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HOUSE BILL NO. 1407

Offered January 15, 2018

A BILL to amend and reenact §§ 2.2-1604, 2.2-1605, 2.2-4310, 2.2-4310.3, and 2.2-4343 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.2-4310.1:1, relating to Virginia Public Procurement Act; small business and microbusiness procurement enhancement program.

Patron—Ward

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-1604, 2.2-1605, 2.2-4310, 2.2-4310.3, and 2.2-4343 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.2-4310.1:1 as follows:

§ 2.2-1604. Definitions.

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

"Certification" means the process by which (i) a business is determined to be a small, women-owned, or minority-owned business or (ii) an employment services organization, for the purpose of reporting small, women-owned, and minority-owned business and employment services organization participation in state contracts and purchases pursuant to §§ 2.2-1608 and 2.2-1610.

"Department" means the Department of Small Business and Supplier Diversity or any division of the Department to which the Director has delegated or assigned duties and responsibilities.

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

"Historically black colleges and university" includes any college or university that was established prior to 1964; whose principal mission was, and is, the education of black Americans; and that is accredited by a nationally recognized accrediting agency or association determined by the Secretary of Education.

"Microbusiness" means a business that has been certified by the Department of Small Business and Supplier Diversity as a small business and has (i) 25 or fewer employees and (ii) average annual gross receipts of \$3 million or less averaged over the previous three years.

"Minority individual" means an individual who is a citizen of the United States or a legal resident alien and who satisfies one or more of the following definitions:

1. "African American" means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.

2. "Asian American" means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana Islands, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh, or Sri Lanka, and who is regarded as such by the community of which this person claims to be a part.

3. "Hispanic American" means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.

4. "Native American" means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.

"Minority-owned business" means a business that is at least 51 percent owned by one or more minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more minority individuals, or any historically black college or university, regardless of the percentage ownership by minority individuals or, in the case of a corporation, partnership, or limited liability company or other entity, the equity ownership interest in the corporation, partnership, or limited liability company or other entity.

"Small business" means a business that is at least 51 percent independently owned and controlled by

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59 one or more individuals who are U.S. citizens or legal resident aliens and, together with affiliates, has
60 250 or fewer employees or average annual gross receipts of \$10 million or less averaged over the
61 previous three years. One or more of the individual owners shall control both the management and daily
62 business operations of the small business.

63 "State agency" means any authority, board, department, instrumentality, institution, agency, or other
64 unit of state government. "State agency" does not include any county, city, or town.

65 "Women-owned business" means a business that is at least 51 percent owned by one or more women
66 who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited
67 liability company or other entity, at least 51 percent of the equity ownership interest is owned by one or
68 more women who are U.S. citizens or legal resident aliens, and both the management and daily business
69 operations are controlled by one or more women.

70 **§ 2.2-1605. Powers and duties of Department.**

71 A. The Department shall have the following powers and duties:

72 1. Coordinate as consistent with prevailing law the plans, programs, and operations of the state
73 government that affect or may contribute to the establishment, preservation, and strengthening of small,
74 women-owned, and minority-owned businesses;

75 2. Promote the mobilization of activities and resources of state and local governments, businesses and
76 trade associations, baccalaureate institutions of higher education, foundations, professional organizations,
77 and volunteer and other groups towards the growth of small businesses and businesses owned by women
78 and minorities, and facilitate the coordination of the efforts of these groups with those of state
79 departments and agencies;

80 3. Establish a center for the development, collection, summarization, and dissemination of
81 information that will be helpful to persons and organizations throughout the nation in undertaking or
82 promoting procurement from small, women-owned, and minority-owned businesses;

83 4. Consistent with prevailing law and availability of funds, and according to the Director's discretion,
84 provide technical and management assistance to small, women-owned, and minority-owned businesses
85 and defray all or part of the costs of pilot or demonstration projects that are designed to overcome the
86 special problems of small, women-owned, and minority-owned businesses;

87 5. Advise the Small Business Financing Authority on the management and administration of the
88 Small, Women-owned, and Minority-owned Business Loan Fund created pursuant to § 2.2-2311.1;

