

01-105

**COUNTIES, CITIES AND TOWNS: INDUSTRIAL DEVELOPMENT AND REVENUE BOND ACT.**

**ADMINISTRATION OF GOVERNMENT: BOARDS – DESIGN-BUILD/CONSTRUCTION MANAGEMENT REVIEW BOARD — VIRGINIA PUBLIC PROCUREMENT ACT.**

**Industrial development authorities may use design-build contracts for construction of "authority facilities" or "facilities," as defined in Industrial Development and Revenue Bond Act, without having to engage in competitive bidding and without having to involve Design-Build/Construction Management Review Board.**

The Honorable Clarence E. Phillips  
Member, House of Delegates  
April 2, 2002

**Issue Presented**

You ask whether industrial development authorities may use design-build contracts for the construction of "authority facilities" or "facilities," as those terms are defined in § 15.2-4902 of the *Code of Virginia*, without having to engage in competitive bidding and without having to involve the Design-Build/Construction Management Review Board.<sup>1</sup>

**Response**

Industrial development authorities may use design-build contracts for the construction of "authority facilities" or "facilities," as those terms are defined in § 15.2-4902, without engaging in competitive bidding or involving the Design-Build/Construction Management Review Board, for the reasons that follow.

**Applicable Authorities and Discussion**

The Industrial Development and Revenue Bond Act, §§ 15.2-4900 through 15.2-4920, authorizes localities to create industrial development authorities.<sup>2</sup> The express legislative intent in authorizing the creation of industrial development authorities is "so that such authorities may acquire, own, lease, and dispose of properties and make loans" in furtherance of the purpose(s) for which the authorities are created.<sup>3</sup>

Section 2.2-4344(B) authorizes industrial development authorities to "enter into contracts without competition with respect to any item of cost of 'authority facilities' or 'facilities' as defined in § 15.2-4902." Section 2.2-4344(B) clearly provides as an exemption from the competitive bidding requirements of the Virginia Public Procurement Act,<sup>4</sup> contracts with respect to the costs associated with "authority facilities" or "facilities," as defined in § 15.2-4902. Section 15.2-4902 contains, among others, definitions of "authority facilities," "facilities," and "cost" as each of those terms is used in the Industrial Development and Revenue

Bond Act. "Cost" includes "the cost of construction" and the "cost of engineering, ... plans, specifications, studies, surveys, estimates of cost and of revenues, ... and such other expenses as may be necessary or incident to the construction of the authority facilities."<sup>5</sup> A basic rule of statutory construction requires that, where there is no ambiguity in a statute, the statute is not to be construed but is to be given effect in accordance with its plain meaning and intent.<sup>6</sup>

The Procurement Act defines the term "design-build contract" to mean "a contract between a public body and another party in which the party contracting with the public body agrees to both design and build the structure, roadway or other item specified in the contract."<sup>7</sup> A "public body" is defined to mean "any ... authority ... or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in [the Procurement Act]."<sup>8</sup> An industrial development authority is a "political subdivision, a body politic and corporate."<sup>9</sup> Competitive negotiation and specific findings regarding the competitive bidding process are required by the General Assembly before the Design-Build/Construction Management Review Board may review submissions by public bodies.<sup>10</sup> Industrial development authorities are exempt from the competitive bidding requirements of the Procurement Act, and therefore do not have to comply with the competitive negotiation and bidding process. The Procurement Act must be considered together with the specific provisions of § 15.2-4902.<sup>11</sup>

## Conclusion

It is my opinion that industrial development authorities may use design-build contracts for the construction of "authority facilities" or "facilities," as those terms are defined in § 15.2-4902, without having to engage in competitive bidding and without having to involve the Design-Build/Construction Management Review Board.

<sup>1</sup>See Va. Code Ann. §§ 2.2-2404 to 2.2-2406 (LexisNexis Repl. Vol. 2001) (establishing and listing powers and duties of Design-Build/Construction Management Review Board).

<sup>2</sup>See *id.* § 15.2-4901 (Michie Repl. Vol. 1997); § 15.2-4903 (Michie Supp. 2001).

<sup>3</sup>*Id.* § 15.2-4901.

<sup>4</sup>See *id.* §§ 2.2-4300 to 2.2-4377 (LexisNexis Repl. Vol. 2001).

<sup>5</sup>*Id.* § 15.2-4902 (Michie Supp. 2001).

<sup>6</sup>See *Ambrogi v. Koontz*, 224 Va. 381, 386, 297 S.E.2d 660, 662 (1982); 1996 Op. Va. Att'y Gen. 152, 153.

<sup>7</sup>*Id.* § 2.2-4301.

<sup>8</sup>*Id.*

<sup>9</sup>See § 15.2-4902 (defining "authority").

<sup>10</sup> See § 2.2-2406.

<sup>11</sup> See *Prillaman v. Commonwealth*, 199 Va. 401, 405-06, 100 S.E.2d 4, 7-8 (1957); 1996 Op. Va. Att'y Gen. 134, 135 (statutes relating to same subject should be considered *in pari materia*).

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