

**REPORT OF THE
HONORABLE GERALD L. BALILES
GOVERNOR OF VIRGINIA
ON**

**State Agencies
Contracting with Private
Businesses and Avoiding
Unfair Competition**

**TO
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 39

**COMMONWEALTH OF VIRGINIA
RICHMOND
1990**



COMMONWEALTH of VIRGINIA

Office of the Governor

Richmond 23219

Gerald L. Baliles
Governor

December 29, 1989

TO: The General Assembly of Virginia

I am pleased to transmit this Report on State Agencies Contracting with Private Businesses and Avoiding Unfair Competition.

The report was prepared with the assistance of the Department of Planning and Budget and is being submitted pursuant to House Joint Resolution 213 of the 1988 Session of the General Assembly of Virginia.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Gerald L. Baliles", with a horizontal line extending to the right.

Gerald L. Baliles

INTRODUCTION

This report is presented in accordance with House Joint Resolution 213, agreed to by the 1988 General Assembly. The report outlines actions taken by the Commonwealth's executive branch agencies to contract with private businesses and to avoid unfair competition with the private sector.

Across the nation, there has been much public debate over the proper role of government in directly providing services to citizens. Decisions to privatize and to eliminate unfair competition with the private sector often involve complex analyses which must carefully weigh advantages and disadvantages.

These issues were the subject of review by the Governor's Commission on Efficiency in Government, which was established in January, 1986. The issues were also addressed in two gubernatorial executive memoranda. Executive Memorandum 1-88 deals with "Increasing State Government Efficiency by Improving Government's Capability to Contract with the Private Sector." Executive Memorandum 2-88 deals with "Eliminating Unfair Competition with the Private Sector."

In response to these actions, state agencies have made significant efforts to increase their contracting with the private sector for goods and services and to eliminate unfair competition. Moreover, the procedures set forth in the executive memoranda will assure that these efforts continue.

BACKGROUND

In their report entitled The Opportunities For and Challenges of Privatizing Government Services Through Contracting and Eliminating Unfair Competition, the Commission on Efficiency's Privatization Committee recommended that the Governor "issue an executive memorandum which will foster successful contracting initiatives from state agencies." Governor Baliles adopted this recommendation, and issued Executive Memorandum 1-88.

The report also recommended that the Governor "issue an executive memorandum which will create a mechanism to remove government from unfair competition with the private sector." Governor Baliles implemented this recommendation through Executive Memorandum 2-88.

In a third recommendation, the Committee urged the General Assembly "to adopt a joint resolution which will set forth the policy of the Commonwealth on contracting with the private sector." This recommendation resulted in House Joint Resolution
213

MEETING THE RECOMMENDATIONS AND JOINT RESOLUTION REQUIREMENTS

Executive Memorandum 1-88

The Commission on Efficiency's Privatization Committee recommended the issuance of an executive memorandum to encourage state agencies to consider contracting for services delivery. The Committee saw a need to create an environment in which state agencies considered contracting as a viable alternative to government provision of services. The committee also advised that:

- each agency head designate someone to administer agency contracts;
- contract administrators be trained in "make or buy" analysis, to help them make better decisions about contracting out services; and
- state agencies' services be analyzed to help determine which might be appropriate for contracting.

The Committee anticipated that these changes would increase state agencies' potential to contract with the private sector.

Executive Memorandum 1-88, which took effect on January 15, 1988, implements this set of recommendations. This Executive Memorandum contains procedures to improve agencies' contracting capabilities. The goal is to enhance economic and small business development and to reduce the cost of state government operations.

The Executive Memorandum sets criteria to guide contracting decisions. Contract costs, service quality, and reliability are to be considered. The government's ability to protect the health, safety and welfare of its citizens, however, is not to be diminished.

Pursuant to the Executive Memorandum, agency heads now appoint contract administrators. The Department of General Services' Office of Purchases and Supply has trained 461 contract administrators and agency personnel who have contracting authority. The training curriculum includes techniques to foster effective contracting with private firms and methods to determine whether to buy the product or service from outside sources or produce it within the agency (i.e., "make or buy" analysis).

