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HOUSE BILL NO. 1540

Offered January 14, 2015

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A BILL to amend and reenact §§ 2.2-2012, 2.2-4301, 2.2-4302.2, 2.2-4303, 2.2-4304, 2.2-4343, 23-38.110, and 33.2-283 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 2.2-4303.1 and 2.2-4303.2, relating to the Virginia Public Procurement Act; methods of procurement; job order contracting and cooperative procurement.

Patron—Albo

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-2012, 2.2-4301, 2.2-4302.2, 2.2-4303, 2.2-4304, 2.2-4343, 23-38.110, and 33.2-283 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 2.2-4303.2 as follows:

§ 2.2-2012. Procurement of information technology and telecommunications goods and services; computer equipment to be based on performance-based specifications.

A. Information technology and telecommunications goods and services of every description shall be procured by (i) VITA for its own benefit or on behalf of other state agencies and institutions or (ii) such other agencies or institutions to the extent authorized by VITA. Such procurements shall be made in accordance with the Virginia Public Procurement Act (§ 2.2-4300 et seq.), regulations that implement the electronic and information technology accessibility standards of the Rehabilitation Act of 1973 (29 U.S.C. § 794d), as amended, and any regulations as may be prescribed by VITA. In no case shall such procurements exceed the requirements of the regulations that implement the electronic and information technology accessibility standards of the Rehabilitation Act of 1973, as amended.

The CIO shall disapprove any procurement that does not conform to the Commonwealth strategic plan for information technology developed and approved pursuant to § 2.2-2007 or to the individual strategic plans of state agencies or public institutions of higher education.

B. All statewide contracts and agreements made and entered into by VITA for the purchase of communications services, telecommunications facilities, and information technology goods and services shall provide for the inclusion of counties, cities, and towns in such contracts and agreements. Notwithstanding the provisions of § 2.2-4301, 2.2-4302.1, 2.2-4302.2, 2.2-4303.1, or 2.2-4303.2, VITA may enter into multiple vendor contracts for the referenced services, facilities, and goods and services.

C. VITA may establish contracts for the purchase of personal computers and related devices by licensed teachers employed in a full-time teaching capacity in Virginia public schools or in state educational facilities for use outside the classroom. The computers and related devices shall not be purchased with public funds, but shall be paid for and owned by teachers individually provided that no more than one such computer and related device per year shall be so purchased.

D. If VITA, or any agency or institution authorized by VITA, elects to procure personal computers and related peripheral equipment pursuant to any type of blanket purchasing arrangement under which public bodies, as defined in § 2.2-4301, may purchase such goods from any vendor following competitive procurement but without the conduct of an individual procurement by or for the using agency or institution, it shall establish performance-based specifications for the selection of equipment. Establishment of such contracts shall emphasize performance criteria including price, quality, and delivery without regard to "brand name." All vendors meeting the Commonwealth's performance requirements shall be afforded the opportunity to compete for such contracts.

E. VITA shall allow private institutions of higher education chartered in Virginia and granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code to purchase directly from contracts established for state agencies and public bodies by VITA.

F. This section shall not be construed or applied so as to infringe upon, in any manner, the responsibilities for accounting systems assigned to the Comptroller under § 2.2-803.

§ 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

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59 members of the board of directors or similar governing body of the business or (ii) is convertible into,  
60 or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general  
61 partnership interest shall be deemed to be a voting security.

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

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

66 "Competitive negotiation" is the method of contractor selection set forth in § 2.2-4302.2.

67 "Competitive sealed bidding" is the method of contractor selection set forth in § 2.2-4302.1.

68 "Construction" means building, altering, repairing, improving or demolishing any structure, building  
69 or highway, and any draining, dredging, excavation, grading or similar work upon real property.

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

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

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

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

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

84 "Job order contracting" means a method of procuring construction services by establishing a book of  
85 unit prices and then obtaining a contractor to perform work as needed using the prices, quantities, and  
86 specifications in the book as the basis of its pricing. The contractor may be selected through either  
87 competitive sealed bidding or competitive negotiation depending on the needs of the public body  
88 procuring the construction services. A minimum amount of work may be specified in the contract. The  
89 contract term and the project amount shall not exceed the limitations specified in § ~~2.2-4302.2~~ or  
90 ~~2.2-4303~~ 2.2-4303.2.

