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## HOUSE BILL NO. 2078

Offered January 9, 2013

Prefiled January 9, 2013

A BILL to amend and reenact §§ 2.2-4301, 2.2-4303, 2.2-4305 through 2.2-4308, 2.2-4343, 2.2-4345, 2.2-4364, and 23-38.110 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 2.2-4303.1 and 2.2-4359.1, relating to the public procurement; design-build; construction management; protests.

Patron—Peace

Referred to Committee on General Laws

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

1. That §§ 2.2-4301, 2.2-4303, 2.2-4305 through 2.2-4308, 2.2-4343, 2.2-4345, 2.2-4364, and 23-38.110 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 2.2-4303.1 and 2.2-4359.1 as follows:

**§ 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 30 days prior to the date set for receipt of proposals by posting on the Department of General Services' central electronic procurement website or other appropriate websites. Additionally, public bodies shall publish in a newspaper of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. 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, proposals may be solicited directly from potential contractors.

3. a. Procurement of professional services. The public body shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In addition, offerors shall be informed of any ranking criteria that will be used by the public body in addition to the review of the professional competence of the offeror. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the public body may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the public body shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning

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59 with the offeror ranked first. If a contract satisfactory and advantageous to the public body can be  
60 negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise,  
61 negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with  
62 the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable  
63 price. Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the  
64 Request for Proposal, a public body may award contracts to more than one offeror.

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

68 A contract for architectural or professional engineering services relating to construction projects may  
69 be negotiated by a public body, for multiple projects provided (i) the projects require similar experience  
70 and expertise, (ii) the nature of the projects is clearly identified in the Request for Proposal, and (iii) the  
71 contract term is limited to one year or when the cumulative total project fees reach the maximum cost  
72 authorized in this paragraph, whichever occurs first. For state public bodies, such contract, except those  
73 awarded for environmental, location, design and inspection work regarding highways and bridges by the  
74 Commissioner of Highways may be renewable for four additional one-year terms at the option of the  
75 public body. For local public bodies, including metropolitan planning organizations or planning district  
76 commissions, such contract may be renewable for four additional one-year terms at the option of the  
77 public body. Under such contract, (a) the fair and reasonable prices, as negotiated, shall be used in  
78 determining the cost of each project performed, (b) except those awarded for environmental, location,  
79 design and inspection work regarding highways and bridges by the Commissioner of Highways, the sum  
80 of all projects performed in one contract term shall not exceed \$500,000 or, in the case of a state  
81 agency, as defined in § 2.2-4347, such greater amount as may be determined by the Director of the  
82 Department of General Services, not to exceed \$1 million, except that in any locality or any authority,  
83 sanitation district, metropolitan planning organization or planning district commission with a population  
84 in excess of 80,000, the sum of all such projects shall not exceed \$5 million; and (c) except those  
85 awarded for environmental, location, design and inspection work regarding highways and bridges by the  
86 Commissioner of Highways or for architectural and engineering services for rail and public  
87 transportation projects by the Director of the Department of Rail and Public Transportation, the project  
88 fee of any single project shall not exceed \$100,000 or, in the case of a state agency, such greater  
89 amount as may be determined by the Director of the Department of General Services not to exceed  
90 \$200,000, except that in any locality or any authority or sanitation district with a population in excess of  
91 80,000, such fee shall not exceed \$1 million. Any unused amounts from the first contract term shall not  
92 be carried forward to the additional term. Competitive negotiations for such contracts may result in  
93 awards to more than one offeror provided (1) the Request for Proposal so states and (2) the public body  
94 has established procedures for distributing multiple projects among the selected contractors during the  
95 contract term. Notwithstanding any other provision in this section, for contracts for environmental  
96 location, design and inspection work regarding highways and bridges by the Commissioner of Highways,  
97 the initial contract term shall be limited to two years or when the cumulative total project fees reach \$5  
98 million, whichever occurs first. Such contract may be renewable for two additional one-year terms at the  
99 option of the Commissioner, and the sum of all projects in each one-year term shall not exceed \$5  
100 million. For architectural and engineering services for rail and public transportation projects by the  
101 Director of the Department of Rail and Public Transportation, the sum of all projects in one contract  
102 term shall not exceed \$2 million and such contract may be renewable for two additional one-year terms  
103 at the option of the Commissioner.

