

11104386D

## HOUSE BILL NO. 1592

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws  
on February 1, 2011)

(Patron Prior to Substitute—Delegate Iaquinto)

A *BILL to amend and reenact §§ 2.2-1110, 2.2-4301, 2.2-4303, 23-38.90, 23-38.110, 56-573.1:1, and 56-575.17 of the Code of Virginia, relating to public procurement; posting on state website.*

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

**1. That §§ 2.2-1110, 2.2-4301, 2.2-4303, 23-38.90, 23-38.110, 56-573.1:1, and 56-575.17 of the Code of Virginia are amended and reenacted as follows:**

§ 2.2-1110. Using agencies to purchase through Division of Purchases and Supply; exception.

A. Except as provided by § 2.2-2012 or otherwise directed and authorized by the Division or in the Code of Virginia, every authority, department, division, institution, officer ~~and~~ agency of the Commonwealth, and other unit of state government, hereinafter called the using agency, shall purchase through the Division all materials, equipment, supplies, printing and nonprofessional services of every description, whenever the whole or a part of the costs is to be paid out of the state treasury. The Division shall make such purchases in conformity with this article.

*The Division shall maintain the Department of General Services' central electronic procurement system. This procurement system shall provide for the purchase of goods and services, public posting of all Invitations to Bid, Requests for Proposal, sole source award notices, emergency award notices, and reports on purchases. All using agencies shall utilize the Department of General Services' central electronic procurement system as their purchasing system beginning at the point of requisitioning for all procurement actions, including technology, transportation, and construction, unless otherwise authorized in writing by the Division. Where necessary to capture data in agency enterprise resource planning systems and to eliminate or avoid duplicate or manual data entry in such agency systems, using agencies shall integrate their enterprise resource planning systems with the Department of General Services' central electronic procurement system, unless otherwise authorized in writing by the Division or in accordance with the provisions of the Restructured Higher Education Financial and Administrative Operations Act (§ 23-38.88 et seq.).*

*Using agencies shall post on the Department of General Services' central electronic procurement website all Invitations to Bid, Requests for Proposal, sole source award notices, and emergency award notices to ensure visibility and access to the Commonwealth's procurement opportunities on one website.*

B. The provisions of subsection A shall not apply to the purchase of materials, equipment, supplies, printing and nonprofessional services of every description by the Virginia Retirement System; however, the Board of Trustees of the Virginia Retirement System shall adopt regulations made in accordance with the Virginia Public Procurement Act (§ 2.2-4300 et seq.) that specify policies and procedures that are based on competitive principles and that are generally applicable to procurement of such goods and services by comparably situated state agencies. The exemption provided by this subsection shall apply for only as long as such regulations, or other regulations meeting the requirements of this subsection, remain in effect at the Virginia Retirement System.

§ 2.2-4301. Definitions.

As used in this chapter:

"Affiliate" means an individual or business that controls, is controlled by, or is under common control with another individual or business. A person controls an entity if the person owns, directly or indirectly, more than 10 percent of the voting securities of the entity. For the purposes of this definition "voting security" means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general partnership interest shall be deemed to be a voting security.

"Best value," as predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to a public body's needs.

"Business" means any type of corporation, partnership, limited liability company, association, or sole proprietorship operated for profit.

"Competitive negotiation" is a method of contractor selection that includes the following elements:

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications that will be required of the contractor.

2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of

HOUSE SUBSTITUTE

HB1592H1

60 proposals by posting in a public area normally used for posting of public notices and by publication on  
61 the Department of General Services' central electronic procurement website or other appropriate  
62 websites. Additionally, public bodies shall publish in a newspaper or newspapers of general circulation  
63 in the area in which the contract is to be performed so as to provide reasonable notice to the maximum  
64 number of offerors that can be reasonably anticipated to submit proposals in response to the particular  
65 request. Public notice may also be published on the Department of General Services' central electronic  
66 procurement website and other appropriate websites. Effective July 1, 2002, publishing by state agencies,  
67 departments and institutions on the public Internet procurement website designated by the Department of  
68 General Services shall be required. Posting on the Department of General Services' central electronic  
69 procurement website shall be required of any state public body. Local public bodies are encouraged to  
70 utilize the Department of General Services' central electronic procurement website to provide the public  
71 with centralized visibility and access to the Commonwealth's procurement opportunities. In addition,  
72 proposals may be solicited directly from potential contractors.