89 6. Implement *the small business and microbusiness procurement enhancement program established*
90 *pursuant to § 2.2-4310.1:1 and any remediation or enhancement measure for small, women-owned, or*
91 *minority-owned businesses as may be authorized by the Governor pursuant to subsection C of*
92 *§ 2.2-4310 and develop regulations, consistent with prevailing law, for program implementation. Such*
93 *regulations shall be developed in consultation with the state agencies with procurement responsibility*
94 *and promulgated by those agencies in accordance with applicable law; and*

95 7. Receive and coordinate, with the appropriate state agency, the investigation of complaints that a
96 business certified pursuant to this chapter has failed to comply with its subcontracting plan under
97 subsection D of § 2.2-4310. If the Department determines that a business certified pursuant to this
98 chapter has failed to comply with the subcontracting plan, the business shall provide a written
99 explanation.

100 B. In addition, the Department shall serve as the liaison between the Commonwealth's existing
101 businesses and state government in order to promote the development of Virginia's economy. To that
102 end, the Department shall:

103 1. Encourage the training or retraining of individuals for specific employment opportunities at new or
104 expanding business facilities in the Commonwealth;

105 2. Develop and implement programs to assist small businesses in the Commonwealth in order to
106 promote their growth and the creation and retention of jobs for Virginians;

107 3. Establish an industry program that is the principal point of communication between basic
108 employers in the Commonwealth and the state government that will address issues of significance to
109 business;

110 4. Make available to existing businesses, in conjunction and cooperation with localities, chambers of
111 commerce, and other public and private groups, basic information and pertinent factors of interest and
112 concern to such businesses;

113 5. Develop statistical reports on job creation and the general economic conditions in the
114 Commonwealth; and

115 6. Administer the Small Business Jobs Grant Fund Program described in Article 2 (§ 2.2-1611 et
116 seq.).

117 C. All agencies of the Commonwealth shall assist the Department upon request and furnish such
118 information and assistance as the Department may require in the discharge of its duties.

119 **§ 2.2-4310. Discrimination prohibited; participation of small, women-owned, minority-owned,**
120 **and service disabled veteran-owned business and employment services organization.**

A. In the solicitation or awarding of contracts, no public body shall discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by state law relating to discrimination in employment. Whenever solicitations are made, each public body shall include businesses selected from a list made available by the Department of Small Business and Supplier Diversity, which list shall include all companies and organizations certified by the Department.

B. All public bodies shall establish programs consistent with this chapter to facilitate the participation of small businesses, businesses owned by women, minorities, and service disabled veterans, and employment services organizations in procurement transactions. The programs established shall be in writing and shall comply with *the small business and microbusiness procurement enhancement program established pursuant to § 2.2-4310.1:1* and the provisions of any enhancement or remedial measures authorized by the Governor pursuant to subsection C or, where applicable, by the chief executive of a local governing body pursuant to § 15.2-965.1, and shall include specific plans to achieve any goals established therein. State agencies shall submit annual progress reports on (i) small, women-owned, and minority-owned business procurement, (ii) service disabled veteran-owned business procurement, and (iii) employment services organization procurement to the Department of Small Business and Supplier Diversity in a form specified by the Department of Small Business and Supplier Diversity. Contracts and subcontracts awarded to employment services organizations shall be credited toward the small business, women-owned, and minority-owned business contracting and subcontracting goals of state agencies and contractors. The Department of Small Business and Supplier Diversity shall make information on service disabled veteran-owned procurement available to the Department of Veterans Services upon request.

C. Whenever there exists (i) a rational basis for small business or employment services organization enhancement or (ii) a persuasive analysis that documents a statistically significant disparity between the availability and utilization of women-owned and minority-owned businesses, the Governor is authorized and encouraged to require state agencies to implement appropriate enhancement or remedial measures consistent with prevailing law. Any enhancement or remedial measure authorized by the Governor pursuant to this subsection for state public bodies may allow for small businesses certified by the Department of Small Business and Supplier Diversity or a subcategory of small businesses established as a part of the enhancement program to have a price preference over noncertified businesses competing for the same contract award on designated procurements, provided that the bid of the certified small business or the business in such subcategory of small businesses established as a part of an enhancement program does not exceed the low bid by more than five percent.