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

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

117 b. Procurement of other than professional services. Selection shall be made of two or more offerors  
118 deemed to be fully qualified and best suited among those submitting proposals, on the basis of the  
119 factors involved in the Request for Proposal, including price if so stated in the Request for Proposal.  
120 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. *In considering competing proposals, the public body shall give significant consideration to the lowest price proposal. In the event the public body fails to award to the offeror with the lowest price proposal, the public body shall document in writing its reasons for so doing, which document shall be posted on the Department of General Services' central electronic procurement website.* 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. *In such event, the public body shall document in writing its reasons for so doing, which document shall be posted on the Department of General Services' central electronic procurement website.*

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

"Construction management contract" means a contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner. *Construction management contracts shall be used only for projects in which competitive sealed bidding is either not practical or not fiscally advantageous to the public body, and (i) expediting the construction is necessary to meet the requirements of the public body or (ii) value engineering or constructability analysis is necessary to meet the requirements of the public body. Prior to soliciting proposals for a construction management contract, the public body shall set forth in writing the specific reasons why it is necessary to use a construction manager for the particular project in question, and such reasons shall be also included in the Request for Proposal. Construction management contracts shall require the construction manager to commence its services not later than the schematic design phase of the project. Any guaranteed maximum price construction management contract entered into by any public body shall require that (a) not more than 10 percent of the construction work, as measured by its cost, shall be performed by the construction manager with its own employees or employees of entities it controls and of which it owns any portion and (b) the remaining 90 percent of the construction work shall be performed by subcontractors to the construction manager, which subcontractors have been procured by competitive sealed bidding to the maximum extent practicable. The public body and the construction manager shall document in the public body's file for the project the reason any subcontracted work is not procured through competitive sealed bidding.*

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

182 specified in the contract. *Prior to soliciting proposals for a design-build contract, the public body shall*  
183 *set forth in writing the specific reasons why it is necessary to use design-build for the particular project*  
184 *in question. The specific reasons shall also be included in the Request for Proposal.*

185 "Employment services organization" means an organization that provides employment services to  
186 individuals with disabilities that is an approved Commission on the Accreditation of Rehabilitation  
187 Facilities (CARF) accredited vendor of the Department for Aging and Rehabilitative Services.

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

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

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

196 "Nonprofessional services" means any services not specifically identified as professional services in  
197 the definition of professional services.

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

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

208 "Public body" means any legislative, executive or judicial body, agency, office, department, authority,  
209 post, commission, committee, institution, board or political subdivision created by law to exercise some  
210 sovereign power or to perform some governmental duty, and empowered by law to undertake the  
211 activities described in this chapter. "Public body" shall include any metropolitan planning organization or  
212 planning district commission which operates exclusively within the Commonwealth of Virginia.

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

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

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

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

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

228 **§ 2.2-4303. Methods of procurement.**

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

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

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

237 Upon a written determination made in advance by (i) the Governor or his designee in the case of a  
238 procurement by the Commonwealth or by a department, agency or institution thereof or (ii) the local  
239 governing body in the case of a procurement by a political subdivision of the Commonwealth, that  
240 competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured  
241 through a licensed agent or broker selected in the manner provided for the procurement of things other  
242 than professional services in subdivision 3 b of the definition of "competitive negotiation" in § 2.2-4301.  
243 The basis for this determination shall be documented in writing.

D. ~~Construction~~ *Except as provided in § 2.2-4303.1, 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. 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' 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. ~~In~~ *Notwithstanding the provisions of § 2.2-4303.1, 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. 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. For local public bodies, such purchase procedures may allow for single or term contracts for professional services without requiring competitive negotiation, provided the aggregate or the sum of all phases is not expected to exceed \$60,000.

For state public bodies, 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. All public bodies proceeding with purchases under this subsection shall post 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. A state 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

305 of all phases is not expected to exceed \$50,000; however such small purchase procedures shall provide  
306 for competition wherever practicable.

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

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

318 **§ 2.2-4303.1. Procurement of construction by competitive negotiation.**

319 A. Construction may be procured by competitive negotiation only (i) for single or term contracts  
320 where the aggregate cost of all phases of the work is expected to exceed \$10 million or (ii) for single or  
321 term contracts where the aggregate cost of all phases of the work is not expected to exceed \$10 million  
322 and the unusual complexity of the project or other extraordinary circumstance necessitates the use of  
323 competitive negotiation:

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

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

328 3. By any governing body of a locality with a population in excess of 100,000, provided that the  
329 locality has the personnel, procedures, and expertise to enter into a contract for construction on a fixed  
330 price or not-to-exceed price design-build or construction management basis and shall otherwise be in  
331 compliance with the provisions of this section, § 2.2-4308, and other applicable laws governing  
332 design-build or construction management contracts for public bodies other than the Commonwealth. The  
333 procedures of the local governing body shall be consistent with the two-step competitive negotiation  
334 process established in § 2.2-4301; or

335 4. As otherwise set forth in § 2.2-4308.

