

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact § 2.2-4303 of the Code of Virginia, relating to the Virginia Public
2 Procurement Act; use of competitive sealed bidding or competitive negotiation for the
3 procurement of goods, certain services, and insurance.

4 **Be it enacted by the General Assembly of Virginia:**

5 **1. That § 2.2-4303 of the Code of Virginia is amended and reenacted as follows:**

6 **§ 2.2-4303. Methods of procurement.**

7 A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or
8 for the purchase of services, insurance, or construction, shall be awarded after competitive sealed
9 bidding, or competitive negotiation as provided in this section, unless otherwise authorized by law.

10 B. Professional services shall be procured by competitive negotiation.

11 ~~C. Upon a determination made in advance by the public body and set forth in writing that~~
12 ~~competitive sealed bidding is either not practicable or not fiscally advantageous to the public, goods,~~
13 ~~services, or insurance may be procured by competitive negotiation. The writing shall document the basis~~
14 ~~for this determination.~~

15 Upon a written determination made in advance by (i) the Governor or his designee in the case of
16 a procurement by the Commonwealth or by a department, agency or institution thereof or (ii) the local
17 governing body in the case of a procurement by a political subdivision of the Commonwealth, that
18 competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured
19 through a licensed agent or broker selected in the manner provided for the procurement of things other
20 than professional services set forth in § 2.2-4302.2. The basis for this determination shall be documented
21 in writing.

22 D. Construction may be procured only by competitive sealed bidding, except that competitive
23 negotiation may be used in the following instances upon a determination made in advance by the public
24 body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally
25 advantageous to the public, which writing shall document the basis for this determination:

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

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

30 3. By any governing body of a locality with a population in excess of 100,000, provided that the
31 locality has the personnel, procedures, and expertise to enter into a contract for construction on a fixed
32 price or not-to-exceed price design-build or construction management basis and shall otherwise be in
33 compliance with the provisions of this section, § 2.2-4308, and other applicable law governing design-
34 build or construction management contracts for public bodies other than the Commonwealth. The
35 procedures of the local governing body shall be consistent with the two-step competitive negotiation
36 process established in § 2.2-4302.2; or

37 4. As otherwise provided in § 2.2-4308.

38 E. Upon a determination in writing that there is only one source practicably available for that
39 which is to be procured, a contract may be negotiated and awarded to that source without competitive
40 sealed bidding or competitive negotiation. The writing shall document the basis for this determination.
41 The public body shall issue a written notice stating that only one source was determined to be
42 practicably available, and identifying that which is being procured, the contractor selected, and the date
43 on which the contract was or will be awarded. This notice shall be posted on the Department of General
44 Services' central electronic procurement website or other appropriate websites, and in addition, public
45 bodies may publish in a newspaper of general circulation on the day the public body awards or
46 announces its decision to award the contract, whichever occurs first. Posting on the Department of
47 General Services' central electronic procurement website shall be required of any state public body.
48 Local public bodies are encouraged to utilize the Department of General Services' central electronic
49 procurement website to provide the public with centralized visibility and access to the Commonwealth's
50 procurement opportunities.

51 F. In case of emergency, a contract may be awarded without competitive sealed bidding or
52 competitive negotiation; however, such procurement shall be made with such competition as is

53 practicable under the circumstances. A written determination of the basis for the emergency and for the
54 selection of the particular contractor shall be included in the contract file. The public body shall issue a
55 written notice stating that the contract is being awarded on an emergency basis, and identifying that
56 which is being procured, the contractor selected, and the date on which the contract was or will be
57 awarded. This notice shall be posted on the Department of General Services' central electronic
58 procurement website or other appropriate websites, and in addition, public bodies may publish in a
59 newspaper of general circulation on the day the public body awards or announces its decision to award
60 the contract, whichever occurs first, or as soon thereafter as is practicable. Posting on the Department of
61 General Services' central electronic procurement website shall be required of any state public body.
62 Local public bodies are encouraged to utilize the Department of General Services' central electronic
63 procurement website to provide the public with centralized visibility and access to the Commonwealth's
64 procurement opportunities.

65 G. A public body may establish purchase procedures, if adopted in writing, not requiring
66 competitive sealed bids or competitive negotiation for single or term contracts for goods and services
67 other than professional services if the aggregate or the sum of all phases is not expected to exceed
68 \$100,000; however, such small purchase procedures shall provide for competition wherever practicable.
69 For local public bodies, such purchase procedures may allow for single or term contracts for
70 professional services without requiring competitive negotiation, provided the aggregate or the sum of all
71 phases is not expected to exceed \$60,000.

72 For state public bodies, purchases under this subsection that are expected to exceed \$30,000 shall
73 require the (i) written informal solicitation of a minimum of four bidders or offerors and (ii) posting of a
74 public notice on the Department of General Services' central electronic procurement website or other
75 appropriate websites. Posting on the Department of General Services' central electronic procurement
76 website shall be required of any state public body. Local public bodies are encouraged to utilize the
77 Department of General Services' central electronic procurement website to provide the public with
78 centralized visibility and access to the Commonwealth's procurement opportunities.

79 H. A state public body may establish purchase procedures, if adopted in writing, not requiring
80 competitive negotiation for single or term contracts for professional services if the aggregate or the sum
81 of all phases is not expected to exceed \$50,000; however such small purchase procedures shall provide
82 for competition wherever practicable.

83 I. Upon a determination made in advance by a public body and set forth in writing that the
84 purchase of goods, products or commodities from a public auction sale is in the best interests of the
85 public, such items may be purchased at the auction, including online public auctions. Purchase of
86 information technology and telecommunications goods and nonprofessional services from a public
87 auction sale shall be permitted by any authority, department, agency, or institution of the
88 Commonwealth if approved by the Chief Information Officer of the Commonwealth. The writing shall
89 document the basis for this determination. However, bulk purchases of commodities used in road and
90 highway construction and maintenance, and aggregates shall not be made by online public auctions.

91 J. The purchase of goods or nonprofessional services, but not construction or professional
92 services, may be made by reverse auctioning. However, bulk purchases of commodities used in road and
93 highway construction and maintenance, and aggregates shall not be made by reverse auctioning.

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