D. In awarding a contract for services to a small, women-owned, or minority-owned business that is certified in accordance with § 2.2-1606, or to a business identified by a public body as a service disabled veteran-owned business where the award is being made pursuant to an enhancement or remedial program as provided in subsection C, the public body shall include in every such contract of more than \$10,000 the following:

"If the contractor intends to subcontract work as part of its performance under this contract, the contractor shall include in the proposal a plan to subcontract to small, women-owned, minority-owned, and service disabled veteran-owned businesses."

E. In the solicitation or awarding of contracts, no state agency, department or institution shall discriminate against a bidder or offeror because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest.

F. As used in this section:

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

"Microbusiness" means a business that has been certified by the Department of Small Business and Supplier Diversity as a small business and has (i) 25 or fewer employees and (ii) average annual gross receipts of \$3 million or less averaged over the previous three years.

"Minority individual" means an individual who is a citizen of the United States or a legal resident alien and who satisfies one or more of the following definitions:

1. "African American" means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.

2. "Asian American" means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana Islands, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh, or Sri Lanka and who is regarded as such by the community of which this person claims to be a part.

182 3. "Hispanic American" means a person having origins in any of the Spanish-speaking peoples of
183 Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and
184 who is regarded as such by the community of which this person claims to be a part.

185 4. "Native American" means a person having origins in any of the original peoples of North America
186 and who is regarded as such by the community of which this person claims to be a part or who is
187 recognized by a tribal organization.

188 "Minority-owned business" means a business that is at least 51 percent owned by one or more
189 minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation,
190 partnership, or limited liability company or other entity, at least 51 percent of the equity ownership
191 interest in the corporation, partnership, or limited liability company or other entity is owned by one or
192 more minority individuals who are U.S. citizens or legal resident aliens, and both the management and
193 daily business operations are controlled by one or more minority individuals, or any historically black
194 college or university as defined in § 2.2-1604, regardless of the percentage ownership by minority
195 individuals or, in the case of a corporation, partnership, or limited liability company or other entity, the
196 equity ownership interest in the corporation, partnership, or limited liability company or other entity.

197 "Service disabled veteran" means a veteran who (i) served on active duty in the United States
198 military ground, naval, or air service, (ii) was discharged or released under conditions other than
199 dishonorable, and (iii) has a service-connected disability rating fixed by the United States Department of
200 Veterans Affairs.

201 "Service disabled veteran business" means a business that is at least 51 percent owned by one or
202 more service disabled veterans or, in the case of a corporation, partnership, or limited liability company
203 or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or
204 limited liability company or other entity is owned by one or more individuals who are service disabled
205 veterans and both the management and daily business operations are controlled by one or more
206 individuals who are service disabled veterans.

207 "Small business" means a business, independently owned and controlled by one or more individuals
208 who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees,
209 or annual gross receipts of \$10 million or less averaged over the previous three years. One or more of
210 the individual owners shall control both the management and daily business operations of the small
211 business.

212 "State agency" means any authority, board, department, instrumentality, institution, agency, or other
213 unit of state government. "State agency" ~~shall~~ does not include any county, city, or town.

214 "Women-owned business" means a business that is at least 51 percent owned by one or more women
215 who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited
216 liability company or other entity, at least 51 percent of the equity ownership interest is owned by one or
217 more women who are U.S. citizens or legal resident aliens, and both the management and daily business
218 operations are controlled by one or more women.

219 **§ 2.2-4310.1:1. Small business and microbusiness procurement enhancement program; report.**

220 A. As used in this section:

221 "Microbusiness" means the same as that term is defined in § 2.2-4310. "Microbusiness" includes
222 women-owned businesses and minority-owned businesses, as those terms are defined in § 2.2-4310, that
223 have been certified as microbusinesses by the Department of Small Business and Supplier Diversity.