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

94 "Nonprofessional services" means any services not specifically identified as professional services in  
95 the definition of professional services.

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

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

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

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

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

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

118 "Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified  
119 goods or nonprofessional services through real-time electronic bidding, with the award being made to  
120 the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed

121 and bidders shall have the opportunity to modify their bid prices for the duration of the time period  
 122 established for bid opening.

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

126 **§ 2.2-4302.2. Process for competitive negotiation.**

127 A. The process for competitive negotiation shall include the following:

128 1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be  
 129 procured, specifying the factors that will be used in evaluating the proposal and containing or  
 130 incorporating by reference the other applicable *proposed* contractual terms and conditions, including any  
 131 unique capabilities, specifications, or qualifications that will be required. *Any proposed contractual terms*  
 132 *and conditions shall be subject to negotiations after a selection of qualified offerors has been made in*  
 133 *accordance with this section;*

134 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of  
 135 proposals by posting on the Department of General Services' central electronic procurement website or  
 136 other appropriate websites. Additionally, public bodies shall publish in a newspaper of general  
 137 circulation in the area in which the contract is to be performed so as to provide reasonable notice to the  
 138 maximum number of offerors that can be reasonably anticipated to submit proposals in response to the  
 139 particular request. Posting on the Department of General Services' central electronic procurement website  
 140 shall be required of any state public body. Local public bodies are encouraged to utilize the Department  
 141 of General Services' central electronic procurement website to provide the public with centralized  
 142 visibility and access to the Commonwealth's procurement opportunities. In addition, proposals may be  
 143 solicited directly from potential contractors. Any additional solicitations shall include certified businesses  
 144 selected from a list made available by the Department of Small Business and Supplier Diversity; and

145 3. For goods, nonprofessional services, and insurance, selection shall be made of two or more  
 146 offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of  
 147 the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal.  
 148 Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but  
 149 need not be the sole or primary determining factor. After negotiations have been conducted with each  
 150 offeror so selected, the public body shall select the offeror which, in its opinion, has made the best  
 151 proposal and provides the best value, and shall award the contract to that offeror. When the terms and  
 152 conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more  
 153 than one offeror. Should the public body determine in writing and in its sole discretion that only one  
 154 offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under  
 155 consideration, a contract may be negotiated and awarded to that offeror; or

156 4. For professional services, the public body shall engage in individual discussions with two or more  
 157 offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with  
 158 emphasis on professional competence, to provide the required services. Repetitive informal interviews  
 159 shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and  
 160 performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In  
 161 addition, offerors shall be informed of any ranking criteria that will be used by the public body in  
 162 addition to the review of the professional competence of the offeror. The Request for Proposal shall not,  
 163 however, request that offerors furnish estimates of man-hours or cost for services. ~~At the discussion~~  
 164 ~~stage, the public body may discuss nonbinding estimates of total project costs, including, but not limited~~  
 165 ~~to, life-cycle costing, and where appropriate, nonbinding estimates of price for services.~~ In accordance  
 166 with § 2.2-4342, proprietary information from competing offerors shall not be disclosed to the public or  
 167 to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation  
 168 factors published in the Request for Proposal and all information developed in the selection process to  
 169 this point, the public body shall select in the order of preference two or more offerors whose  
 170 professional qualifications and proposed services are deemed most meritorious.

171 Negotiations, *including negotiations of the proposed contractual terms and conditions*, shall then be  
 172 conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the  
 173 public body can be negotiated at a price considered fair and reasonable, the award shall be made to that  
 174 offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and  
 175 negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated  
 176 at a fair and reasonable price.

177 Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the  
 178 Request for Proposal, a public body may award contracts to more than one offeror.

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

182 B. For multiple projects, a contract for architectural or professional engineering services relating to  
 183 construction projects, or a contract for job order contracting, may be negotiated by a public body,  
 184 provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly  
 185 identified in the Request for Proposal, and (iii) the contract is limited to a one-year term or when the  
 186 cumulative total project fees reach the maximum cost authorized in this subsection, whichever occurs  
 187 first.

