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**SENATE BILL NO. 260**

Offered January 11, 2012

Prefiled January 10, 2012

*A BILL to amend and reenact §§ 2.2-4303, 2.2-4304, 2.2-4343, 2.2-5005, 15.2-5102.1, and 15.2-6314.1 of the Code of Virginia, relating to the Virginia Public Procurement Act; use of the best value contracting by certain localities.*

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 Referred to Committee on General Laws and Technology
 

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

**1. That §§ 2.2-4303, 2.2-4304, 2.2-4343, 2.2-5005, 15.2-5102.1, and 15.2-6314.1 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 of highways and any draining, dredging, excavation, grading or similar work upon real property;

3. By any governing body of a locality with a population in excess of 100,000, provided 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 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

4. As otherwise provided in § 2.2-4308.

E. *In addition to the provisions of subsection D, any governing body of a locality with a population in excess of 100,000 may procure construction on a best value procurement basis wherein price as a factor shall be weighted at least 51 percent. The Request for Proposal shall contain a notice to potential offerors that the procurement decision will be made on a best value procurement basis. The Request for Proposal shall describe the (i) criteria that will be considered in evaluating the proposals, and (ii) the rating or weighting system that will be used in evaluating the proposals, including a disclosure that price will be weighted at least 51 percent as a factor.*

F. 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 on the Department of General Services'

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SB260

central electronic procurement website or other appropriate websites, and 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. 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.

~~F.G.~~ 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 on the Department of General Services' central electronic procurement website or other appropriate websites, and 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. 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.

~~G.H.~~ 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 \$100,000; 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 (i) written informal solicitation of a minimum of four bidders or offerors and (ii) posting of a public notice on the Department of General Services' central electronic procurement website or other appropriate websites. 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.

~~H.I.~~ A public body may establish purchase procedures, if adopted in writing, not requiring competitive negotiation for single or term contracts for 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.

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

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

§ 2.2-4304. Cooperative procurement.

A. Any public body may participate in, sponsor, conduct, or administer a cooperative procurement agreement on behalf of or in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, the District of Columbia, or the U.S. General Services Administration, for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods and services.

A public body may purchase from another public body's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies, except for:

1. Contracts for architectural or engineering services; or

2. Construction in excess of \$200,000 by a local public body from the contract of another local public body that is more than a straight line distance of 75 miles from the territorial limits of the local public body procuring the construction. The installation of artificial turf or other athletic surfaces shall not be subject to the limitations prescribed in this subdivision. Nothing in this subdivision shall be construed to prohibit sole source or emergency procurements awarded pursuant to subsections ~~E~~ and ~~F~~ F

and G of § 2.2-4303.

In instances where any authority, department, agency, or institution of the Commonwealth desires to purchase information technology and telecommunications goods and services from another public body's contract and the procurement was conducted on behalf of other public bodies, such purchase shall be permitted if approved by the Chief Information Officer of the Commonwealth. Any public body that enters into a cooperative procurement agreement with a county, city, or town whose governing body has adopted alternative policies and procedures pursuant to subdivisions A 9 and A 10 of § 2.2-4343 shall comply with the alternative policies and procedures adopted by the governing body of such county, city, or town.

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

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

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

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

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

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

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

§ 2.2-4343. Exemption from operation of chapter for certain transactions.

A. The provisions of this chapter shall not apply to:

1. The Virginia Port Authority in the exercise of any of its powers in accordance with Chapter 10 (§ 62.1-128 et seq.) of Title 62.1, provided the Authority implements, by policy or regulation adopted by the Board of Commissioners and approved by the Department of General Services, procedures to ensure fairness and competitiveness in the procurement of goods and services and in the administration of its capital outlay program. This exemption shall be applicable only so long as such policies and procedures meeting the requirements remain in effect.

2. The Virginia Retirement System for selection of services related to the management, purchase or sale of authorized investments, actuarial services, and disability determination services. Selection of these services shall be governed by the standard set forth in § 51.1-124.30.

