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HOUSE BILL NO. 2437

Offered January 20, 2017

A *BILL to amend and reenact §§ 2.2-4303, 2.2-4304, 2.2-4305, 2.2-4345, 15.2-5102.1, 15.2-6314.1, 23.1-1002, and 33.2-223 of the Code of Virginia, relating to Virginia Public Procurement Act; use of best value contracting; construction and professional services.*

Patron—Davis

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-4303, 2.2-4304, 2.2-4305, 2.2-4345, 15.2-5102.1, 15.2-6314.1, 23.1-1002, and 33.2-223 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-4303. Methods of procurement.

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

B. Professional services shall be procured by competitive negotiation.

C. Upon a written determination made in advance by (i) the Governor or his designee in the case of a procurement by the Commonwealth or by a department, agency or institution thereof or (ii) the local governing body in the case of a procurement by a political subdivision of the Commonwealth, that competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured through a licensed agent or broker selected in the manner provided for the procurement of things other than professional services set forth in § 2.2-4302.2. The basis for this determination shall be documented in writing.

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

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

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

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

4. As otherwise provided in § 2.2-4308.

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

F. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The public body shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the Department of General Services' 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

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59 provide the public with centralized visibility and access to the Commonwealth's procurement
60 opportunities.

61 F. G. In case of emergency, a contract may be awarded without competitive sealed bidding or
62 competitive negotiation; however, such procurement shall be made with such competition as is
63 practicable under the circumstances. A written determination of the basis for the emergency and for the
64 selection of the particular contractor shall be included in the contract file. The public body shall issue a
65 written notice stating that the contract is being awarded on an emergency basis, and identifying that
66 which is being procured, the contractor selected, and the date on which the contract was or will be
67 awarded. This notice shall be posted on the Department of General Services' central electronic
68 procurement website or other appropriate websites, and in addition, public bodies may publish in a
69 newspaper of general circulation on the day the public body awards or announces its decision to award
70 the contract, whichever occurs first, or as soon thereafter as is practicable. Posting on the Department of
71 General Services' central electronic procurement website shall be required of any state public body.
72 Local public bodies are encouraged to utilize the Department of General Services' central electronic
73 procurement website to provide the public with centralized visibility and access to the Commonwealth's
74 procurement opportunities.

75 G. H. A public body may establish purchase procedures, if adopted in writing, not requiring
76 competitive sealed bids or competitive negotiation for single or term contracts for:

77 1. Goods and services other than professional services and non-transportation-related construction, if
78 the aggregate or the sum of all phases is not expected to exceed \$100,000; and

79 2. Transportation-related construction, if the aggregate or sum of all phases is not expected to exceed
80 \$25,000.

81 However, such small purchase procedures shall provide for competition wherever practicable.

82 Such purchase procedures may allow for single or term contracts for professional services without
83 requiring competitive negotiation, provided the aggregate or the sum of all phases is not expected to
84 exceed \$60,000.

85 Where small purchase procedures are adopted for construction, the procedures shall not waive
86 compliance with the Uniform State Building Code.

87 For state public bodies, purchases under this subsection that are expected to exceed \$30,000 shall
88 require the (a) written informal solicitation of a minimum of four bidders or offerors and (b) posting of
89 a public notice on the Department of General Services' central electronic procurement website or other
90 appropriate websites. Posting on the Department of General Services' central electronic procurement
91 website shall be required of any state public body. Local public bodies are encouraged to utilize the
92 Department of General Services' central electronic procurement website to provide the public with
93 centralized visibility and access to the Commonwealth's procurement opportunities.

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

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

105 **§ 2.2-4304. Joint and cooperative procurement.**

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

112 B. In addition, a public body may purchase from another public body's contract or from the contract
113 of the Metropolitan Washington Council of Governments even if it did not participate in the request for
114 proposal or invitation to bid, if the request for proposal or invitation to bid specified that the
115 procurement was a cooperative procurement being conducted on behalf of other public bodies, except
116 for:

117 1. Contracts for architectural or engineering services; or

118 2. Construction, except for the installation of artificial turf and track surfaces, including all associated
119 and necessary construction, which shall not be subject to the limitations prescribed in this subdivision.
120 Nothing in this subdivision shall be construed to prohibit sole source or emergency procurements

awarded pursuant to subsections ~~E~~ and *F and G* of § 2.2-4303.

