions of the Virginia Personnel Act (§ 2.2-2900 et seq.) and the Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to the Authority in the exercise of any power conferred under this article.

B. *The governing board of the Authority shall adopt policies for the procurement of goods and services. Such policies shall:*

1. Seek competition to the maximum practical degree;

2. Require competitive negotiation for professional services, which includes the requirements of §§ 2.2-4302.2 and 2.2-4303.1, unless there is only one source practically available and the Authority

has complied with the requirements of subsection C;

3. Prohibit discrimination against a bidder or offeror based on race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by federal or state law relating to discrimination in employment; and

4. Incorporate the prompt payment principles of § 2.2-4350 and the payment clauses of § 2.2-4354. The Authority shall include provisions for the inspection of public records in § 2.2-4342.

C. For purchases of (i) goods or nonprofessional services under \$200,000 or (ii) professional services or non-transportation-related construction under \$80,000, the Authority shall not be required to comply with subdivisions B 1 and 2. For purchases of (a) goods or nonprofessional services for \$200,000 or more or (b) professional services or non-transportation-related construction of \$80,000 or more, the Authority shall not be required to comply with subdivisions B 1 and 2 if the Authority determines in writing that such purchase contributes to the public purpose and mission of the Authority as described in § 2.2-2351. The Authority shall state in such writing (1) an explanation of such determination, (2) that which is being purchased, (3) the contractor selected for such purchase, (4) the date of the award of such contract, and (5) the relationship of such purchase to the public purpose and mission of the Authority. Such notice shall be posted on the Department of General Services' central electronic procurement website or the Authority's website on the day the Authority awards or announces its decision to award such contract, whichever occurs first. The Authority shall incorporate the procedures effectuating the provisions of this subsection in the policies required by subsection B.

D. In case of emergency, the Authority shall not be required to comply with subdivisions B 1 and 2 if the Authority determines in writing that an emergency exists and makes the purchase needed with such competition as is practicable under the circumstances. The Authority shall state in such writing (i) that the contract is being awarded on an emergency basis, (ii) that which is being purchased, (iii) the contractor selected, (iv) the date of the award of such contract, and (v) the relationship between the selection of such contract to the circumstances constituting an emergency. Such notice shall be posted on the Department of General Services' central electronic procurement website or the Authority's website on the day the Authority awards or announces its decision to award such contract, whichever occurs first. The Authority shall incorporate the procedures effectuating the provisions of this subsection in the policies required by subsection B.

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 negotiation. The writing shall document the basis for this determination. The Authority 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 on the Department of General Services' central electronic procurement website or the Authority's website and may be 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.

F. The Authority shall submit the policies established in accordance with subsection B to the Governor, the Department of General Services, and the Chairs of the Senate Committee on General Laws and Technology and the House Committee on General Laws every five years by November 1, beginning November 1, 2024.