336 B. For the purposes of clause (ii) of subsection A, however, the public body shall first obtain the  
337 written certification of the Director of the Department of General Services and the Secretary of  
338 Administration that the unusual complexity of the project or other extraordinary circumstance  
339 necessitates the use of competitive negotiation.

340 C. In either case, the public body shall make a determination in advance and set forth in writing  
341 that competitive sealed bidding is neither practicable nor fiscally advantageous to the public, which  
342 writing shall document the basis for this determination.

343 **§ 2.2-4305. Competitive procurement by localities on state-aid projects.**

344 No contract for the construction of any building or for an addition to or improvement of an existing  
345 building by any local governing body or subdivision thereof for which state funds of not more than  
346 \$50,000 in the aggregate or for the sum of all phases of a contract or project either by appropriation,  
347 grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let  
348 except after competitive sealed bidding under subsection D of § 2.2-4303 or after competitive  
349 negotiation as provided under subsection D of § 2.2-4303 § 2.2-4303.1. The procedure for the  
350 advertising for bids or for proposals and for letting of the contract shall conform, mutatis mutandis, to  
351 this chapter.

352 **§ 2.2-4306. Design-build or construction management contracts for Commonwealth authorized.**

353 A. Notwithstanding any other provisions of law, the Commonwealth may enter into contracts on a  
354 fixed price design-build basis or construction management basis in accordance with the provisions of  
355 this section and §§ 2.2-1502 and 2.2-4303.1. Procedures to implement this section and any changes to  
356 such procedures shall be adopted by the Secretary of Administration after a public hearing and reviewed  
357 by the House Committee on Appropriations and the Senate Committee on Finance.

358 B. Procurement of construction by the design-build or the construction management method shall be  
359 a two-step competitive negotiation process. In the first step, offerors shall be requested to submit their  
360 qualifications. Based upon the information submitted and any other relevant information which the  
361 Commonwealth may obtain, no more than five all qualified offerors deemed most suitable for the  
362 project shall be selected by the Commonwealth and requested to submit proposals. In procuring  
363 construction by the design-build or construction management method, the Commonwealth shall:

364 1. Establish and set forth in the request for qualifications the minimum standards an offeror must  
365 meet to qualify to submit a proposal;

366 2. Conduct a debriefing with each offeror to disclose the results of the qualification review and

explain the reasons for qualifying certain offerors and not others; and

3. Conduct a debriefing to explain why the contract was awarded to the successful offeror if requested by another offeror.

C. For competing proposals for a construction management project, an offeror's relevant experience on projects of a similar type and scope shall be considered. The public body, however, shall not consider whether an offeror has previous construction management experience.

D. For a design-build project, the Commonwealth may give weight to an offeror's prior design-build experience, but it shall not give weight to whether such experience was on a project of a similar type and scope.

E. Design-build contracts may be used by the Commonwealth only for those types of construction projects designated in the procedures adopted by the Secretary of Administration to implement this section.

**§ 2.2-4307. Fixed-price or not-to-exceed-price design-build and construction management contracts for juvenile correctional facilities authorized.**

Notwithstanding the provisions of § 2.2-4306, but subject to § 2.2-4303.1 and the procedures adopted by the Secretary of Administration to implement the provisions of that section, the Commonwealth may enter into contracts for juvenile correctional facilities on a fixed-price or not-to-exceed-price design-build basis or construction management basis, including related leases, lease/purchase contracts, agreements relating to the sale of securities to finance such facilities, and similar financing agreements.

**§ 2.2-4308. Design-build or construction management contracts for public bodies other than the Commonwealth; eligibility requirements; award of contract; records to be kept.**

A. While the competitive sealed bid process remains the preferred method of construction procurement for public bodies in the Commonwealth, any public body other than the Commonwealth may, *subject to the requirements of § 2.2-4303.1*, enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis provided the public body (i) complies with the requirements of this section and (ii) has, *prior to issuing a Request for Proposal for a design-build or construction management contract, adopted and implemented written procedures, after a public hearing* consistent with the procedures adopted by the Secretary of Administration for utilizing design-build or construction management contracts.