3. The State Treasurer in the selection of investment management services related to the external management of funds shall be governed by the standard set forth in § 2.2-4514, and shall be subject to competitive guidelines and policies that are set by the Commonwealth Treasury Board and approved by the Department of General Services.

4. The Department of Social Services or local departments of social services for the acquisition of motor vehicles for sale or transfer to Temporary Assistance to Needy Families (TANF) recipients.

5. The College of William and Mary in Virginia, Virginia Commonwealth University, the University

182 of Virginia, and Virginia Polytechnic Institute and State University in the selection of services related to  
183 the management and investment of their endowment funds, endowment income, gifts, all other  
184 nongeneral fund reserves and balances, or local funds of or held by the College or Universities pursuant  
185 to § 23-44.1, 23-50.10:01, 23-76.1, or 23-122.1. However, selection of these services shall be governed  
186 by the Uniform Prudent Management of Institutional Funds Act (§ 55-268.11 et seq.) as required by  
187 §§ 23-44.1, 23-50.10:01, 23-76.1, and 23-122.1.

188 6. The Board of the Virginia College Savings Plan for the selection of services related to the  
189 operation and administration of the Plan, including, but not limited to, contracts or agreements for the  
190 management, purchase, or sale of authorized investments or actuarial, record keeping, or consulting  
191 services. However, such selection shall be governed by the standard set forth in § 23-38.80.

192 7. Public institutions of higher education for the purchase of items for resale at retail bookstores and  
193 similar retail outlets operated by such institutions. However, such purchase procedures shall provide for  
194 competition where practicable.

195 8. The purchase of goods and services by agencies of the legislative branch that may be specifically  
196 exempted therefrom by the Chairman of the Committee on Rules of either the House of Delegates or the  
197 Senate. Nor shall the contract review provisions of § 2.2-2011 apply to such procurements. The  
198 exemption shall be in writing and kept on file with the agency's disbursement records.

199 9. Any town with a population of less than 3,500, except as stipulated in the provisions of  
200 §§ 2.2-4305, 2.2-4308, 2.2-4311, 2.2-4315, 2.2-4330, 2.2-4333 through 2.2-4338, 2.2-4343.1, and  
201 2.2-4367 through 2.2-4377.

202 10. Any county, city or town whose governing body has adopted, by ordinance or resolution,  
203 alternative policies and procedures which are (i) based on competitive principles and (ii) generally  
204 applicable to procurement of goods and services by such governing body and its agencies, except as  
205 stipulated in subdivision 12.

206 This exemption shall be applicable only so long as such policies and procedures, or other policies  
207 and procedures meeting the requirements of § 2.2-4300, remain in effect in such county, city or town.  
208 Such policies and standards may provide for incentive contracting that offers a contractor whose bid is  
209 accepted the opportunity to share in any cost savings realized by the locality when project costs are  
210 reduced by such contractor, without affecting project quality, during construction of the project. The fee,  
211 if any, charged by the project engineer or architect for determining such cost savings shall be paid as a  
212 separate cost and shall not be calculated as part of any cost savings.

213 11. Any school division whose school board has adopted, by policy or regulation, alternative policies  
214 and procedures that are (i) based on competitive principles and (ii) generally applicable to procurement  
215 of goods and services by the school board, except as stipulated in subdivision 12.

216 This exemption shall be applicable only so long as such policies and procedures, or other policies or  
217 procedures meeting the requirements of § 2.2-4300, remain in effect in such school division. This  
218 provision shall not exempt any school division from any centralized purchasing ordinance duly adopted  
219 by a local governing body.

220 12. Notwithstanding the exemptions set forth in subdivisions 9 through 11, the provisions of  
221 subsections C and D of § 2.2-4303, and §§ 2.2-4305, 2.2-4308, 2.2-4311, 2.2-4315, 2.2-4317, 2.2-4330,  
222 2.2-4333 through 2.2-4338, 2.2-4343.1, and 2.2-4367 through 2.2-4377 shall apply to all counties, cities  
223 and school divisions, and to all towns having a population greater than 3,500 in the Commonwealth.