Agency contract administrators are developing plans to effectively and appropriately contract with private sector firms in the future. Each plan contains provisions to ensure the effective and appropriate delivery of services, to monitor contractor performance, and to assess progress in using private contractors.

Executive Memorandum 2-88

The Privatization Committee also recommended that the Governor issue an executive memorandum which would create a mechanism to remove government from unfair competition with the private sector.

Executive Memorandum 2-88, which took effect on January 15, 1988, implements this recommendation. The memorandum contains procedures to help agencies identify and eliminate operations that unfairly compete with the private sector.

This Executive Memorandum contains guidelines to help each agency examine its role in providing goods and services according to its statutory mission and purpose. Agencies are to seek to identify any activities which might place the state in a position of unfair competition with the private sector.

In addition, each agency is directed to establish a process for private sector companies to make complaints and ask questions concerning unfair competition. The process includes steps to resolve and evaluate complaints in an orderly and timely basis.

The process must ensure an objective investigation of complaints about unfair competition. The results are to be reported to the agency head, the appropriate Governor's Secretary, the Governor's Office, and the firm or individual which made the complaint. The report also details agency actions which resulted from the investigation. Finally, the agency head is required to prepare and implement a plan which will eliminate any unfair competition identified during the complaint investigation.

House Joint Resolution 213

The Privatization Committee recommended that the General Assembly adopt a joint resolution to set out the Commonwealth's policy on contracting with the private sector. The Committee identified a need "to establish and articulate the broad policies which should guide state agencies and officials as they go about their daily duties and responsibilities." The Committee believed that the General Assembly should express its sense that state government "rely on the private sector to provide services under contract wherever it is feasible, sensible, appropriate, and economical to do so."

House Joint Resolution 213, adopted by the 1989 General Assembly Session, implements this recommendation.

The Secretaries and Executive Branch agencies are using the on-going procedures established in the above executive memoranda to identify opportunities to contract with the private sector and to eliminate unfair competition which may exist between state agencies and the private sector.

CONCLUSIONS

Led by the Governor's Secretaries, state agencies have pursued opportunities to fulfill privatization mandates. The Secretaries have received reports on agencies' contracting efforts and progress in meeting the requirements of Executive Memoranda 1-88 and 2-88.

Listed below are examples of the types of negotiated contracts with the private sector which executive branch agencies have negotiated since January, 1988.

- advertising
- aerial crop spraying
- architectural and engineering services
- asbestos removal
- clerical services
- courier services
- construction
- custodial services
- data collection
- debt collection
- dental and orthodontic laboratory work
- dining services for college students
- education services (includes health risk reduction, resource mothers, nutrition, rape/sexual assault)
- electrical services
- elevator maintenance and repair services
- equipment rental, maintenance, and repair
- environmental consulting for underground storage tank sites
- equipment maintenance
- financial auditing services
- forms warehousing, distribution and inventory control
- graphic services
- groundskeeping and landscaping
- hazardous or solid waste analysis
- hazardous waste disposal
- health profession examinations (preparing and conducting)
- heating and air-conditioning mechanical maintenance and repair
- insurance
- interpreter services for the deaf
- land appraising and certain boundary surveying
- linen services
- marine repairs
- medical services (includes dentists, nurses, home health services, medical laboratories, physical therapists, and occupational therapists)
- office renovation and moving services
- office space rental
- office supplies
- painting

- pest control
- photography
- plumbing services
- printing and binding
- process serving
- psychiatric, pathological and radiologic services for student health
- security guard services
- telecommunication devices for the deaf and hard of hearing (purchase, distribution and repair)
- training
- trash removal
- travel services
- video production

The list of examples is not all-inclusive, since each agency continues to examine its needs and requirements for goods and services.

The Executive Memoranda which set out procedures and requirements for state agencies on private sector contracting, will remain in effect until June 30, 1990. Executive branch agencies have in place the processes recommended by the Privatization Committee of the Commission on Efficiency in Government. As a result, it is expected that this important endeavor will continue into the future.