188 Such contracts may be renewable for four additional one-year terms at the option of the public body.  
 189 The fair and reasonable prices as negotiated shall be used in determining the cost of each project  
 190 performed and the sum of all projects performed in a one-year contract term shall not exceed \$500,000,  
 191 except that for:

192 1. A state agency, as defined in § 2.2-4347, the sum of all projects performed in a one-year contract  
 193 term shall not exceed \$1 million as may be determined by the Director of the Department of General  
 194 Services;

195 2. Any locality or any authority, sanitation district, metropolitan planning organization or planning  
 196 district commission with a population in excess of 80,000, or any city within Planning District 8, the  
 197 sum of all projects performed in a one-year contract term shall not exceed \$5 million and those awarded  
 198 for any airport as defined in § 5.1-1 and aviation transportation projects, the sum of all such projects  
 199 shall not exceed \$1.5 million;

200 3. Architectural and engineering services for rail and public transportation projects by the Director of  
 201 the Department of Rail and Public Transportation, the sum of all projects in a one-year contract term  
 202 shall not exceed \$2 million. Such contract may be renewable for two additional one-year terms at the  
 203 option of the Director;

204 4. Environmental location, design and inspection work regarding highways and bridges by the  
 205 Commissioner of Highways, the initial contract term shall be limited to two years or when the  
 206 cumulative total project fees reach \$5 million, whichever occurs first. Such contract may be renewable  
 207 for two additional one-year terms at the option of the Commissioner, and the sum of all projects in each  
 208 one-year contract term shall not exceed \$5 million; and

209 5. Job order contracting, the sum of all projects performed in a one-year contract term shall not  
 210 exceed \$2 million.

211 Competitive negotiations for such contracts may result in awards to more than one offeror provided  
 212 (i) the Request for Proposal so states and (ii) the public body has established procedures for distributing  
 213 multiple projects among the selected contractors during the contract term.

214 C. For any single project, for (i) architectural or professional engineering services relating to  
 215 construction projects, or (ii) job order contracting, the project fee shall not exceed \$100,000, or for  
 216 architectural or engineering services for airports as defined in § 5.1-1 and aviation transportation  
 217 projects, the project fee of any single project shall not exceed \$500,000, except that for:

218 1. A state agency as defined in § 2.2-4347, the project fee shall not exceed \$200,000, as may be  
 219 determined by the Director of the Department of General Services;

220 2. Any locality or any authority or sanitation district with a population in excess of 80,000, or any  
 221 city within Planning District 8, the project fee shall not exceed \$2 million; and

222 3. Job order contracting, the project fee shall not exceed \$400,000.

223 D. For the purposes of subsections B and C, any unused amounts from the first contract term shall  
 224 not be carried forward to the additional term.

225 E. Multiphase professional services contracts satisfactory and advantageous to the completion of  
 226 large, phased, or long term long-term projects may be negotiated and awarded based on a fair and  
 227 reasonable price for the first phase only, where the completion of the earlier phases is necessary to  
 228 provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior  
 229 to the entering into any such contract, the public body shall (i) state the anticipated intended total scope  
 230 of the project and (ii) determine in writing that the nature of the work is such that the best interests of  
 231 the public body require awarding the contract.

232 **§ 2.2-4303. Methods of procurement.**

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

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

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

241 Upon a written determination made in advance by (i) the Governor or his designee in the case of a  
 242 procurement by the Commonwealth or by a department, agency or institution thereof or (ii) the local  
 243 governing body in the case of a procurement by a political subdivision of the Commonwealth, that

244 competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured  
245 through a licensed agent or broker selected in the manner provided for the procurement of things other  
246 than professional services set forth in § 2.2-4302.2. The basis for this determination shall be documented  
247 in writing.