224 The method for procurement of professional services set forth in subdivision 3 a of § 2.2-4301 in the  
225 definition of competitive negotiation shall also apply to all counties, cities and school divisions, and to  
226 all towns having a population greater than 3,500, where the cost of the professional service is expected  
227 to exceed \$50,000 in the aggregate or for the sum of all phases of a contract or project. For  
228 procurements where the cost of the professional service is not expected to exceed \$50,000 in the  
229 aggregate or for the sum of all phases of a contract or project, subsection H I of § 2.2-4303 shall apply.  
230 A school board that makes purchases through its public school foundation or purchases educational  
231 technology through its educational technology foundation, either as may be established pursuant to  
232 § 22.1-212.2:2 shall be exempt from the provisions of this chapter, except, relative to such purchases,  
233 the school board shall comply with the provisions of §§ 2.2-4311 and 2.2-4367 through 2.2-4377.

234 13. A public body that is also a utility operator may purchase services through or participate in  
235 contracts awarded by one or more utility operators that are not public bodies for utility marking services  
236 as required by the Underground Utility Damage Prevention Act (§ 56-265.14 et seq.). A purchase of  
237 services under this subdivision may deviate from the procurement procedures set forth in this chapter  
238 upon a determination made in advance by the public body and set forth in writing that competitive  
239 sealed bidding is either not practicable or not fiscally advantageous to the public, and the contract is  
240 awarded based on competitive principles.

241 14. Procurement of any construction or planning and design services for construction by a Virginia  
242 nonprofit corporation or organization not otherwise specifically exempted when (i) the planning, design  
243 or construction is funded by state appropriations of \$10,000 or less or (ii) the Virginia nonprofit

corporation or organization is obligated to conform to procurement procedures that are established by federal statutes or regulations, whether those federal procedures are in conformance with the provisions of this chapter.

15. Purchases, exchanges, gifts or sales by the Citizens' Advisory Council on Furnishing and Interpreting the Executive Mansion.

16. The Eastern Virginia Medical School in the selection of services related to the management and investment of its endowment and other institutional funds. The selection of these services shall, however, be governed by the Uniform Prudent Management of Institutional Funds Act (§ 55-268.11 et seq.).

17. The Department of Corrections in the selection of pre-release and post-incarceration services.

18. The Board of the Chippokes Plantation Farm Foundation in entering into agreements with persons for the construction, operation, and maintenance of projects consistent with the Chippokes Plantation State Park Master Plan approved by the Director of the Department of Conservation and Recreation pursuant to the requirements of § 10.1-200.1 and designed to further an appreciation for rural living and the contributions of the agricultural, forestry, and natural resource based industries of the Commonwealth, provided such projects are supported solely by private or nonstate funding.

19. The University of Virginia Medical Center to the extent provided by subdivision B 3 of § 23-77.4.

20. The purchase of goods and services by a local governing body or any authority, board, department, instrumentality, institution, agency or other unit of state government when such purchases are made under a remedial plan established by the Governor pursuant to subsection C of § 2.2-4310 or by a chief administrative officer of a county, city or town pursuant to § 15.2-965.1.

21. The contract by community services boards or behavioral health authorities with an administrator or management body pursuant to a joint agreement authorized by § 37.2-512 or 37.2-615.

22. (Contingent expiration date, see note.) Procurement of any construction or planning and design services and contracts with or assigned to George Mason University by the corporation or other legal entity created by the board of visitors of George Mason University for the establishment and operation of the branch campus of George Mason University in the Republic of Korea, pursuant to § 23-91.29:1.

B. Where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the provisions of this chapter, a public body may comply with such federal requirements, notwithstanding the provisions of this chapter, only upon the written determination of the Governor, in the case of state agencies, or the governing body, in the case of political subdivisions, that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provision of this chapter in conflict with the conditions of the grant or contract.

§ 2.2-5005. Incentive performance benefits to certain public institutions of higher education.