Attachment 1: Executive Memorandum 1-88

Attachment 2: Executive Memorandum 2-88

Attachment 3: Copy of Resolution



COMMONWEALTH of VIRGINIA

Office of the Governor

Richmond 23219

Gerald L. Baliles
Governor

EXECUTIVE MEMORANDUM 1-88

Subject:

Increasing state government efficiency by improving government's capability to contract with the private sector.

Definitions:

For purposes of this memorandum, definitions under the Virginia Public Procurement Act, § 11-37, Code of Virginia, shall apply.

Purpose:

This memorandum sets forth procedures which will aid state agencies in increasing their capabilities to contract with the private sector for goods and services, and thereby enhance economic and small business development and reduce the cost of state government operations.

Applicability:

This memorandum applies to all executive branch agencies and institutions.

Effective Date:

January 15, 1988

Requirements:

By virtue of the authority vested in me as Governor, I hereby charge the Governor's Secretaries to work in cooperation with their agency heads to explore and pursue opportunities for contracting with the private sector. Key considerations should include whether such contracting will result in the provision of goods and services which are no more costly and have equal quality and reliability, and whether there will be any diminution in government's ability to protect the health, safety and welfare of its citizens. Consideration should also be given to the administrative cost of periodic re-procurement and contract administration as well as whether or not there is a significant need for the continuity which permanent state employees may provide.

- A. By February 1, 1988, each agency head or chief executive officer will designate an individual, hereinafter referred to as a contract administrator, to be in charge of procurement and administration of contracts. Each agency head or chief executive officer will furnish the Department of General Services, Division of Purchases and Supply, the name of the contract administrator and a list of all individuals within the agency who have the authority to contract. Such lists shall state the types of goods or services which each individual is authorized to procure and the dollar limits, if any, placed upon his authority. In addition, the agency head will insure that the Department of General Services is informed of all subsequent changes to the list.
- B. By April 15, 1988, the Division of Purchases and Supply will develop a comprehensive training program for contract administrators and other procurement personnel to foster effective contracting with private sector firms for procurement of goods and professional and nonprofessional services. As a part of this training program, the Division will provide education on a process for state agencies to use in analyzing service delivery alternatives ("make or buy" analysis). In each instance of contracting, agencies will be expected to consider the cost, quality, reliability, and availability of the service, as well as other relevant considerations. The Division of Purchases and Supply will assist agencies in determining appropriate standards to assess contracting opportunities.

Also, in the course of training, the Division of Purchases and Supply will include information on 1) what is currently being contracted in state government and on 2) areas in which model solicitations for contracting exist.

- C. By April 15, 1988, in order to provide agencies with incentives to contract with the private sector, the Department of Planning and Budget will develop alternatives through which agencies may share in demonstrated savings which are a result of a newly initiated contract with a private sector firm. These alternatives will be available for consideration in the 1989 budget development process.
- D. By September 15, 1988, all agency contract administrators and, at the discretion of the agency heads, all other persons within agencies who have the authority to contract, will have completed an initial training program developed by the Division of Purchases and Supply. Agency personnel with contracting authority will continue to receive regular and periodic training, as appropriate, after these initial sessions.
- E. By October 15, 1988, each agency contract administrator will develop a plan for his or her agency to effectively and appropriately contract with private sector firms. The plan will set out how the agency will: 1) insure that service delivery ("make or buy" analysis) occurs; 2) have managerial capacity to contract; 3) document and implement procedures to monitor contractor performance closely; 4) maintain direction of and accountability for contracting; and 5) assess agency progress in reviewing a specified list of contracting opportunities and in using contracts with the private sector.

F. On October 15, 1988, and on October 1, 1989, and at such other times as may be designated, each agency head or chief executive officer will furnish to the respective Governor's Secretary a report on the agency's activities in implementing the purpose of this executive memorandum.

The effective exploration and pursuit of appropriate contracting opportunities and the sound management of contracts will be criteria against which the Governor's Secretaries will evaluate the performance of their agency heads.

This Executive Memorandum shall remain in full force and effect until June 30, 1990, unless superseded or rescinded by further executive memorandum.