73 3. a. Procurement of professional services. The public body shall engage in individual discussions  
74 with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial  
75 responses and with emphasis on professional competence, to provide the required services. Repetitive  
76 informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their  
77 qualifications and performance data or staff expertise pertinent to the proposed project, as well as  
78 alternative concepts. In addition, offerors shall be informed of any ranking criteria that will be used by  
79 the public body in addition to the review of the professional competence of the offeror. The Request for  
80 Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At  
81 the discussion stage, the public body may discuss nonbinding estimates of total project costs, including,  
82 but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services.  
83 Proprietary information from competing offerors shall not be disclosed to the public or to competitors.  
84 At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published  
85 in the Request for Proposal and all information developed in the selection process to this point, the  
86 public body shall select in the order of preference two or more offerors whose professional qualifications  
87 and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning  
88 with the offeror ranked first. If a contract satisfactory and advantageous to the public body can be  
89 negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise,  
90 negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with  
91 the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable  
92 price. Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the  
93 Request for Proposal, a public body may award contracts to more than one offeror.

94 Should the public body determine in writing and in its sole discretion that only one offeror is fully  
95 qualified, or that one offeror is clearly more highly qualified and suitable than the others under  
96 consideration, a contract may be negotiated and awarded to that offeror.

97 A contract for architectural or professional engineering services relating to construction projects may  
98 be negotiated by a public body, for multiple projects provided (i) the projects require similar experience  
99 and expertise, (ii) the nature of the projects is clearly identified in the Request for Proposal, and (iii) the  
100 contract term is limited to one year or when the cumulative total project fees reach the maximum cost  
101 authorized in this paragraph, whichever occurs first. For state public bodies, such contract, except those  
102 awarded for environmental, location, design and inspection work regarding highways and bridges by the  
103 Commonwealth Transportation Commissioner may be renewable for four additional one-year terms at  
104 the option of the public body. For local public bodies, such contract may be renewable for four  
105 additional one-year terms at the option of the public body. Under such contract, (a) the fair and  
106 reasonable prices, as negotiated, shall be used in determining the cost of each project performed, (b)  
107 except those awarded for environmental, location, design and inspection work regarding highways and  
108 bridges by the Commonwealth Transportation Commissioner, the sum of all projects performed in one  
109 contract term shall not exceed \$500,000 or, in the case of a state agency, as defined in § 2.2-4347, such  
110 greater amount as may be determined by the Director of the Department of General Services, not to  
111 exceed \$1 million, except that in any locality or any authority or sanitation district with a population in  
112 excess of 80,000, the sum of all such projects shall not exceed \$5 million; and (c) except those awarded  
113 for environmental, location, design and inspection work regarding highways and bridges by the  
114 Commonwealth Transportation Commissioner or for architectural and engineering services for rail and  
115 public transportation projects by the Director of the Department of Rail and Public Transportation, the  
116 project fee of any single project shall not exceed \$100,000 or, in the case of a state agency, such greater  
117 amount as may be determined by the Director of the Department of General Services not to exceed  
118 \$200,000, except that in any locality or any authority or sanitation district with a population in excess of  
119 80,000, such fee shall not exceed \$1 million. Any unused amounts from the first contract term shall not  
120 be carried forward to the additional term. Competitive negotiations for such contracts may result in  
121 awards to more than one offeror provided (1) the Request for Proposal so states and (2) the public body

has established procedures for distributing multiple projects among the selected contractors during the contract term. For contracts for environmental location, design and inspection work regarding highways and bridges by the Commonwealth Transportation Commissioner, the sum of all projects in one contract term shall not exceed \$5 million and such contract may be renewable for two additional one-year terms at the option of the Commissioner. For architectural and engineering services for rail and public transportation projects by the Director of the Department of Rail and Public Transportation, the sum of all projects in one contract term shall not exceed \$2 million and such contract may be renewable for two additional one-year terms at the option of the Commissioner.