Prior to making a determination as to the use of design-build or construction management for a specific construction project, the public body shall have in its employ or under contract a licensed architect or engineer with professional competence appropriate to the project who shall advise the public body regarding the use of design-build or construction management for that project and who shall assist the public body with the preparation of the Request for Proposal and the evaluation of such proposals.

Prior to issuing a Request for Proposal for any design-build or construction management contract for a specific construction project, the public body shall:

1. Have adopted, by ordinance or resolution, written procedures governing the selection, evaluation and award of design-build and construction management contracts. Such procedures shall be consistent with (i) those described in this chapter for the procurement of nonprofessional services through competitive negotiation and (ii) *the requirements of § 2.2-4306*. Such procedures shall also require Requests for Proposals to include and define the criteria of such construction project in areas such as site plans; floor plans; exterior elevations; basic building envelope materials; fire protection information plans; structural, mechanical (HVAC), and electrical systems; and special telecommunications; and may define such other requirements as the public body determines appropriate for that particular construction project. Such procedures for:

a. Design-build construction projects shall include a two-step competitive negotiation process consistent with the standards established by the Division of Engineering and Buildings of the Department of General Services for state agencies.

b. Construction management projects shall include selection procedures and required construction management contract terms consistent with the procedures as adopted by the Secretary of Administration.

2. Have documented in writing that for a specific construction project (i) a design-build or construction management contract is more advantageous than a competitive sealed bid construction contract; (ii) there is a benefit to the public body by using a design-build or construction management contract; and (iii) competitive sealed bidding is not practical or fiscally advantageous.

B. The contract shall be awarded to the fully qualified offeror who submits an acceptable proposal determined to be the best value in response to the Request for Proposal.

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

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

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

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

9. Any town with a population of less than 3,500, except as stipulated in the provisions of §§ 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 2.2-4367 through 2.2-4377.

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

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

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

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

12. Notwithstanding the exemptions set forth in subdivisions 9 through 11, the provisions of subsections C and D of § 2.2-4303, and §§ 2.2-4303.1, 2.2-4305, 2.2-4308, 2.2-4311, 2.2-4315, 2.2-4317, 2.2-4330, 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 and school divisions, and to all towns having a population greater than 3,500 in the Commonwealth.

The method for procurement of professional services set forth in subdivision 3 a of § 2.2-4301 in the definition of competitive negotiation shall also apply to all counties, cities and school divisions, and to all towns having a population greater than 3,500, where the cost of the professional service is expected to exceed \$60,000 in the aggregate or for the sum of all phases of a contract or project. A school board that makes purchases through its public school foundation or purchases educational technology through



its educational technology foundation, either as may be established pursuant to § 22.1-212.2:2 shall be exempt from the provisions of this chapter, except, relative to such purchases, the school board shall comply with the provisions of §§ 2.2-4311 and 2.2-4367 through 2.2-4377.

13. A public body that is also a utility operator may purchase services through or participate in contracts awarded by one or more utility operators that are not public bodies for utility marking services as required by the Underground Utility Damage Prevention Act (§ 56-265.14 et seq.). A purchase of services under this subdivision may deviate from the procurement procedures set forth in this chapter 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, and the contract is awarded based on competitive principles.

14. Procurement of any construction or planning and design services for construction by a Virginia nonprofit corporation or organization not otherwise specifically exempted when (i) the planning, design 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 University of Virginia Medical Center to the extent provided by subdivision B 3 of § 23-77.4.

19. 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.

20. 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.

21. (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.

**§ 2.2-4345. Exemptions from competitive sealed bidding and competitive negotiation for certain transactions; limitations.**

A. The following public bodies may enter into contracts without competitive sealed bidding or competitive negotiation:

1. The Director of the Department of Medical Assistance Services for special services provided for eligible recipients pursuant to subsection H of § 32.1-325, provided that the Director has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public, or would constitute an imminent threat to the health or welfare of such recipients. The writing shall document the basis for this determination.

2. The State Health Commissioner for the compilation, storage, analysis, evaluation, and publication of certain data submitted by health care providers and for the development of a methodology to measure the efficiency and productivity of health care providers pursuant to Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1, if the Commissioner has made a determination in advance, after reasonable notice to the public and set forth in writing, that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public. The writing shall document the basis for this determination. Such agreements and contracts shall be based on competitive principles.

3. The Virginia Code Commission when procuring the services of a publisher, pursuant to §§ 30-146 and 30-148, to publish the Code of Virginia or the Virginia Administrative Code.