Governor

EXECUTIVE MEMORANDUM 2-88

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- B. By May 1, 1988, each agency will implement a process by which private sector complaints and inquiries regarding unfair competition are handled on an orderly and timely basis.**

- C. Each agency head will ensure that the above mentioned process provides an effective mechanism to:**
 - 1. objectively investigate complaints about unfair competition with the private sector;**
 - 2. provide the agency head with a factual report and recommendation concerning such complaints;**
 - 3. report each investigation to the agency's Governor's Secretary;**
 - 4. report each investigation to the Governor's Office; and**
 - 5. inform the firm or individual making the complaint of the findings of the investigation and the actions which the agency will take, if any, as a result of the investigation.**

- D. Whenever the agency, either in the process for handling complaints about unfair competition or through other means, finds that unfair competition has occurred, it shall be the responsibility of the agency head to prepare and implement a plan which will result in the cessation of such unfair competition.**

The effective handling of complaints and inquiries regarding unfair competition and the implementation of this Executive Memorandum will be criteria against which the Secretaries will evaluate the performance of their agency heads.

This Executive Memorandum shall remain in full force and effect until June 30, 1990, unless superseded or rescinded by further executive memorandum.


Governor



COMMONWEALTH of VIRGINIA

Office of the Governor

Richmond 23219

Gerald L. Bailey
Governor

EXECUTIVE MEMORANDUM 2-88

Subject:

Eliminating unfair competition with the private sector.

Purpose:

This memorandum sets forth procedures which will aid state agencies in examining their mission with respect to the provision of goods and services, determining which of their operations are in unfair competition with private sector companies, and identifying opportunities for eliminating such competition, thereby enhancing economic development, increasing business receipts subject to taxation, and reducing the cost of state government operations.

Applicability:

This memorandum applies to all executive branch agencies and institutions.

Effective Date:

January 15, 1988

Requirements:

By virtue of the authority vested in me as Governor, I hereby charge the Governor's Secretaries to work in cooperation with their agency heads to explore instances of unfair competition with the private sector where such competition has resulted in the state providing goods and services which are readily available from the private sector at no more cost and with equal quality, reliability, and accessibility to citizens of the Commonwealth.

- A. By March 15, 1988, each agency head or chief executive officer will examine his or her agency's role in the provision of goods and services, according to its statutory mission and purpose, and will determine whether any activities might place the Commonwealth in a position of unfair competition with the private sector.

1988 SESSION
ENGROSSED

HP2594301

HOUSE JOINT RESOLUTION NO. 213

House Amendments in [] - February 15, 1988

Requesting the agencies of state government to maximize contracting arrangements with private businesses.

Patron-Axselle

Introduced at the Request of the Governor

Referred to the Committee on General Laws

WHEREAS, our economic system provides an example to other nations of the benefits and progress resulting from private sector initiative; and

WHEREAS, this free enterprise system is the backbone of the Commonwealth's and the nation's economy; and

WHEREAS, the citizens of the Commonwealth rely primarily on private enterprise for employment opportunities and for providing a standard of living which is above the national average; and

WHEREAS, goods and services provided by private enterprise contribute greatly to the favorable quality of life enjoyed by Virginians; and

WHEREAS, tax revenues from private enterprise provide in large measure for the operation of Virginia's state and local governments; and

WHEREAS, certain services currently provided by government agencies might be provided with greater efficiency, effectiveness and economy by private enterprise; and

WHEREAS, certain activities of state and local government might unintentionally place the Commonwealth in a position of unfair competition with the private sector; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the agencies of state government diligently work to maximize contracting arrangements with private businesses wherever appropriate; and, be it

RESOLVED FURTHER, That state agencies make every effort to avoid any unfair competition with private business [- ; and be it

RESOLVED FINALLY, That the Governor report the results of the compliance of agencies of state government with this resolution and Executive Orders 1 and 2 of 1988 to the General Assembly by January 1, 1990.]

Official Use By Clerks

Agreed to By
The House of Delegates
without amendment
with amendment
substitute
substitute w/amdt

Agreed to By The Senate
without amendment
with amendment
substitute
substitute w/amdt

Date: _____

Date: _____

Clerk of the House of Delegates

Clerk of the Senate