Multiphase professional services contracts satisfactory and advantageous to the Department of Transportation for environmental, location, design and inspection work regarding highways and bridges may be negotiated and awarded based on a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases.

Multiphase professional services contracts satisfactory and advantageous to a local public body for environmental, location, design and inspection work regarding construction of infrastructure projects may be negotiated and awarded based on qualifications at a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to the procurement of any such contract, the local public body shall state the anticipated intended total scope of the project and determine in writing that the nature of the work is such that the best interests of such public body require awarding the contract.

b. Procurement of other than professional services. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the public body shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

"Competitive sealed bidding" is a method of contractor selection, other than for professional services, which includes the following elements:

1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the public body has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. When it is impractical to prepare initially a purchase description to support an award based on prices, an Invitation to Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by posting in a designated public area, or publication in a newspaper on the Department of General Services' central electronic procurement website or other appropriate websites. In addition, public bodies may publish in a newspaper of general circulation, or both. Public notice may also be published on the Department of General Services' central electronic procurement website and other appropriate websites. Effective July 1, 2002, posting by state agencies, departments and institutions on the public Internet procurement website designated by the Department of General Services shall be required. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities. In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall include businesses selected from a list made available by the Department of Minority Business Enterprise.

3. Public opening and announcement of all bids received.

4. Evaluation of bids based upon the requirements set forth in the invitation, which may include special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.

5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.

"Construction" means building, altering, repairing, improving or demolishing any structure, building

183 or highway, and any draining, dredging, excavation, grading or similar work upon real property.

184 "Construction management contract" means a contract in which a party is retained by the owner to  
185 coordinate and administer contracts for construction services for the benefit of the owner, and may also  
186 include, if provided in the contract, the furnishing of construction services to the owner.

187 "Design-build contract" means a contract between a public body and another party in which the party  
188 contracting with the public body agrees to both design and build the structure, roadway or other item  
189 specified in the contract.

190 "Goods" means all material, equipment, supplies, printing, and automated data processing hardware  
191 and software.

192 "Informality" means a minor defect or variation of a bid or proposal from the exact requirements of  
193 the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or  
194 delivery schedule for the goods, services or construction being procured.

195 "Multiphase professional services contract" means a contract for the providing of professional  
196 services where the total scope of work of the second or subsequent phase of the contract cannot be  
197 specified without the results of the first or prior phase of the contract.

198 "Nonprofessional services" means any services not specifically identified as professional services in  
199 the definition of professional services.

200 "Potential bidder or offeror" for the purposes of §§ 2.2-4360 and 2.2-4364 means a person who, at  
201 the time a public body negotiates and awards or proposes to award a contract, is engaged in the sale or  
202 lease of goods, or the sale of services, insurance or construction, of the type to be procured under the  
203 contract, and who at such time is eligible and qualified in all respects to perform that contract, and who  
204 would have been eligible and qualified to submit a bid or proposal had the contract been procured  
205 through competitive sealed bidding or competitive negotiation.

206 "Professional services" means work performed by an independent contractor within the scope of the  
207 practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law,  
208 dentistry, medicine, optometry, pharmacy or professional engineering. "Professional services" shall also  
209 include the services of an economist procured by the State Corporation Commission.

210 "Public body" means any legislative, executive or judicial body, agency, office, department, authority,  
211 post, commission, committee, institution, board or political subdivision created by law to exercise some  
212 sovereign power or to perform some governmental duty, and empowered by law to undertake the  
213 activities described in this chapter.

214 "Public contract" means an agreement between a public body and a nongovernmental source that is  
215 enforceable in a court of law.

216 "Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform  
217 fully the contract requirements and the moral and business integrity and reliability that will assure good  
218 faith performance, and who has been prequalified, if required.

219 "Responsive bidder" means a person who has submitted a bid that conforms in all material respects  
220 to the Invitation to Bid.

221 "Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified  
222 goods or nonprofessional services through real-time electronic bidding, with the award being made to  
223 the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed  
224 and bidders shall have the opportunity to modify their bid prices for the duration of the time period  
225 established for bid opening.

226 "Services" means any work performed by an independent contractor wherein the service rendered  
227 does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials  
228 and supplies.