224 "Prime contractor" means the contractor who has full legal responsibility for completion of a
225 contract with a public body. A prime contractor may employ or manage one or more subcontractors to
226 carry out specific parts of the contract.

227 "Program" means the small business and microbusiness procurement enhancement program.

228 "Small business" means the same as that term is defined in § 2.2-4310.

229 "State agency" means any authority, board, department, instrumentality, institution, agency, or other
230 unit of state government, including public institutions of higher education.

231 "SWaM" means small, women-owned, or minority-owned.

232 B. It shall be the policy of the Commonwealth, to the greatest extent possible, to facilitate the
233 participation of small businesses and microbusinesses in state procurement. To that end, the small
234 business and microbusiness procurement enhancement program is hereby established. The goal of the
235 Program shall be the achievement of 42 percent of small and microbusiness utilization in all
236 discretionary spending by state agencies in procurement orders, prime contracts, and subcontracts. The
237 Department of Small Business and Supplier Diversity shall be responsible for implementing the
238 Program.

239 C. The Program shall include a set-aside for competition among all small businesses for state
240 agency purchases up to \$100,000 for goods and nonprofessional services and up to \$50,000 for
241 professional services when the price quoted is fair and reasonable. In addition, a set-aside for
242 competition among microbusinesses is established to include purchases under \$10,000 when the price
243 quoted is fair and reasonable.

D. State agencies shall require each prime contractor to include in each proposal or bid a SWaM procurement plan detailing intended subcontractor participation of such businesses. Each prime contractor awarded a contract shall comply with the SWaM procurement plan. Whenever the actual subcontractor participation does not meet the level included in the SWaM participation plan, the prime contractor shall provide a written explanation that shall be made a part of the contract file. The record of a prime contractor's compliance with SWaM procurement plan requirements shall be considered in the prospective award of a contract or renewal of an existing contract. The Department of Small Business and Supplier Diversity shall (i) develop guidelines providing a uniform methodology for evaluating and monitoring SWaM procurement plans and (ii) implement processes for producing reliable data on the utilization of SWaM subcontractors by prime contractors.

E. Each state agency subject to the provisions of this section shall designate an existing employee as a small business equity officer whose responsibility shall be to ensure equity for small businesses and microbusinesses in (i) the solicitation of procurement proposals and bids and (ii) the award of contracts.

F. The Department of Small Business and Supplier Diversity, in conjunction with the Department of General Services, the Virginia Information Technologies Agency, the Department of Transportation, and public institutions of higher education that have executed a valid management agreement under the Restructured Higher Education Financial and Administrative Operations Act (§ 23.1-1000 et seq.), shall implement initiatives to enhance the development of small businesses and microbusinesses in the Commonwealth, including:

1. Provision of information regarding access to capital, including contract financing and bonding support and other opportunities for economic development.

2. Management and technical assistance programs.

3. Partnerships and outreach with local business groups and other organizations to develop a diverse vendor base.

4. Statewide mentor and joint venture programs.

G. On or before November 30 of each year, the Director of the Department of Small Business and Supplier Diversity shall report to the Governor and the General Assembly on the implementation and effectiveness of the Program.

§ 2.2-4310.3. Fiscal data pertaining to certain enhancement or remedial measures.

The Department of General Services shall make available a dashboard of purchase order reports from the Commonwealth's statewide electronic procurement system known as eVA. The dashboard shall include aggregated data showing (i) current fiscal year purchase orders, (ii) purchase orders from the small business and microbusiness procurement enhancement program established pursuant to § 2.2-4310.1:1 in the previous fiscal year, and (iii) other relevant data derived from any enhancement or remedial measure implemented by the Governor pursuant to subsection C of § 2.2-4310.

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

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

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

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

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

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

5. The College of William and Mary in Virginia, Virginia Commonwealth University, the University of Virginia, and Virginia Polytechnic Institute and State University in the selection of services related to the management and investment of their endowment funds, endowment income, gifts, all other nongeneral fund reserves and balances, or local funds of or held by the respective public institution of higher education pursuant to § 23.1-2210, 23.1-2306, 23.1-2604, or 23.1-2803. However, selection of these services shall be governed by the Uniform Prudent Management of Institutional Funds Act (§ 64.2-1100 et seq.) as required by §§ 23.1-2210, 23.1-2306, 23.1-2604, and 23.1-2803.