551 4. The Department of Alcoholic Beverage Control for the purchase of alcoholic beverages.  
552 5. The Department for Aging and Rehabilitative Services, for the administration of elder rights  
553 programs, with (i) nonprofit Virginia corporations granted tax-exempt status under § 501(c)(3) of the  
554 Internal Revenue Code with statewide experience in Virginia in conducting a state long-term care  
555 ombudsman program or (ii) designated area agencies on aging.  
556 6. The Department of Health for (a) child restraint devices, pursuant to § 46.2-1097; (b) health care  
557 services with Virginia corporations granted tax-exempt status under § 501(c)(3) of the Internal Revenue  
558 Code and operating as clinics for the indigent and uninsured that are organized for the delivery of  
559 primary health care services in a community (i) as federally qualified health centers designated by the  
560 Health Care Financing Administration or (ii) at a reduced or sliding fee scale or without charge; or (c)  
561 contracts with laboratories providing cytology and related services if competitive sealed bidding and  
562 competitive negotiations are not fiscally advantageous to the public to provide quality control as  
563 prescribed in writing by the Commissioner of Health.  
564 7. Virginia Correctional Enterprises, when procuring materials, supplies, or services for use in and  
565 support of its production facilities, provided the procurement is accomplished using procedures that  
566 ensure as efficient use of funds as practicable and, at a minimum, includes obtaining telephone  
567 quotations. Such procedures shall require documentation of the basis for awarding contracts under this  
568 section.  
569 8. The Virginia Baseball Stadium Authority for the operation of any facilities developed under the  
570 provisions of Chapter 58 (§ 15.2-5800 et seq.) of Title 15.2, including contracts or agreements with  
571 respect to the sale of food, beverages and souvenirs at such facilities.  
572 9. With the consent of the Governor, the Jamestown-Yorktown Foundation for the promotion of  
573 tourism through marketing with private entities provided a demonstrable cost savings, as reviewed by  
574 the Secretary of Education, can be realized by the Foundation and such agreements or contracts are  
575 based on competitive principles.  
576 10. The Chesapeake Hospital Authority in the exercise of any power conferred under Chapter 271, as  
577 amended, of the Acts of Assembly of 1966, provided that it does not discriminate against any person on  
578 the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions,  
579 age, marital status, or disability in the procurement of goods and services.  
580 11. Richmond Eye and Ear Hospital Authority, any authorities created under Chapter 53 (§ 15.2-5300  
581 et seq.) of Title 15.2 and any hospital or health center commission created under Chapter 52  
582 (§ 15.2-5200 et seq.) of Title 15.2 in the exercise of any power conferred under their respective  
583 authorizing legislation, provided that these entities shall not discriminate against any person on the basis  
584 of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age,  
585 marital status, or disability in the procurement of goods and services.  
586 12. The Patrick Hospital Authority sealed in the exercise of any power conferred under the Acts of  
587 Assembly of 2000, provided that it does not discriminate against any person on the basis of race, color,  
588 religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or  
589 disability in the procurement of goods and services.  
590 13. Public bodies for insurance or electric utility services if purchased through an association of  
591 which it is a member if the association was formed and is maintained for the purpose of promoting the  
592 interest and welfare of and developing close relationships with similar public bodies, provided such  
593 association has procured the insurance or electric utility services by use of competitive principles and  
594 provided that the public body has made a determination in advance after reasonable notice to the public  
595 and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally  
596 advantageous to the public. The writing shall document the basis for this determination.  
597 14. Public bodies administering public assistance and social services programs as defined in  
598 § 63.2-100, community services boards as defined in § 37.2-100, or any public body purchasing services  
599 under the Comprehensive Services Act for At-Risk Youth and Families (§ 2.2-5200 et seq.) or the  
600 Virginia Juvenile Community Crime Control Act (§ 16.1-309.2 et seq.) for goods or personal services  
601 for direct use by the recipients of such programs if the procurement is made for an individual recipient.  
602 Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted  
603 from the requirements of § 2.2-4303.  
604 15. The Eastern Virginia Medical School in the exercise of any power conferred pursuant to Chapter  
605 471, as amended, of the Acts of Assembly of 1964.  
606 B. No contract for the construction of any building or for an addition to or improvement of an  
607 existing building by any local government or subdivision of local government for which state funds of  
608 not more than \$50,000 in the aggregate or for the sum of all phases of a contract or project either by  
609 appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction  
610 shall be let except after competitive sealed bidding or after competitive negotiation as provided under of  
611 subsection D of § 2.2-4303 or § 2.2-4303.1. The procedure for the advertising for bids or for proposals  
612 and for letting of the contract shall conform, mutatis mutandis, to this chapter.