229 "Sheltered workshop" means a work-oriented rehabilitative facility with a controlled working  
230 environment and individual goals that utilizes work experience and related services for assisting the  
231 handicapped person to progress toward normal living and a productive vocational status.

232 § 2.2-4303. Methods of procurement.

233 A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for  
234 the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or  
235 competitive negotiation as provided in this section, unless otherwise authorized by law.

236 B. Professional services shall be procured by competitive negotiation.

237 C. Upon a determination made in advance by the public body and set forth in writing that  
238 competitive sealed bidding is either not practicable or not fiscally advantageous to the public, goods,  
239 services, or insurance may be procured by competitive negotiation. The writing shall document the basis  
240 for this determination.

241 Upon a written determination made in advance by (i) the Governor or his designee in the case of a  
242 procurement by the Commonwealth or by a department, agency or institution thereof or (ii) the local  
243 governing body in the case of a procurement by a political subdivision of the Commonwealth, that  
244 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 (a) public body for the construction, alteration, repair, renovation or demolition of buildings or structures when the contract is not expected to cost more than \$1.5 million and (b) local governing body on a fixed price design-build basis or construction management basis under § 2.2-4308 when the contract is not expected to cost more than \$1.5 million;

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

4. By any governing body of a locality with a population in excess of 100,000 that the Design-Build/Construction Management Review Board has made a one-time determination that the locality has the personnel, procedures, and expertise to enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis, provided that projects undertaken by the local governing body shall be exempt only from approval of the Design-Build/Construction Management Review Board and shall otherwise be in compliance with the provisions of this section, § 2.2-4308, and other applicable law governing design-build or construction management contracts for public bodies other than the Commonwealth. The procedures of the local governing body shall be consistent with the two-step competitive negotiation process established in § 2.2-4301; or

5. 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 on the Department of General Services' central electronic procurement website or other appropriate websites. In addition, public bodies may publish 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 Posting on the Department of General Services' central electronic procurement website and other appropriate websites shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

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 on the Department of General Services' central electronic procurement website or other appropriate websites. In addition, public bodies may publish 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 Posting on the Department of General Services' central electronic procurement website and other appropriate websites shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

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

306 H. A public body may establish purchase procedures, if adopted in writing, not requiring competitive  
307 negotiation for single or term contracts for professional services if the aggregate or the sum of all phases  
308 is not expected to exceed \$50,000; however such small purchase procedures shall provide for  
309 competition wherever practicable.

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

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

321 § 23-38.90. Memoranda of understanding.

322 Effective July 1, 2008, any public institution of higher education may enter into a memorandum of  
323 understanding with the appropriate Cabinet Secretary or Secretaries, as designated by the Governor, for  
324 additional operational authority in any operational area or areas adopted by the General Assembly in  
325 accordance with law provided that the authority granted in the memorandum of understanding is  
326 consistent with that institution's ability to manage its operations in the particular area or areas and  
327 provided that the following general criteria are met:

328 1. The institution has received and maintained Council certification pursuant to § 23-9.6:1.01 for the  
329 most recent year that the Council has completed certification;

330 2. An absolute two-thirds or more of the institution's governing body shall have voted in the  
331 affirmative for a resolution expressing the sense of the body that the institution is qualified to be, and  
332 should be, governed by memoranda of understanding as provided in this chapter; ~~and~~

333 3. The institution ~~must~~ shall adopt at least one new education-related measure for each area of  
334 operational authority for which a memorandum of understanding is requested. Each education-related  
335 measure and its respective target shall be developed in consultation with the Secretary of Finance,  
336 Secretary of Education, the appropriate Cabinet Secretary, and the Council. Each education-related  
337 measure and its respective target ~~must~~ shall be approved by the Council and shall become part of the  
338 certification required by § 23-9.6:1.01; *and*

339 4. *The institution shall post on the Department of General Services' central electronic procurement*  
340 *website all Invitations to Bid, Requests for Proposal, sole source award notices, and emergency award*  
341 *notices to ensure visibility and access to the Commonwealth's procurement opportunities on one website.*