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

C. Subject to the provisions of §§ 2.2-1110, 2.2-1111, 2.2-1120 and 2.2-2012, any authority, department, agency, or institution of the Commonwealth may participate in, sponsor, conduct, or administer a joint procurement arrangement in conjunction with public bodies, private health or educational institutions or with public agencies or institutions of the several states, territories of the United States, or the District of Columbia, for the purpose of combining requirements to effect cost savings or reduce administrative expense in any acquisition of goods and services, other than professional services, and construction.

A public body may purchase from any authority, department, agency or institution of the Commonwealth's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was a cooperative procurement being conducted on behalf of other public bodies. In such instances, deviation from the procurement procedures set forth in this chapter and the administrative policies and procedures established to implement this chapter shall be permitted, if approved by the Director of the Division of Purchases and Supply.

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

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

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

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

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

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

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

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

§ 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.

4. (Effective until July 1, 2018) The Department of Alcoholic Beverage Control for the purchase of alcoholic beverages.

4. (Effective July 1, 2018) The Virginia Alcoholic Beverage Control Authority for the purchase of alcoholic beverages.

5. The Department for Aging and Rehabilitative Services, for the administration of elder rights programs, with (i) nonprofit Virginia corporations granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code with statewide experience in Virginia in conducting a state long-term care ombudsman program or (ii) designated area agencies on aging.

6. The Department of Health for (a) child restraint devices, pursuant to § 46.2-1097; (b) health care services with Virginia corporations granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code and operating as clinics for the indigent and uninsured that are organized for the delivery of primary health care services in a community (i) as federally qualified health centers designated by the Health Care Financing Administration or (ii) at a reduced or sliding fee scale or without charge; or (c) contracts with laboratories providing cytology and related services if competitive sealed bidding and competitive negotiations are not fiscally advantageous to the public to provide quality control as prescribed in writing by the Commissioner of Health.

7. Virginia Correctional Enterprises, when procuring materials, supplies, or services for use in and support of its production facilities, provided the procurement is accomplished using procedures that ensure as efficient use of funds as practicable and, at a minimum, includes obtaining telephone quotations. Such procedures shall require documentation of the basis for awarding contracts under this section.

8. The Virginia Baseball Stadium Authority for the operation of any facilities developed under the provisions of Chapter 58 (§ 15.2-5800 et seq.) of Title 15.2, including contracts or agreements with respect to the sale of food, beverages and souvenirs at such facilities.

9. With the consent of the Governor, the Jamestown-Yorktown Foundation for the promotion of tourism through marketing with private entities provided a demonstrable cost savings, as reviewed by the Secretary of Education, can be realized by the Foundation and such agreements or contracts are based on competitive principles.

10. The Chesapeake Hospital Authority in the exercise of any power conferred under Chapter 271, as amended, of the Acts of Assembly of 1966, provided that it does not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability in the procurement of goods and services.

11. Richmond Eye and Ear Hospital Authority, any authorities created under Chapter 53 (§ 15.2-5300 et seq.) of Title 15.2 and any hospital or health center commission created under Chapter 52 (§ 15.2-5200 et seq.) of Title 15.2 in the exercise of any power conferred under their respective authorizing legislation, provided that these entities shall not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability in the procurement of goods and services.

12. The Patrick Hospital Authority sealed in the exercise of any power conferred under the Acts of Assembly of 2000, provided that it does not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability in the procurement of goods and services.

13. Public bodies for insurance or electric utility services if purchased through an association of which it is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance or electric utility services by use of competitive principles and provided that the public body has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.

14. Public bodies administering public assistance and social services programs as defined in § 63.2-100, community services boards as defined in § 37.2-100, or any public body purchasing services

under the Children's Services Act (§ 2.2-5200 et seq.) or the Virginia Juvenile Community Crime Control Act (§ 16.1-309.2 et seq.) for goods or personal services for direct use by the recipients of such programs if the procurement is made for an individual recipient. Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted from the requirements of § 2.2-4303.

15. The Eastern Virginia Medical School in the exercise of any power conferred pursuant to Chapter 471, as amended, of the Acts of Assembly of 1964.