248 D. Construction may be procured only by competitive sealed bidding, except that competitive  
249 negotiation may be used in the following instances upon a determination made in advance by the public  
250 body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally  
251 advantageous to the public, which writing shall document the basis for this determination:

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

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

256 3. By any governing body of a locality with a population in excess of 100,000, provided that the  
257 locality has the personnel, procedures, and expertise to enter into a contract for construction on a fixed  
258 price or not-to-exceed price design-build or construction management basis and shall otherwise be in  
259 compliance with the provisions of this section, § 2.2-4308, and other applicable law governing  
260 design-build or construction management contracts for public bodies other than the Commonwealth. The  
261 procedures of the local governing body shall be consistent with the two-step competitive negotiation  
262 process established in § 2.2-4302.2; or

263 4. As otherwise provided in § 2.2-4308.

264 E. Upon a determination in writing that there is only one source practicably available for that which  
265 is to be procured, a contract may be negotiated and awarded to that source without competitive sealed  
266 bidding or competitive negotiation. The writing shall document the basis for this determination. The  
267 public body shall issue a written notice stating that only one source was determined to be practicably  
268 available, and identifying that which is being procured, the contractor selected, and the date on which  
269 the contract was or will be awarded. This notice shall be posted on the Department of General Services'  
270 central electronic procurement website or other appropriate websites, and in addition, public bodies may  
271 publish in a newspaper of general circulation on the day the public body awards or announces its  
272 decision to award the contract, whichever occurs first. Posting on the Department of General Services'  
273 central electronic procurement website shall be required of any state public body. Local public bodies  
274 are encouraged to utilize the Department of General Services' central electronic procurement website to  
275 provide the public with centralized visibility and access to the Commonwealth's procurement  
276 opportunities.

277 F. In case of emergency, a contract may be awarded without competitive sealed bidding or  
278 competitive negotiation; however, such procurement shall be made with such competition as is  
279 practicable under the circumstances. A written determination of the basis for the emergency and for the  
280 selection of the particular contractor shall be included in the contract file. The public body shall issue a  
281 written notice stating that the contract is being awarded on an emergency basis, and identifying that  
282 which is being procured, the contractor selected, and the date on which the contract was or will be  
283 awarded. This notice shall be posted on the Department of General Services' central electronic  
284 procurement website or other appropriate websites, and in addition, public bodies may publish in a  
285 newspaper of general circulation on the day the public body awards or announces its decision to award  
286 the contract, whichever occurs first, or as soon thereafter as is practicable. Posting on the Department of  
287 General Services' central electronic procurement website shall be required of any state public body.  
288 Local public bodies are encouraged to utilize the Department of General Services' central electronic  
289 procurement website to provide the public with centralized visibility and access to the Commonwealth's  
290 procurement opportunities.

291 G. A public body may establish purchase procedures, if adopted in writing, not requiring competitive  
292 sealed bids or competitive negotiation for single or term contracts for (i) goods and services other than  
293 professional services and (ii) construction, if the aggregate or the sum of all phases is not expected to  
294 exceed \$100,000; however, such small purchase procedures shall provide for competition wherever  
295 practicable. ~~For local public bodies, such~~ Such purchase procedures may allow for single or term  
296 contracts for professional services without requiring competitive negotiation, provided the aggregate or  
297 the sum of all phases is not expected to exceed \$60,000. *Where small purchase procedures are adopted*  
298 *for construction, the procedures shall not waive compliance with the Uniform State Building Code.*

299 For state public bodies, purchases under this subsection that are expected to exceed \$30,000 shall  
300 require the (i) written informal solicitation of a minimum of four bidders or offerors and (ii) posting of  
301 a public notice on the Department of General Services' central electronic procurement website or other  
302 appropriate websites. Posting on the Department of General Services' central electronic procurement  
303 website shall be required of any state public body. Local public bodies are encouraged to utilize the  
304 Department of General Services' central electronic procurement website to provide the public with

305 centralized visibility and access to the Commonwealth's procurement opportunities.

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

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

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

321 **§ 2.2-4303.1. Architectural and professional engineering term contracting; limitations.**

322 A. A contract for architectural or professional engineering services relating to multiple construction  
 323 projects may be awarded by a public body, provided (i) the projects require similar experience and  
 324 expertise, (ii) the nature of the projects is clearly identified in the Request for Proposal, and (iii) the  
 325 contract is limited to a term of one year or when the cumulative total project fees reach the maximum  
 326 authorized in this section, whichever occurs first.