342 Within 15 days of receipt of a request from a public institution of higher education to enter into a  
343 memorandum of understanding as provided herein, the Cabinet Secretary or Secretaries receiving that  
344 request shall notify the Chairmen of the House Committee on Appropriations and the Senate Committee  
345 on Finance of the request. The Cabinet Secretary or Secretaries shall determine within 90 calendar days  
346 whether or not to enter into the requested memorandum of understanding, or some variation thereof. If  
347 the determination is to enter into a memorandum of understanding with the institution, the Cabinet  
348 Secretary or Secretaries shall forward a copy of the governing body's resolution and a copy of the  
349 memorandum of understanding to the Chairmen of the House Committee on Appropriations and the  
350 Senate Committee on Finance. Each initial memorandum of understanding shall remain in effect for a  
351 period of three years. Subsequent memoranda of understanding shall remain in effect for a period of five  
352 years. If the determination is not to enter into a memorandum of understanding with the institution, the  
353 Cabinet Secretary or Secretaries shall notify the Chairmen of the House Committee on Appropriations  
354 and the Senate Committee on Finance of the reasons for denying the institution's request. If an  
355 institution's request is denied, nothing in this section shall prohibit the institution from submitting a  
356 future request to enter into a memorandum of understanding pursuant to this section.

357 § 23-38.110. Procurement; discrimination prohibited; participation of small, women-owned, and  
358 minority-owned business enterprises.

359 A. Subject to the express provisions of the management agreement described in § 23-38.88, covered  
360 institutions may be exempt from the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et  
361 seq.), except for § 2.2-4342 (which section shall not be construed to require compliance with the  
362 prequalification application procedures of subsection B of § 2.2-4317); provided, however, that any  
363 deviations from the Virginia Public Procurement Act approved in a Management Agreement shall be  
364 uniform across all covered institutions; and provided further that the governing body of a covered  
365 institution shall adopt, and the covered institution shall comply with, policies for the procurement of  
366 goods and services, including professional services, that shall be based upon competitive principles and  
367 shall in each instance seek competition to the maximum practical degree. The policies shall implement a

system of competitive negotiation for professional services pursuant to subdivisions 1, 2, and 3 a of the defined term "competitive negotiation" under § 2.2-4301, shall prohibit discrimination because of race, religion, color, sex or national origin of the bidder or offeror in the solicitation or award of contracts, shall incorporate the prompt payment principles of §§ 2.2-4350 and 2.2-4354, and shall consider the impact on correctional enterprises under § 53.1-47.

B. Such policies may, among other things, (i) provide for consideration of the dollar amount of the intended procurement, the term of the anticipated contract, and the likely extent of competition; (ii) implement a prequalification procedure for contractors or products; and (iii) include provisions for cooperative arrangements with other covered institutions, other public or private educational institutions, other public or private organizations or entities, including public-private partnerships, public bodies, charitable organizations, health care provider alliances or purchasing organizations or entities, state agencies or institutions of the Commonwealth or the several states, the District of Columbia, the territories and the United States, and any combination thereof. Nothing in this section shall preclude a covered institution from requesting and utilizing, and covered institutions are hereby encouraged to utilize, the assistance of the Virginia Information Technologies Agency in information technology procurements.

C. In the solicitation and awarding of contracts, no covered institution shall discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state or federal law. The procurement policies of a covered institution shall provide that, whenever solicitations are made seeking competitive procurement of goods or services, it shall be a priority of the institution to provide for fair and reasonable consideration of small, women-owned, and minority-owned businesses and to promote and encourage a diversity of suppliers. *The institution shall post on the Department of General Services' central electronic procurement website all Invitations to Bid, Requests for Proposal, sole source award notices, and emergency award notices to ensure visibility and access to the Commonwealth's procurement opportunities on one website.*

D. As part of any procurement provisions of a management agreement, the governing board of a covered institution shall identify the public, educational, and operational interests served by any procurement rule or rules that deviate from those in the Virginia Public Procurement Act.

§ 56-573.1:1. Posting of conceptual proposals; public comment; public access to procurement records.