As used in this section, unless the context requires a different meaning:

"Fiscal year of implementation" means the first full fiscal year for which the financial and administrative management and educational-related performance benchmarks described under § 23-9.6:1.01 are effective, as provided in a general appropriation act.

Beginning with the fiscal year that immediately follows the fiscal year of implementation and for all fiscal years thereafter, each public institution of higher education that (i) has been certified during the fiscal year by the State Council of Higher Education of Virginia pursuant to § 23-9.6:1.01 as having met the institutional performance benchmarks for public institutions of higher education and (ii) meets the conditions prescribed in subsection B of § 23-38.88, shall receive the following financial benefits:

1. Interest on the tuition and fees and other nongeneral fund Educational and General Revenues deposited into the State Treasury by the public institution of higher education, as provided in the appropriation act. Such interest shall be paid from the general fund and shall be an appropriate and equitable amount as determined and certified in writing by the Secretary of Finance to the Comptroller by the end of each fiscal year, or as soon thereafter as practicable;

2. Any unexpended appropriations of the public institution of higher education at the close of the fiscal year, which shall be reappropriated and allotted for expenditure by the institution in the immediately following fiscal year; and

3. A pro rata amount of the rebate due to the Commonwealth on credit card purchases of \$5,000 or less made during the fiscal year. The amount to be paid to each institution shall equal a pro rata share based upon its total transactions of \$5,000 or less using the credit card that is approved for use by all state agencies as compared to all transactions of \$5,000 or less using such card by all state agencies. The Comptroller shall determine the public institution's pro rata share and, as provided in the appropriation act, shall pay the institution by August 15, or as soon thereafter as practicable, of the fiscal year immediately following the year of certification.

The payment to an institution of its pro rata share under this subdivision shall also be applicable to

other rebate or refund programs in effect that are similar to that of the credit card rebate program described in this subdivision. The Secretary of Finance shall identify such other rebate or refund programs and shall determine the pro rata share to be paid to the public institution of higher education.

4. A rebate of any transaction fees for the prior fiscal year paid for sole source procurements made by the institution in accordance with subsection E F of § 2.2-4303, for using a vendor who is not registered with the Department of General Service's web-based electronic procurement program commonly known as "eVA", as provided in the appropriation act. Such rebate shall be certified by the Department of General Services and paid to each public institution by August 15, or as soon thereafter as practicable, of the fiscal year immediately following the year of certification.

§ 15.2-5102.1. (For contingent expiration, see Editor's note) Hampton Roads area refuse collection and disposal system authority.

Any authority, or any subsidiary thereof, organized pursuant to § 15.2-5102 to operate a refuse collection and disposal system that has among its members the Cities of Norfolk, Virginia Beach, Portsmouth, Chesapeake, and Franklin, and the Counties of Isle of Wight, Southampton, and Suffolk, shall, notwithstanding any other law to the contrary, comply with the following requirements:

1. Each locality that is a member of the authority shall be entitled to nominate individuals to fill one position on the Board of Directors (the Board) by submitting a list of three potential directors, each of whom shall possess general business knowledge and shall not be an elected official, to the Governor. The Governor shall then select and appoint one director from each of the lists of nominees prepared by the member localities. In addition, each member locality shall be authorized to directly appoint, upon a majority vote of the governing body of the member locality, one ex officio member of the Board who shall be an employee of the member locality. The members of the Board shall be appointed for terms of four years each. Vacancies occurring other than by expiration of a term shall be filled for the unexpired term. Vacancies shall be filled in the same manner as the original appointments. No member shall serve for more than two consecutive four-year terms, except that any member appointed to the unexpired term of another shall be eligible to serve two consecutive four-year terms.

2. The authority shall develop and maintain an overall strategic plan that shall cover a period of at least five years forward from the year in which it is submitted and approved by the Board. The plans shall be reviewed annually to determine whether amendments are needed. Any such amendments shall be submitted to the board of directors for approval.