327 Such contracts may be renewable for four additional one-year terms at the option of the public body.  
 328 The fair and reasonable prices as negotiated shall be used in determining the cost of each project  
 329 performed.

330 B. The sum of all projects performed in a one-year contract term shall not exceed \$500,000, except  
 331 that for:

332 1. A state agency, as defined in § 2.2-4347, the sum of all projects performed in a one-year contract  
 333 term shall not exceed \$1 million;

334 2. Any locality or any authority, sanitation district, metropolitan planning organization, or planning  
 335 district commission with a population in excess of 80,000, or any city within Planning District 8, the  
 336 sum of all projects performed in a one-year contract term shall not exceed \$5 million and for any  
 337 airport as defined in § 5.1-1 and aviation transportation projects, the sum of all such projects shall not  
 338 exceed \$1.5 million;

339 3. Architectural and engineering services for rail and public transportation projects by the Director  
 340 of the Department of Rail and Public Transportation, the sum of all projects in a one-year contract term  
 341 shall not exceed \$2 million. Such contract may be renewable for two additional one-year terms at the  
 342 option of the Director; and

343 4. Environmental location, design, and inspection work regarding highways and bridges by the  
 344 Commissioner of Highways, the initial contract term shall be limited to two years or when the  
 345 cumulative total project fees reach \$5 million, whichever occurs first. Such contract may be renewable  
 346 for two additional one-year terms at the option of the Commissioner, and the sum of all projects in each  
 347 one-year contract term shall not exceed \$5 million.

348 C. Competitive negotiations for such architectural or professional engineering services contracts may  
 349 result in awards to more than one offeror, provided (i) the Request for Proposal so states and (ii) the  
 350 public body has established procedures for distributing multiple projects among the selected contractors  
 351 during the contract term. Such procedures shall prohibit requiring the selected contractors to compete  
 352 for individual projects based on price.

353 D. The fee for any single project shall not exceed \$100,000; however for architectural or  
 354 engineering services for airports as defined in § 5.1-1 and aviation transportation projects, the fee of  
 355 any single project shall not exceed \$500,000, except that for:

356 1. A state agency as defined in § 2.2-4347, the project fee shall not exceed \$200,000, as may be  
 357 determined by the Director of the Department of General Services or as otherwise provided by the  
 358 Restructured Higher Education Financial and Administrative Operations Act (§ 23-38.88 et seq.); and

359 2. Any locality or any authority or sanitation district with a population in excess of 80,000, or any  
 360 city within Planning District 8, the project fee shall not exceed \$2 million.

361 The limitations imposed upon single-project fees pursuant to this subsection shall not apply to  
 362 environmental, location, design, and inspection work regarding highways and bridges by the  
 363 Commissioner of Highways or architectural and engineering services for rail and public transportation  
 364 projects by the Director of the Department of Rail and Public Transportation.

365 E. For the purposes of subsection B, any unused amounts from one contract term shall not be  
 366 carried forward to any additional term, except as otherwise provided by the Restructured Higher

367 *Education Financial and Administrative Operations Act (§ 23-38.88 et seq.).*

368 **§ 2.2-4303.2. Job order contracting; limitations.**

369 A. A job order contract may be awarded by a public body for multiple jobs, provided (i) the jobs  
370 require similar experience and expertise, (ii) the nature of the jobs is clearly identified in the  
371 solicitation, and (iii) the contract is limited to a term of one year or when the cumulative total project  
372 fees reach the maximum authorized in this section, whichever occurs first. Contractors may be selected  
373 through either competitive sealed bidding or competitive negotiation.

374 B. Such contracts may be renewable for two additional one-year terms at the option of the public  
375 body. The fair and reasonable prices as negotiated shall be used in determining the cost of each job  
376 performed, and the sum of all jobs performed in a one-year contract term shall not exceed \$5 million.  
377 Individual job orders shall not exceed \$500,000.

