

SENATE BILL NO. 1036

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws

on \_\_\_\_\_)

(Patron Prior to Substitute--Senator McPike)

A BILL 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.

**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.)~~of~~ 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

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

29 C. For purchases of (i) goods or nonprofessional services under \$200,000 or (ii) professional  
30 services or non-transportation-related construction under \$80,000, the Authority shall not be required to  
31 comply with subdivisions B 1 and 2. For purchases of (a) goods or nonprofessional services for \$200,000  
32 or more or (b) professional services or non-transportation-related construction of \$80,000 or more, the  
33 Authority shall not be required to comply with subdivisions B 1 and 2 if the Authority determines in  
34 writing that such purchase contributes to the public purpose and mission of the Authority as described in  
35 § 2.2-2234. The Authority shall state in such writing (1) an explanation of such determination, (2) that  
36 which is being purchased, (3) the contractor selected for such purchase, (4) the date of the award of such  
37 contract, and (5) the relationship of such purchase to the public purpose and mission of the Authority.  
38 Such notice shall be posted on the Department of General Services' central electronic procurement website  
39 or the Authority's website on the day the Authority awards or announces its decision to award such  
40 contract, whichever occurs first. The Authority shall incorporate the procedures effectuating the  
41 provisions of this subsection in the policies required by subsection B.

42 D. In case of emergency, the Authority shall not be required to comply with subdivisions B 1 and  
43 2 if the Authority determines in writing that an emergency exists and makes the purchase needed with  
44 such competition as is practicable under the circumstances. The Authority shall state in such writing (i)  
45 that the contract is being awarded on an emergency basis, (ii) that which is being purchased, (iii) the  
46 contractor selected, (iv) the date of the award of such contract, and (v) the relationship between the  
47 selection of such contract to the circumstances constituting an emergency. Such notice shall be posted on  
48 the Department of General Services' central electronic procurement website or the Authority's website on  
49 the day the Authority awards or announces its decision to award such contract, whichever occurs first.  
50 The Authority shall incorporate the procedures effectuating the provisions of this subsection in the policies  
51 required by subsection B.

52 E. Upon a determination in writing that there is only one source practicably available for that which  
53 is to be procured, a contract may be negotiated and awarded to that source without competitive negotiation.

54 The writing shall document the basis for this determination. The Authority shall issue a written notice  
55 stating that only one source was determined to be practicably available and identifying that which is being  
56 procured, the contractor selected, and the date on which the contract was or will be awarded. This notice  
57 shall be posted on the Department of General Services' central electronic procurement website or the  
58 Authority's website and may be published in a newspaper of general circulation on the day the public body  
59 awards or announces its decision to award the contract, whichever occurs first.

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

64 **§ 2.2-2325. Exemptions from personnel and procurement procedures; adoption of**  
65 **procurement policies.**

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

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

70 1. Seek competition to the maximum practical degree;

71 2. Require competitive negotiation for professional services, which includes the requirements of  
72 §§ 2.2-4302.2 and 2.2-4303.1, unless there is only one source practically available and the Authority has  
73 complied with the requirements of subsection C;

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

77 4. Incorporate the prompt payment principles of § 2.2-4350 and the payment clauses of § 2.2-4354.

78 The Authority shall include provisions for the inspection of public records in § 2.2-4342.

79 C. For purchases of (i) goods or nonprofessional services under \$200,000 or (ii) professional  
80 services or non-transportation-related construction under \$80,000, the Authority shall not be required to

81 comply with subdivisions B 1 and 2. For purchases of (i) goods or nonprofessional services for \$200,000  
82 or more or (ii) professional services or non-transportation-related construction of \$80,000 or more, the  
83 Authority shall not be required to comply with subdivisions B 1 and 2 if the Authority determines in  
84 writing that such purchase contributes to the public purpose and mission of the Authority as described in  
85 § 2.2-2315. The Authority shall state in such writing (a) an explanation of such determination, (b) that  
86 which is being purchased, (c) the contractor selected for such purchase, (d) the date of the award of such  
87 contract, and (e) the relationship of such purchase to the public purpose and mission of the Authority.  
88 Such notice shall be posted on the Department of General Services' central electronic procurement website  
89 or the Authority's website on the day the Authority awards or announces its decision to award such  
90 contract, whichever occurs first. The Authority shall incorporate the procedures effectuating the  
91 provisions of this subsection in the policies required by subsection B.