B. No contract for the construction of any building or for an addition to or improvement of an existing building by any local government or subdivision of local government for which state funds of not more than \$50,000 in the aggregate or for the sum of all phases of a contract or project either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed bidding or after competitive negotiation as provided under of subsection D *or using best value contracting as provided under subsection E* of § 2.2-4303. The procedure for the advertising for bids or for proposals and for letting of the contract shall conform, mutatis mutandis, to this chapter.

§ 15.2-5102.1. Hampton Roads area refuse collection and disposal system authority.

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

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

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

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

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

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

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

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

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

9. Prior to issuance of new debt, the Board shall perform a due diligence investigation of the appropriateness of issuing the debt, including an analysis of the costs of repaying the debt. Such analysis

shall be certified by an external certified public accountant, reviewed by the Board, and approved by a vote of a minimum of 75 percent of the Board. The issuance of new debt shall require a vote of a minimum of 75 percent of the Board of Directors of the authority. The authority shall not issue long-term bond indebtedness to fund operational expenses. The provisions of this subdivision shall not apply to the issuance of new debt issued for the purpose of refunding or refinancing debt incurred by the authority prior to September 30, 2009.

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

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

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

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

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

§ 23.1-1002. Eligibility for restructured financial and administrative operational authority and financial benefits.

A. The state goals for each public institution of higher education are to:

1. Consistent with its institutional mission, provide access to higher education for all citizens throughout the Commonwealth, including underrepresented populations, and consistent with subdivision 4 of § 23.1-203 and in accordance with anticipated demand analysis, meet enrollment projections and degree estimates as agreed upon with the Council. Each such institution shall bear a measure of responsibility for ensuring that the statewide demand for enrollment is met;

2. Consistent with § 23.1-306, ensure that higher education remains affordable, regardless of individual or family income, and through a periodic assessment determine the impact of tuition and fee levels net of financial aid on applications, enrollment, and student indebtedness incurred for the payment of tuition, mandatory fees, and other necessary charges;

3. Offer a broad range of undergraduate and, where appropriate, graduate programs consistent with its mission and assess regularly the extent to which the institution's curricula and degree programs address the Commonwealth's need for sufficient graduates in particular shortage areas, including specific academic disciplines, professions, and geographic regions;

4. Ensure that the institution's academic programs and course offerings maintain high academic standards by undertaking a continuous review and improvement of academic programs, course availability, faculty productivity, and other relevant factors;

5. Improve student retention so that students progress from initial enrollment to a timely graduation and the number of degrees conferred increases as enrollment increases;

6. Consistent with its institutional mission, develop articulation agreements that have uniform application to all comprehensive community colleges and meet appropriate general education and program requirements at the baccalaureate institution of higher education, provide additional opportunities for associate degree graduates to be admitted and enrolled, and offer dual enrollment programs in cooperation with high schools;

7. Actively contribute to efforts to stimulate the economic development of the Commonwealth and the area in which the institution is located, and for those institutions subject to a management agreement pursuant to Article 4 (§ 23.1-1004 et seq.), in areas with below-state average income levels and employment rates;

8. Consistent with its institutional mission, increase the level of externally funded research conducted at the institution and facilitate the transfer of technology from university research centers to private

sector companies;

9. Work actively and cooperatively with public elementary and secondary school administrators, teachers, and students to improve student achievement, upgrade the knowledge and skills of teachers, and strengthen leadership skills of school administrators;

10. Prepare a six-year financial plan consistent with § 23.1-306;

11. Conduct the institution's business affairs in a manner that (i) helps maximize the operational efficiencies and economies of the institution and the Commonwealth and (ii) meets all financial and administrative management standards pursuant to § 23.1-1001 specified by the Governor and included in the current general appropriation act, which shall include best practices for electronic procurement and leveraged purchasing, information technology, real estate portfolio management, and diversity of suppliers through fair and reasonable consideration of small, women-owned, and minority-owned business enterprises; and

12. Seek to ensure the safety and security of students on campus.

B. Each public institution of higher education that meets the state goals set forth in subsection A on or after August 1, 2005, may:

1. Dispose of its surplus materials at the location where the surplus materials are held and retain any proceeds from such disposal as provided in subdivision B 14 of § 2.2-1124;

2. As provided in and pursuant to the conditions in subsection C of § 2.2-1132, contract with a building official of the locality in which construction is taking place and for such official to perform any inspection and certifications required to comply with the Uniform Statewide Building Code (§ 36-97 et seq.) pursuant to subsection C of § 36-98.1;