378 C. For the purposes of this section, any unused amounts from one contract term shall not be carried  
379 forward to any additional term.

380 D. Order splitting with the intent of keeping a job order under the maximum dollar amounts  
381 prescribed in subsection B is prohibited.

382 E. No public body shall issue or use a job order solely for the purpose of providing professional  
383 architectural or engineering services that constitute the practice of architecture or the practice of  
384 engineering as those terms are defined in § 54.1-100. Professional architectural or engineering services,  
385 however, may be included on a job order where such professional services are (i) incidental and  
386 directly related to the job and (ii) no more than 25 percent of the construction cost, not to exceed  
387 \$60,000.

388 F. Job order contracting shall not be used for construction, maintenance, or asset management  
389 services for a highway, bridge, tunnel, or overpass.

390 **§ 2.2-4304. Joint and cooperative procurement.**

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

397 A B. In addition, a public body may purchase from another public body's contract even if it did not  
398 participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid  
399 specified that the procurement was a cooperative procurement being conducted on behalf of other public  
400 bodies, except for:

401 1. Contracts for architectural or engineering services; or

402 2. Construction in excess of \$200,000 by a local public body from the contract of another local  
403 public body that is more than a straight line distance of 75 miles from the territorial limits of the local  
404 public body procuring the construction. The installation of artificial turf or other athletic surfaces shall  
405 not be subject to the limitations prescribed in this subdivision. Nothing in this subdivision shall be  
406 construed to prohibit sole source or emergency procurements awarded pursuant to subsections E and F  
407 of § 2.2-4303.

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

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

428 Director of the Division of Purchases and Supply.

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

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

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

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

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

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

450 **§ 2.2-4343. Exemption from operation of chapter for certain transactions.**

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

452 1. The Virginia Port Authority in the exercise of any of its powers in accordance with Chapter 10  
453 (§ 62.1-128 et seq.) of Title 62.1, provided the Authority implements, by policy or regulation adopted by  
454 the Board of Commissioners, procedures to ensure fairness and competitiveness in the procurement of  
455 goods and services and in the administration of its capital outlay program. This exemption shall be  
456 applicable only so long as such policies and procedures meeting the requirements remain in effect.

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

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

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

466 5. The College of William and Mary in Virginia, Virginia Commonwealth University, the University  
467 of Virginia, and Virginia Polytechnic Institute and State University in the selection of services related to  
468 the management and investment of their endowment funds, endowment income, gifts, all other  
469 nongeneral fund reserves and balances, or local funds of or held by the College or Universities pursuant  
470 to § 23-44.1, 23-50.10:01, 23-76.1, or 23-122.1. However, selection of these services shall be governed  
471 by the Uniform Prudent Management of Institutional Funds Act (§ 64.2-1100 et seq.) as required by  
472 §§ 23-44.1, 23-50.10:01, 23-76.1, and 23-122.1.

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

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

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

484 9. Any town with a population of less than 3,500, except as stipulated in the provisions of  
485 §§ 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  
486 2.2-4367 through 2.2-4377.

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



490 stipulated in subdivision 12.

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

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

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

505 12. Notwithstanding the exemptions set forth in subdivisions 9 through 11, the provisions of  
506 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,  
507 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  
508 and school divisions, and to all towns having a population greater than 3,500 in the Commonwealth.

509 The method for procurement of professional services through competitive negotiation set forth in  
510 ~~subsection B of § 2.2-4302.2~~ 2.2-4303.1 shall also apply to all counties, cities and school divisions, and  
511 to all towns having a population greater than 3,500, where the cost of the professional service is  
512 expected to exceed \$60,000 in the aggregate or for the sum of all phases of a contract or project. A  
513 school board that makes purchases through its public school foundation or purchases educational  
514 technology through its educational technology foundation, either as may be established pursuant to  
515 § 22.1-212.2:2 shall be exempt from the provisions of this chapter, except, relative to such purchases,  
516 the school board shall comply with the provisions of §§ 2.2-4311 and 2.2-4367 through 2.2-4377.