A. Conceptual proposals submitted in accordance with subsection A or B of § 56-560 to a responsible public entity shall be posted by the responsible public entity within 10 working days after acceptance of such proposals as follows:

1. For responsible public entities that are state agencies, *authorities*, departments, ~~and~~ institutions, ~~and other units of state government~~, posting shall be on the Department of General Service's ~~web-based Services' central electronic procurement program commonly known as "eVA;" website~~; and

2. For responsible public entities that are local public bodies, posting shall be on the responsible public entity's website or ~~by publication, on the Department of General Services' central electronic procurement website~~. *In addition, such public bodies may publish in a newspaper of general circulation in the area in which the contract is to be performed, of a summary of the proposals and the location where copies of the proposals are available for public inspection. Posting may also be on the Department of General Service's web-based electronic procurement program commonly known as "eVA," in the discretion of the local responsible public entity. Such local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.*

In addition to the posting requirements, at least one copy of the proposals shall be made available for public inspection. Nothing in this section shall be construed to prohibit the posting of the conceptual proposals by additional means deemed appropriate by the responsible public entity so as to provide maximum notice to the public of the opportunity to inspect the proposals. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the responsible public entity and the private entity.

B. In addition to the posting requirements of subsection A, for 30 days prior to entering into an interim or comprehensive agreement, a responsible public entity shall provide an opportunity for public comment on the proposals. The public comment period required by this subsection may include a public hearing in the sole discretion of the responsible public entity. After the end of the public comment period, no additional posting shall be required.

C. Once the negotiation phase for the development of an interim or a comprehensive agreement is complete and a decision to award has been made by a responsible public entity, the responsible public entity shall present the major business points of the interim or comprehensive agreement, including the use of any public funds, to its oversight board at a regularly scheduled meeting of the board that is open to the public.

D. Once an interim agreement or a comprehensive agreement has been entered into, a responsible public entity shall make procurement records available for public inspection, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). For the purposes of this subsection, procurement records shall not be interpreted to include (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or (ii) financial records, including balance sheets or financial statements of the private entity that are not generally available to the public through regulatory disclosure or otherwise.

E. Cost estimates relating to a proposed procurement transaction prepared by or for a responsible public entity shall not be open to public inspection.

F. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

G. The provisions of this section shall apply to accepted proposals regardless of whether the process of bargaining will result in an interim or a comprehensive agreement.

§ 56-575.17. Posting of conceptual proposals; public comment; public access to procurement records.

A. Conceptual proposals submitted in accordance with subsection A or B of § 56-575.4 to a responsible public entity shall be posted by the responsible public entity within 10 working days after acceptance of such proposals as follows:

1. For responsible public entities that are state agencies, *authorities*, departments, and institutions, and other units of state government, posting shall be on the Department of General Service's web-based *Services' centralized* electronic procurement program commonly known as "eVA;" website; and

2. For responsible public entities that are local bodies, posting shall be on the responsible public entity's website or ~~by publication, on the Department of General Services' central electronic procurement website.~~ *In addition, such public bodies may publish in a newspaper of general circulation in the area in which the contract is to be performed, of a summary of the proposals and the location where copies of the proposals are available for public inspection. Posting may also be on the Department of General Service's web-based electronic procurement program commonly known as "eVA," in the discretion of the local responsible public entity. Such local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.*

In addition to the posting requirements, at least one copy of the proposals shall be made available for public inspection. Nothing in this section shall be construed to prohibit the posting of the conceptual proposals by additional means deemed appropriate by the responsible public entity so as to provide maximum notice to the public of the opportunity to inspect the proposals. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the responsible public entity and the private entity.

B. The responsible public entity shall hold a public hearing on the proposals during the proposal review process, but not later than 30 days prior to entering into an interim or comprehensive agreement.

C. Once the negotiation phase for the development of an interim or a comprehensive agreement is complete, but before an interim agreement or a comprehensive agreement is entered into, a responsible public entity shall make available the proposed agreement in a manner provided in subsection A.

D. Once an interim agreement or a comprehensive agreement has been entered into, a responsible public entity shall make procurement records available for public inspection, upon request. For the purposes of this subsection, procurement records shall not be interpreted to include (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or (ii) financial records, including balance sheets or financial statements of the private entity that are not generally available to the public through regulatory disclosure or otherwise.

E. Cost estimates relating to a proposed procurement transaction prepared by or for a responsible public entity shall not be open to public inspection.

F. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

G. The provisions of this section shall apply to accepted proposals regardless of whether the process of bargaining will result in an interim or a comprehensive agreement.