3. For each public institution of higher education that has in effect a signed memorandum of understanding with the Secretary of Administration regarding participation in the nongeneral fund decentralization program as set forth in the general appropriation act, as provided in subsection C of § 2.2-1132, enter into contracts for specific construction projects without the preliminary review and approval of the Division of Engineering and Buildings of the Department of General Services, provided that such institutions are in compliance with the requirements of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) and utilize the general terms and conditions for those forms of procurement approved by the Division of Engineering and Buildings and the Office of the Attorney General;

4. Acquire easements as provided in subdivision 4 of § 2.2-1149;

5. Enter into an operating/income lease or capital lease pursuant to the conditions and provisions in subdivision 5 of § 2.2-1149;

6. Convey an easement pertaining to any property such institution owns or controls as provided in subsection C of § 2.2-1150;

7. In accordance with the conditions and provisions in subdivision C 2 of § 2.2-1153, sell surplus real property that is possessed and controlled by the institution and valued at less than \$5 million;

8. For purposes of compliance with § 2.2-4310, procure goods, services, and construction from a vendor that the institution has certified as a small, women-owned, or minority-owned business enterprise pursuant to the conditions and provisions in § 2.2-1609;

9. Be exempt from review of its budget request for information technology by the CIO as provided in subdivision B 3 of § 2.2-2007.1;

10. Adopt policies for the designation of administrative and professional faculty positions at the institution pursuant to the conditions and provisions in subsection E of § 2.2-2901;

11. Be exempt from reporting its purchases to the Secretary of Education, provided that all purchases, including sole source purchases, are placed through the Commonwealth's electronic procurement system using proper system codes for the methods of procurement; and

12. Utilize as methods of procurement a fixed price, design-build, or construction management contract notwithstanding the provisions of § 2.2-4306.

C. Each public institution of higher education that (i) has been certified during the fiscal year by the Council pursuant to § 23.1-206 as having met the institutional performance benchmarks for public institutions of higher education and (ii) meets the state goals set in subsection A shall receive the following financial benefits:

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

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

3. A pro rata amount of the rebate due to the Commonwealth on credit card purchases of \$5,000 or

428 less made during the fiscal year. The amount to be paid to each institution shall equal a pro rata share
429 based upon its total transactions of \$5,000 or less using the credit card that is approved for use by all
430 state agencies as compared to all transactions of \$5,000 or less using such card by all state agencies.
431 The Comptroller shall determine the public institution's pro rata share and, as provided in the general
432 appropriation act, shall pay the institution by August 15 of the fiscal year immediately following the
433 year of certification or as soon as practicable after August 15 of such fiscal year. The payment to an
434 institution of its pro rata share under this subdivision shall also be applicable to other rebate or refund
435 programs in effect that are similar to that of the credit card rebate program described in this subdivision.
436 The Secretary of Finance shall identify such other rebate or refund programs and shall determine the pro
437 rata share to be paid to the institution; and

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

445 **§ 33.2-223. General powers of Commissioner of Highways.**

446 Except such powers as are conferred by law upon the Board, the Commissioner of Highways shall
447 have the power to do all acts necessary or convenient for constructing, improving, maintaining, and
448 preserving the efficient operation of the highways embraced in the systems of state highways and to
449 further the interests of the Commonwealth in the areas of public transportation, railways, seaports, and
450 airports. And as executive head of the Department, the Commissioner of Highways is specifically
451 charged with the duty of executing all orders and decisions of the Board and may, subject to the
452 provisions of this chapter, require that all appointees and employees perform their duties under this
453 chapter.

454 In addition, the Commissioner of Highways, in order to maximize efficiency, shall take such steps as
455 may be appropriate to outsource or privatize any of the Department's functions that might reasonably be
456 provided by the private sector. Procuring equipment and labor to ensure that adequate resources will be
457 available to address emergency and weather-related events as they may arise, including snow and ice
458 removal services, shall be considered an emergency under subsection *F G* of § 2.2-4303, and the
459 Commissioner of Highways shall have the authority to establish and utilize such procedures as he deems
460 necessary and most efficient to obtain and ensure the availability of such services to protect the safety
461 and security of the traveling public.