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

524 14. Procurement of any construction or planning and design services for construction by a Virginia  
525 nonprofit corporation or organization not otherwise specifically exempted when (i) the planning, design  
526 or construction is funded by state appropriations of \$10,000 or less or (ii) the Virginia nonprofit  
527 corporation or organization is obligated to conform to procurement procedures that are established by  
528 federal statutes or regulations, whether those federal procedures are in conformance with the provisions  
529 of this chapter.

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

532 16. The Eastern Virginia Medical School in the selection of services related to the management and  
533 investment of its endowment and other institutional funds. The selection of these services shall, however,  
534 be governed by the Uniform Prudent Management of Institutional Funds Act (§ 64.2-1100 et seq.).

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

536 18. The University of Virginia Medical Center to the extent provided by subdivision B 3 of  
537 § 23-77.4.

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

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

544 21. [Expired].

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

551 public interest. Such determination shall state the specific provision of this chapter in conflict with the  
552 conditions of the grant or contract.

553 **§ 23-38.110. Procurement; discrimination prohibited; participation of small, women-owned, and**  
554 **minority-owned business enterprises.**

555 A. Subject to the express provisions of the management agreement described in § 23-38.88, covered  
556 institutions may be exempt from the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et  
557 seq.), except for § 2.2-4342 (which section shall not be construed to require compliance with the  
558 prequalification application procedures of subsection B of § 2.2-4317); provided, however, that any  
559 deviations from the Virginia Public Procurement Act approved in a Management Agreement shall be  
560 uniform across all covered institutions; and provided further that the governing body of a covered  
561 institution shall adopt, and the covered institution shall comply with, policies for the procurement of  
562 goods and services, including professional services, that shall be based upon competitive principles and  
563 shall in each instance seek competition to the maximum practical degree. The policies shall implement a  
564 system of competitive negotiation for professional services pursuant to ~~subsections A, B, and E of~~  
565 ~~§ 2.2-4302.2, § 2.2-4303.1;~~ shall prohibit discrimination because of race, religion, color, sex or national  
566 origin of the bidder or offeror in the solicitation or award of contracts; shall incorporate the prompt  
567 payment principles of §§ 2.2-4350 and 2.2-4354; and shall consider the impact on correctional  
568 enterprises under § 53.1-47.

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

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

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

592 **§ 33.2-283. Powers and duties of the Director of the Department of Rail and Public**  
593 **Transportation.**

594 Except such powers as are conferred by law upon the Board, or such services as are performed by  
595 the Department of Transportation pursuant to law, the Director of the Department of Rail and Public  
596 Transportation shall have the power to do all acts necessary or convenient for establishing, maintaining,  
597 improving, and promoting public transportation, transportation demand management, ridesharing, and  
598 passenger and freight rail transportation in the Commonwealth and to procure architectural and  
599 engineering services for rail and public transportation projects as specified in § ~~2.2-4302.2~~ 2.2-4303.1.

600 **2. That by October 1, 2017, the Department of Small Business and Supplier Diversity, public**  
601 **institutions of higher education having level 2 or 3 authority under the Restructured Higher**  
602 **Education Financial and Administrative Operations Act of 2005 (§ 23-38.88 et seq. of the Code of**  
603 **Virginia), state agencies utilizing job order contracting, and the Virginia Association of Counties,**  
604 **the Virginia Municipal League, and the Virginia Association of Governmental Purchasing on**  
605 **behalf of local public bodies working cooperatively, shall report their respective experiences and**  
606 **findings relating to the appropriateness and effectiveness of (i) job order contracting in general,**  
607 **(ii) the project cost limitations set forth in subsections B and D of § 2.2-4303.1, as added by this**  
608 **act, and (iii) the architectural and professional engineering term contract limits set forth in**  
609 **§ 2.2-4303.1, as added by this act, to the Chairmen of the House Committee on General Laws and**  
610 **the Senate Committee on General Laws and Technology.**

611 **3. That the provisions of this act shall not apply to any solicitation issued or contract awarded**  
612 **before July 1, 2015, except that the provisions of subsection B of § 2.2-4303.2, as added by this act,**

**613 shall apply to any renewal of a job order contract.**