

## VIRGINIA ACTS OF ASSEMBLY — CHAPTER

*An Act to amend and reenact §§ 2.2-4303 and 2.2-4304 of the Code of Virginia, relating to the Virginia Public Procurement Act; methods of procurement.*

[H 2051]

Approved

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

**1. That §§ 2.2-4303 and 2.2-4304 of the Code of Virginia are 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. 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, goods, services, or insurance may be procured by competitive negotiation. The writing shall document the basis for this determination.

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 in subdivision 3 b of the definition of "competitive negotiation" in § 2.2-4301. 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 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:

1. By the Commonwealth, its departments, agencies and institutions on a fixed price design-build basis or construction management basis under § 2.2-4306;

2. By any public body for the construction, alteration, repair, renovation or demolition of buildings when the contract is not expected to cost more than \$1 million;

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

4. As otherwise provided in § 2.2-4308.

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 in a designated public area or published in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first. Public notice may also be published on the Department of General Services' central electronic procurement website and other appropriate websites.

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 in a designated public area or published 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. Public notice may also be published on the Department of General Services' central electronic procurement website and other appropriate websites.

G. A public body may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts for goods and services other than professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000;

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58 however, such small purchase procedures shall provide for competition wherever practicable. Purchases  
 59 under this subsection that are expected to exceed \$30,000 shall require the written informal solicitation  
 60 of a minimum of four bidders or offerors.

61 H. A public body may establish purchase procedures, if adopted in writing, not requiring competitive  
 62 negotiation for single or term contracts for professional services if the aggregate or the sum of all phases  
 63 is not expected to exceed \$30,000; however such small purchase procedures shall provide for  
 64 competition wherever practicable.

65 I. Upon a determination made in advance by a public body and set forth in writing that the purchase  
 66 of goods, products or commodities from a public auction sale is in the best interests of the public, such  
 67 items may be purchased at the auction, including online public auctions. *Purchase of information*  
 68 *technology and telecommunications goods and nonprofessional services from a public auction sale shall*  
 69 *be permitted by any authority, department, agency, or institution of the Commonwealth if approved by*  
 70 *the Chief Information Officer of the Commonwealth.* The writing shall document the basis for this  
 71 determination. However, bulk purchases of commodities used in road and highway construction and  
 72 maintenance, and aggregates shall not be made by online public auctions.

73 J. The purchase of goods or nonprofessional services, but not construction or professional services,  
 74 may be made by reverse auctioning. However, bulk purchases of commodities used in road and highway  
 75 construction and maintenance, and aggregates shall not be made by reverse auctioning.

76 § 2.2-4304. Cooperative procurement.

77 A. Any public body may participate in, sponsor, conduct, or administer a cooperative procurement  
 78 agreement on behalf of or in conjunction with one or more other public bodies, or public agencies or  
 79 institutions or localities of the several states, of the United States or its territories, the District of  
 80 Columbia, or the U.S. General Services Administration, for the purpose of combining requirements to  
 81 increase efficiency or reduce administrative expenses in any acquisition of goods and services. Except  
 82 for contracts for professional services, a public body may purchase from another public body's contract  
 83 even if it did not participate in the request for proposal or invitation to bid, if the request for proposal  
 84 or invitation to bid specified that the procurement was being conducted on behalf of other public bodies.  
 85 *In instances where any authority, department, agency, or institution of the Commonwealth desires to*  
 86 *purchase information technology and telecommunications goods and services from another public body's*  
 87 *contract and the procurement was conducted on behalf of other public bodies, such purchase shall be*  
 88 *permitted if approved by the Chief Information Officer of the Commonwealth.* Any public body that  
 89 enters into a cooperative procurement agreement with a county, city, or town whose governing body has  
 90 adopted alternative policies and procedures pursuant to subdivisions 9 and 10 of § 2.2-4343 shall comply  
 91 with the alternative policies and procedures adopted by the governing body of such county, city, or  
 92 town.

93 B. Subject to the provisions of §§ 2.2-1110, 2.2-1111, 2.2-1120 and 2.2-2012, any authority,  
 94 department, agency, or institution of the Commonwealth may participate in, sponsor, conduct, or  
 95 administer a cooperative procurement arrangement on behalf of or in conjunction with public bodies,  
 96 private health or educational institutions or with public agencies or institutions of the several states,  
 97 territories of the United States, or the District of Columbia, for the purpose of combining requirements  
 98 to effect cost savings or reduce administrative expense in any acquisition of goods and services, other  
 99 than professional services. A public body may purchase from any authority, department, agency or  
 100 institution of the Commonwealth's contract even if it did not participate in the request for proposal or  
 101 invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being  
 102 conducted on behalf of other public bodies. In such instances, deviation from the procurement  
 103 procedures set forth in this chapter and the administrative policies and procedures established to  
 104 implement this chapter shall be permitted, if approved by the Director of the Division of Purchases and  
 105 Supply.

106 Pursuant to § 2.2-2012, such approval is not required if the procurement arrangement is for  
 107 telecommunications and information technology goods and services of every description. In instances  
 108 where the procurement arrangement is for telecommunications and information technology goods and  
 109 services, such arrangement shall be permitted if approved by the Chief Information Officer of the  
 110 *Commonwealth.* However, such acquisitions shall be procured competitively.

111 Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that  
 112 will allow for participation in any such arrangement.

113 C. As authorized by the United States Congress and consistent with applicable federal regulations,  
 114 and provided the terms of the contract permit such purchases:

115 1. Any authority, department, agency, or institution of the Commonwealth may purchase goods and  
 116 nonprofessional services, other than telecommunications and information technology, from a U.S.  
 117 General Services Administration contract or a contract awarded by any other agency of the U.S.  
 118 government, upon approval of the director of the Division of Purchases and Supply of the Department

119 of General Services;

120 2. Any authority, department, agency, or institution of the Commonwealth may purchase  
121 telecommunications and information technology goods and nonprofessional services from a U.S. General  
122 Services Administration contract or a contract awarded by any other agency of the U.S. government,  
123 upon approval of the Chief Information Officer *of the Commonwealth*; and

124 3. Any county, city, town, or school board may purchase goods and nonprofessional services from a  
125 U.S. General Services Administration contract or a contract awarded by any other agency of the U.S.  
126 government.

127 2. That the provisions of this act shall not in any way amend or affect the Commonwealth's  
128 institutions of higher education as such institutions may be delegated the authority for the  
129 purchase of information technology facilities and services pursuant to any appropriation act  
130 adopted by the General Assembly.

131 3. That the provisions of this act shall not in any way amend or affect the existing delegations of  
132 telecommunications procurement granted by the Department of Information Technology or the  
133 Virginia Information Technologies Agency, as its successor in interest, to public bodies or inhibit  
134 the ability of the Department of Information Technology or the Virginia Information Technologies  
135 Agency as its successor in interest, to grant future delegations of such authority.