

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 11-35 of the Code of Virginia, as it will become effective July 1, 1995,*
 3 *and as it will become effective July 1, 1996, relating to public procurement; incentive contracting for*
 4 *localities.*

5 [H 2459]

6 Approved

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

8 **1. That § 11-35 of the Code of Virginia, as it will become effective July 1, 1995, and as it will**
 9 **become effective July 1, 1996, is amended and reenacted as follows:**

10 § 11-35. (Effective July 1, 1995 until July 1, 1996) Title; purpose; applicability.

11 A. This chapter may be cited as the Virginia Public Procurement Act.

12 B. The purpose of this chapter is to enunciate the public policies pertaining to governmental
 13 procurement from nongovernmental sources.

14 C. The provisions of this chapter, however, shall not apply, except as stipulated in the provisions of
 15 §§ 11-41.1, 11-49, 11-51, 11-54, 11-56 through 11-61 and 11-72 through 11-80, to any town with a
 16 population of less than 3,500 as determined by the last official United States census.

17 D. Except to the extent adopted by such governing body, the provisions of this chapter also shall not
 18 apply, except as stipulated in subsection E, to any county, city or town whose governing body adopts by
 19 ordinance or resolution alternative policies and procedures which are based on competitive principles and
 20 which are generally applicable to procurement of goods and services by such governing body and the
 21 agencies thereof. This exemption shall be applicable only so long as such policies and procedures, or
 22 other policies and procedures meeting the requirements of this section, remain in effect in such county,
 23 city or town. *Such policies and procedures may provide for incentive contracting which offers a*
 24 *contractor whose bid is accepted the opportunity to share in any cost savings realized by the locality*
 25 *when project costs are reduced by such contractor, without affecting project quality, during construction*
 26 *of the project. The fee, if any, charged by the project engineer or architect for determining such cost*
 27 *savings shall be paid as a separate cost and shall not be calculated as part of any cost savings.*

28 Except to the extent adopted by such school board, the provisions of this chapter shall not apply,
 29 except as stipulated in subsection E, to any school division whose school board adopts by policy or
 30 regulation alternative policies and procedures which are based on competitive principles and which are
 31 generally applicable to procurement of goods and services by such school board. This exemption shall
 32 be applicable only so long as such policies and procedures, or other policies or procedures meeting the
 33 requirements of this section, remain in effect in such school division. This provision shall not exempt
 34 any school division from any centralized purchasing ordinance duly adopted by a local governing body.

35 E. Notwithstanding the exemptions set forth in subsection D, the provisions of §§ 11-41 C, 11-41.1,
 36 11-46 B, 11-49, 11-51, 11-54, 11-56 through 11-61 and 11-72 through 11-80 shall apply to all counties,
 37 cities and school divisions, and to all towns having a population greater than 3,500 in the
 38 Commonwealth. The method for procurement of professional services set forth in subdivision 3 a of
 39 § 11-37 in the definition of competitive negotiation shall also apply to all counties, cities and school
 40 divisions, and to all towns having a population greater than 3,500, where the cost of the professional
 41 service is expected to exceed \$20,000.

42 F. The provisions of this chapter shall not apply to those contracts entered into prior to January 1,
 43 1983, which shall continue to be governed by the laws in effect at the time those contracts were
 44 executed.

45 G. To the end that public bodies in the Commonwealth obtain high quality goods and services at
 46 reasonable cost, that all procurement procedures be conducted in a fair and impartial manner with
 47 avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to
 48 public business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the General
 49 Assembly that competition be sought to the maximum feasible degree, that individual public bodies
 50 enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards
 51 be made clear in advance of the competition, that specifications reflect the procurement needs of the
 52 purchasing body rather than being drawn to favor a particular vendor, and that purchaser and vendor
 53 freely exchange information concerning what is sought to be procured and what is offered.

54 H. Notwithstanding the foregoing provisions of this section, the selection of services by the Virginia
 55 Retirement System related to the management, purchase or sale of authorized investments, including but
 56 not limited to actuarial services, shall be governed by the standards set forth in § 51.1-124.30 and shall

57 not be subject to the provisions of this chapter.

58 I. The provisions of this chapter shall apply to procurement of any construction or planning and
59 design services for construction by a Virginia not-for-profit corporation or organization not otherwise
60 specifically exempted when the planning, design or construction is funded by state appropriations greater
61 than \$10,000 unless the Virginia not-for-profit corporation or organization is obligated to conform to
62 procurement procedures which are established by federal statutes or regulations, whether or not those
63 federal procedures are in conformance with the provisions of this chapter.

