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HOUSE BILL NO. 816

Offered January 12, 2022

Prefiled January 12, 2022

A BILL to amend and reenact § 2.2-4303 of the Code of Virginia, relating to public procurement.

Patron—Torian

Referred to Committee on General Laws

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. Goods, services other than professional services, and insurance may be procured by competitive sealed bidding or competitive negotiation.

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 set forth in § 2.2-4302.2. 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:

1. By any public body on a fixed price design-build basis or construction management basis as provided in Chapter 43.1 (§ 2.2-4378 et seq.); or

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

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 on the Department of General Services' central electronic procurement website or other appropriate websites, and in addition, public bodies may publish in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

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 on the Department of General Services' central electronic procurement website or other appropriate websites, and in addition, public bodies may publish 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. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's

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59 procurement opportunities.

60 G. A public body may establish purchase procedures, if adopted in writing, not requiring competitive
61 sealed bids or competitive negotiation for single or term contracts for:

62 1. Goods and services other than professional services and non-transportation-related construction, if
63 the aggregate or the sum of all phases is not expected to exceed \$200,000; and

64 2. Transportation-related construction, if the aggregate or sum of all phases is not expected to exceed
65 \$25,000.

66 However, such small purchase procedures shall provide for competition wherever practicable.

67 Such purchase procedures may allow for single or term contracts for professional services without
68 requiring competitive negotiation, provided the aggregate or the sum of all phases is not expected to
69 exceed \$80,000.

70 Where small purchase procedures are adopted for construction, the procedures shall not waive
71 compliance with the Uniform State Building Code.

72 For state public bodies, informal solicitations conducted under this subsection shall require the
73 posting of a public notice on the Department of General Services' central electronic procurement
74 website. Local public bodies are encouraged to utilize the Department of General Services' central
75 electronic procurement website to provide the public with centralized visibility and access to the
76 Commonwealth's procurement opportunities.

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

85 I. The purchase of goods or nonprofessional services, but not construction or professional services,
86 may be made by reverse auctioning. However, bulk purchases of commodities used in road and highway
87 construction and maintenance, and aggregates shall not be made by reverse auctioning.

88 J. For any bid or offer made pursuant to this article, the bidder or offeror shall provide:

89 1. The identities of all subcontractors, if any, involved in the bid or offer;

90 2. The estimated amount of compensation to be paid to the subcontractors;

91 3. A description of the work to be done by the subcontractors; and

92 4. A copy of all agreements between the contractor and subcontractors related to the bid or offer.