92 D. In case of emergency, the Authority shall not be required to comply with subdivisions B 1 and  
93 2 if the Authority determines in writing that an emergency exists and makes the purchase needed with  
94 such competition as is practicable under the circumstances. The Authority shall state in such writing (i)  
95 that the contract is being awarded on an emergency basis, (ii) that which is being purchased, (iii) the  
96 contractor selected, (iv) the date of the award of such contract, (v) and the relationship between the  
97 selection of such contract to the circumstances constituting an emergency. Such notice shall be posted on  
98 the Department of General Services' central electronic procurement website or the Authority's website on  
99 the day the Authority awards or announces its decision to award such contract, whichever occurs first.  
100 The Authority shall incorporate the procedures effectuating the provisions of this subsection in the policies  
101 required by subsection B.

102 E. Upon a determination in writing that there is only one source practicably available for that which  
103 is to be procured, a contract may be negotiated and awarded to that source without competitive negotiation.  
104 The writing shall document the basis for this determination. The Authority shall issue a written notice  
105 stating that only one source was determined to be practicably available and identifying that which is being  
106 procured, the contractor selected, and the date on which the contract was or will be awarded. This notice  
107 shall be posted on the Department of General Services' central electronic procurement website or the

108 Authority's website and may be published in a newspaper of general circulation on the day the public body  
109 awards or announces its decision to award the contract, whichever occurs first.

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

114 **§ 2.2-2364. Exemption of Authority from personnel and procurement procedures; adoption**  
115 **of procurement policies.**

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

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

121 1. Seek competition to the maximum practical degree;

122 2. Require competitive negotiation for professional services, which includes the requirements of  
123 §§ 2.2-4302.2 and 2.2-4303.1, unless there is only one source practically available and the Authority has  
124 complied with the requirements of subsection C;

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

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

130 C. For purchases of (i) goods or nonprofessional services under \$200,000 or (ii) professional  
131 services or non-transportation-related construction under \$80,000, the Authority shall not be required to  
132 comply with subdivisions B 1 and 2. For purchases of (a) goods or nonprofessional services for \$200,000  
133 or more or (b) professional services or non-transportation-related construction of \$80,000 or more, the  
134 Authority shall not be required to comply with subdivisions B 1 and 2 if the Authority determines in

135 writing that such purchase contributes to the public purpose and mission of the Authority as described in  
136 § 2.2-2351. The Authority shall state in such writing (1) an explanation of such determination, (2) that  
137 which is being purchased, (3) the contractor selected for such purchase, (4) the date of the award of such  
138 contract, and (5) the relationship of such purchase to the public purpose and mission of the Authority.  
139 Such notice shall be posted on the Department of General Services' central electronic procurement website  
140 or the Authority's website on the day the Authority awards or announces its decision to award such  
141 contract, whichever occurs first. The Authority shall incorporate the procedures effectuating the  
142 provisions of this subsection in the policies required by subsection B.

143 D. In case of emergency, the Authority shall not be required to comply with subdivisions B 1 and  
144 2 if the Authority determines in writing that an emergency exists and makes the purchase needed with  
145 such competition as is practicable under the circumstances. The Authority shall state in such writing (i)  
146 that the contract is being awarded on an emergency basis, (ii) that which is being purchased, (iii) the  
147 contractor selected, (iv) the date of the award of such contract, and (v) the relationship between the  
148 selection of such contract to the circumstances constituting an emergency. Such notice shall be posted on  
149 the Department of General Services' central electronic procurement website or the Authority's website on  
150 the day the Authority awards or announces its decision to award such contract, whichever occurs first.  
151 The Authority shall incorporate the procedures effectuating the provisions of this subsection in the policies  
152 required by subsection B.

153 E. Upon a determination in writing that there is only one source practicably available for that which  
154 is to be procured, a contract may be negotiated and awarded to that source without competitive negotiation.  
155 The writing shall document the basis for this determination. The Authority shall issue a written notice  
156 stating that only one source was determined to be practicably available and identifying that which is being  
157 procured, the contractor selected, and the date on which the contract was or will be awarded. This notice  
158 shall be posted on the Department of General Services' central electronic procurement website or the  
159 Authority's website and may be published in a newspaper of general circulation on the day the public body  
160 awards or announces its decision to award the contract, whichever occurs first.

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

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