64 § 11-35. (Effective July 1, 1996) Title; purpose; applicability.

65 A. This chapter may be cited as the Virginia Public Procurement Act.

66 B. The purpose of this chapter is to enunciate the public policies pertaining to governmental
67 procurement from nongovernmental sources.

68 C. The provisions of this chapter, however, shall not apply, except as stipulated in the provisions of
69 §§ 11-41.1, 11-49, 11-51, 11-54, 11-56 through 11-61 and 11-72 through 11-80, to any town with a
70 population of less than 3,500 as determined by the last official United States census.

71 D. Except to the extent adopted by such governing body, the provisions of this chapter also shall not
72 apply, except as stipulated in subsection E, to any county, city or town whose governing body adopts by
73 ordinance or resolution alternative policies and procedures which are based on competitive principles and
74 which are generally applicable to procurement of goods and services by such governing body and the
75 agencies thereof. This exemption shall be applicable only so long as such policies and procedures, or
76 other policies and procedures meeting the requirements of this section, remain in effect in such county,
77 city or town. *Such policies and standards may provide for incentive contracting which offers a*
78 *contractor whose bid is accepted the opportunity to share in any cost savings realized by the locality*
79 *when project costs are reduced by such contractor, without affecting project quality, during construction*
80 *of the project. The fee, if any, charged by the project engineer or architect for determining such cost*
81 *savings shall be paid as a separate cost and shall not be calculated as part of any cost savings.*

82 Except to the extent adopted by such school board, the provisions of this chapter shall not apply,
83 except as stipulated in subsection E, to any school division whose school board adopts by policy or
84 regulation alternative policies and procedures which are based on competitive principles and which are
85 generally applicable to procurement of goods and services by such school board. This exemption shall
86 be applicable only so long as such policies and procedures, or other policies or procedures meeting the
87 requirements of this section, remain in effect in such school division. This provision shall not exempt
88 any school division from any centralized purchasing ordinance duly adopted by a local governing body.

89 E. Notwithstanding the exemptions set forth in subsection D, the provisions of §§ 11-41 C, 11-41.1,
90 11-46 B, 11-49, 11-51, 11-54, 11-56 through 11-61 and 11-72 through 11-80 shall apply to all counties,
91 cities and school divisions, and to all towns having a population greater than 3,500 in the
92 Commonwealth. The method for procurement of professional services set forth in subdivision 3 a of
93 § 11-37 in the definition of competitive negotiation shall also apply to all counties, cities and school
94 divisions, and to all towns having a population greater than 3,500, where the cost of the professional
95 service is expected to exceed \$20,000.

96 F. The provisions of this chapter shall not apply to those contracts entered into prior to January 1,
97 1983, which shall continue to be governed by the laws in effect at the time those contracts were
98 executed.

99 G. To the end that public bodies in the Commonwealth obtain high quality goods and services at
100 reasonable cost, that all procurement procedures be conducted in a fair and impartial manner with
101 avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to
102 public business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the General
103 Assembly that competition be sought to the maximum feasible degree, that individual public bodies
104 enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards
105 be made clear in advance of the competition, that specifications reflect the procurement needs of the
106 purchasing body rather than being drawn to favor a particular vendor, and that purchaser and vendor
107 freely exchange information concerning what is sought to be procured and what is offered.

108 H. Notwithstanding the foregoing provisions of this section, the selection of services by the Virginia
109 Retirement System and the Board of the Virginia Higher Education Tuition Trust Fund related to the
110 management, purchase or sale of authorized investments, including but not limited to actuarial services,
111 shall be governed by the standards set forth in §§ 51.1-124.30 and 23-38.80, respectively, and shall not
112 be subject to the provisions of this chapter.

113 I. The provisions of this chapter shall apply to procurement of any construction or planning and
114 design services for construction by a Virginia not-for-profit corporation or organization not otherwise
115 specifically exempted when the planning, design or construction is funded by state appropriations greater
116 than \$10,000 unless the Virginia not-for-profit corporation or organization is obligated to conform to
117 procurement procedures which are established by federal statutes or regulations, whether or not those

118 federal procedures are in conformance with the provisions of this chapter.

ENROLLED

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