**§ 2.2-4359.1. Protest of use of competitive negotiation.**

A. A potential or actual bidder or offeror who desires to protest a decision to use the competitive negotiation method of contractor selection shall submit the protest in writing to the public body, or an official designated by the public body, no later than 10 days after the issuance of the written Request for Proposal required by § 2.2-4301. If, however, the protest of any potential or actual bidder or offeror depends in whole or in part upon information contained in the public records pertaining to that procurement transaction that are subject to inspection under § 2.2-4342, then the time within which the protest shall be submitted shall expire 10 days after those records are available for inspection by such bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The public body or designated official shall issue a decision in writing within 10 days stating the reason for the action taken. The decision shall be final, unless bidder or offeror appeals within 10 days of receipt of the written decision by invoking the administrative procedures meeting the standards of § 2.2-4365, if available, or in the alternative by instituting legal action as provided in § 2.2-4364.

B. If prior to an award, it is determined that the use of the competitive negotiation method of contractor selection (i) was not an honest exercise of discretion, but rather was arbitrary or capricious, or (ii) was not in accordance with the Constitution of Virginia, applicable state law, or regulation, then the sole relief shall be a finding to that effect and the public body shall cancel the Request for Proposal.

C. If after an award, it is determined that use of the competitive negotiation method of contractor selection (i) was not an honest exercise of discretion, but rather was arbitrary or capricious, or (ii) was not in accordance with the Constitution of Virginia, applicable state law, or regulation, then the sole relief shall be a finding to that effect.

D. Where the award has been made but performance has not begun, the performance of the contract may be enjoined.

E. Where the award has been made and performance has begun, the public body shall declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

**§ 2.2-4364. Legal actions.**

A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract or whose protest under § 2.2-4359.1 is denied, may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in subsection B of § 2.2-4317. In the event the apparent low bidder, having been previously determined by the public body to be not responsible in accordance with § 2.2-4301, is found by the court to be a responsible bidder, the court may direct the public body to award the contract to such bidder in accordance with the requirements of this section and the Invitation to Bid.

B. A bidder denied withdrawal of a bid under § 2.2-4358 may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the public body was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid.

C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis in the manner provided in § 2.2-4303, whose protest of an award or decision to award under § 2.2-4360 is denied, may bring an action in the appropriate circuit court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.

D. If injunctive relief is granted, the court, upon request of the public body, shall require the posting of reasonable security to protect the public body.

E. A contractor may bring an action involving a contract dispute with a public body in the appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be named as a defendant in any action brought pursuant to this chapter or § 33.1-387, except for disputes involving contracts of the Office of the Comptroller or the Department of Accounts.

F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of § 2.2-4365, if available, but if those procedures are invoked by the bidder, offeror or contractor, the

674 procedures shall be exhausted prior to instituting legal action concerning the same procurement  
675 transaction unless the public body agrees otherwise.

676 G. Nothing herein shall be construed to prevent a public body from instituting legal action against a  
677 contractor.

678 **§ 23-38.110. Procurement; discrimination prohibited; participation of small, women-owned, and**  
679 **minority-owned business enterprises.**

680 A. Subject to the express provisions of the management agreement described in § 23-38.88 *for any*  
681 *capital project involving single or term contracts where the aggregate or sum of all phases is expected*  
682 *to exceed \$10 million*, covered institutions may be exempt from the provisions of the Virginia Public  
683 Procurement Act (§ 2.2-4300 et seq.), except for § 2.2-4342 (which section shall not be construed to  
684 require compliance with the prequalification application procedures of subsection B of § 2.2-4317);  
685 provided, however, that any deviations from the Virginia Public Procurement Act approved in a  
686 Management Agreement shall be uniform across all covered institutions; and provided further that the  
687 governing body of a covered institution shall adopt, and the covered institution shall comply with,  
688 policies for the procurement of goods and services, including professional services, that shall be based  
689 upon competitive principles and shall in each instance seek competition to the maximum practical  
690 degree. The policies shall implement a system of competitive negotiation for professional services  
691 pursuant to subdivisions 1, 2, and 3 a of the defined term "competitive negotiation" under § 2.2-4301,  
692 shall prohibit discrimination because of race, religion, color, sex or national origin of the bidder or  
693 offeror in the solicitation or award of contracts, shall incorporate the prompt payment principles of  
694 §§ 2.2-4350 and 2.2-4354, and shall consider the impact on correctional enterprises under § 53.1-47.

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

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

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