6. The Board of the Virginia College Savings Plan for the selection of services related to the operation and administration of the Plan, including, but not limited to, contracts or agreements for the management, purchase, or sale of authorized investments or actuarial, record keeping, or consulting

305 services. However, such selection shall be governed by the standard set forth in § 23.1-706.

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

309 8. The purchase of goods and services by agencies of the legislative branch that may be specifically
310 exempted therefrom by the Chairman of the Committee on Rules of either the House of Delegates or the
311 Senate. Nor shall the contract review provisions of § 2.2-2012 apply to such procurements. The
312 exemption shall be in writing and kept on file with the agency's disbursement records.

313 9. Any town with a population of less than 3,500, except as stipulated in the provisions of
314 §§ 2.2-4305, 2.2-4311, 2.2-4315, 2.2-4330, 2.2-4333 through 2.2-4338, 2.2-4343.1, and 2.2-4367 through
315 2.2-4377 and Chapter 43.1 (§ 2.2-4378 et seq.).

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

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

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

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

334 12. Notwithstanding the exemptions set forth in subdivisions 9 through 11, the provisions of
335 subsections C and D of § 2.2-4303, §§ 2.2-4305, 2.2-4311, 2.2-4315, 2.2-4317, 2.2-4330, 2.2-4333
336 through 2.2-4338, 2.2-4343.1, and 2.2-4367 through 2.2-4377, and Chapter 43.1 (§ 2.2-4378 et seq.)
337 shall apply to all counties, cities, and school divisions, and to all towns having a population greater than
338 3,500 in the Commonwealth.

339 The method for procurement of professional services through competitive negotiation set forth in
340 §§ 2.2-4303.1 and 2.2-4303.2 shall also apply to all counties, cities and school divisions, and to all
341 towns having a population greater than 3,500, where the cost of the professional service is expected to
342 exceed \$60,000 in the aggregate or for the sum of all phases of a contract or project. A school board
343 that makes purchases through its public school foundation or purchases educational technology through
344 its educational technology foundation, either as may be established pursuant to § 22.1-212.2:2 shall be
345 exempt from the provisions of this chapter, except, relative to such purchases, the school board shall
346 comply with the provisions of §§ 2.2-4311 and 2.2-4367 through 2.2-4377.

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

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

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

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

365 17. The Department of Corrections in the selection of pre-release and post-incarceration services and
366 the Department of Juvenile Justice in the selection of pre-release and post-commitment services.

367 18. The University of Virginia Medical Center to the extent provided by subdivision A 3 of
368 § 23.1-2213.

369 19. The purchase of goods and services by a local governing body or any authority, board,
370 department, instrumentality, institution, agency or other unit of state government when such purchases
371 are made (i) under *the small business and microbusiness procurement enhancement program established*
372 *pursuant to § 2.2-4310.1:1*, (ii) under a remedial plan established by the Governor pursuant to
373 subsection C of § 2.2-4310, or (iii) by a chief administrative officer of a county, city or town pursuant
374 to § 15.2-965.1.

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

377 21. [Expired].

378 22. The purchase of Virginia-grown food products for use by a public body where the annual cost of
379 the product is not expected to exceed \$100,000.

380 23. The Virginia Industries for the Blind when procuring components, materials, supplies, or services
381 for use in commodities and services furnished to the federal government in connection with its operation
382 as an AbilityOne Program-qualified nonprofit agency for the blind under the Javits-Wagner-O'Day Act,
383 41 U.S.C. §§ 8501-8506, provided that the procurement is accomplished using procedures that ensure
384 that funds are used as efficiently as practicable. Such procedures shall require documentation of the
385 basis for awarding contracts. Notwithstanding the provisions of § 2.2-1117, no public body shall be
386 required to purchase such components, materials, supplies, services, or commodities.

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