3. The authority's core purpose shall be defined as "management of the safe and environmentally sound disposal of regional waste." The authority shall devote its time and effort to activities associated with its core purpose. A vote of a majority of the Board shall be required prior to undertaking any activities not associated with the authority's core purpose.

4. The authority shall develop and maintain a strategic operating plan identifying all elements of its core business units and core purpose, how each business and administrative unit will support the overall strategic plan, and how the authority will achieve its stated mission and core purpose. The strategic operating plan shall be subject to review and approval of the Board on an annual basis.

5. The authority shall consider outsourcing any or all functions that may result in reduced costs to the authority, and the authority shall annually issue requests for proposals that potentially reduce the costs of any of its programs. In addition, the authority shall accept and review any proposals under the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) that potentially reduce the costs of any of the authority's programs.

6. The authority shall evaluate its landfill capacity annually, taking into consideration and projecting future changes in the quantity of waste disposed of in its landfill, or landfills reasonably situated or contractually obligated to accept its waste.

7. The authority shall keep records of its costs, revenue, debts, and capital expenses by fiscal year for each program. The authority shall also keep records of costs for each individual capital project.

8. The authority shall maintain a detailed financing plan that shall include a plan for the retirement of all debt and a plan for the funding of all planned capital projects. The plan for the funding of all planned capital projects shall specify the amount of debt the authority will issue in furtherance of the projects and the debt repayment plan for any new debt created by the capital projects, including the revenue source that will be used to repay the debt. The detailed financing plan shall be updated and approved annually by the Board and reviewed and certified annually by an external certified public accountant.

9. Prior to issuance of new debt, the Board shall perform a due diligence investigation of the appropriateness of issuing the debt, including an analysis of the costs of repaying the debt. Such analysis shall be certified by an external certified public accountant, reviewed by the Board, and approved by a vote of a minimum of 75 percent of the Board. The issuance of new debt shall require a vote of a minimum of 75 percent of the Board of Directors of the authority. The authority shall not issue long-term bond indebtedness to fund operational expenses. The provisions of this subdivision shall not apply to the issuance of new debt issued for the purpose of refunding or refinancing debt incurred by

the authority prior to September 30, 2009.

10. In the interest of open and transparent government, the authority shall adhere strictly to the requirements of the Freedom of Information Act (§ 2.2-3700 et seq.).

11. The executive director of the authority shall not be permitted to execute or commit the authority to any contract, memorandum of agreement or memorandum of understanding without an informed vote of approval by the Board. This subdivision shall not apply in the case of (i) contracts for the purchase of goods and services for an aggregate sum of less than \$30,000, which are subject to the Virginia Procurement Act (Va. Code § 2.2-4300 et seq.) but exempted from competitive negotiation or competitive sealed bidding by a duly adopted policy of the Board and (ii) sole source and emergency procurements made pursuant to subsections ~~E~~ and ~~F~~ *F and G* of § 2.2-4303.

§ 15.2-6314.1. Applicability of the Virginia Personnel Act and the Virginia Public Procurement Act.

A. Employees of an authority created by a locality shall be exempt from the provisions of the Virginia Personnel Act (§ 2.2-2900 et seq.) if (i) the locality has personnel policies and procedures that are consistent with the goals, objectives, and policies of the Virginia Personnel Act; and (ii) such authority adopts the locality's personnel policies and procedures. In any event, personnel actions shall be taken without regard to race, sex, color, national origin, religion, age, handicap, or political affiliation.

B. Any authority created under this chapter shall be subject to the terms of the Virginia Public Procurement Act (§ 2.2-4300 et seq.). Notwithstanding the foregoing, should the United States Department of Defense place a federal area on a list of installations to be closed or realigned under the authority granted to the United States Department of Defense pursuant to the federal Defense Base Closure And Realignment Act of 1990 (United States Public Law 101-501, as amended through the National Defense Authorization Act of Fiscal Year 2003), and such federal area is subject to the jurisdiction of an authority created by a locality, such listing of that installation shall qualify as an "emergency" under subsection ~~F~~ *G* of § 2.2-4303 of the Virginia Public Procurement Act.