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## SENATE BILL NO. 312

Offered January 10, 2018

Prefiled January 8, 2018

A *BILL to amend and reenact §§ 2.2-4301 and 2.2-4304 of the Code of Virginia, relating to solar service agreements; cooperative procurement.*

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Patron—Edwards

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Referred to Committee on General Laws and Technology

**Be it enacted by the General Assembly of Virginia:****1. That §§ 2.2-4301 and 2.2-4304 of the Code of Virginia are amended and reenacted as follows:****§ 2.2-4301. Definitions.**

As used in this chapter:

"Affiliate" means an individual or business that controls, is controlled by, or is under common control with another individual or business. A person controls an entity if the person owns, directly or indirectly, more than 10 percent of the voting securities of the entity. For the purposes of this definition "voting security" means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general partnership interest shall be deemed to be a voting security.

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

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

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

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

"Construction" means building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property. *Any construction performed in creating a good or service pursuant to a solar services agreement, solar power purchase agreement, or solar self-generation agreement shall not be defined as construction, notwithstanding any reference to "construction" in a request for proposal for a solar services agreement, solar power purchase agreement, or solar self-generation agreement.*

"Construction management contract" means the same as that term is defined in § 2.2-4379.

"Design-build contract" means the same as that term is defined in § 2.2-4379.

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

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

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

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

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

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

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

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59 through competitive sealed bidding or competitive negotiation.

60 "Professional services" means work performed by an independent contractor within the scope of the  
61 practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law,  
62 dentistry, medicine, optometry, pharmacy or professional engineering. "Professional services" shall also  
63 include the services of an economist procured by the State Corporation Commission. *Any professional*  
64 *services, such as engineering, performed in creating a good or service pursuant to a solar services*  
65 *agreement, solar power purchase agreement, or solar self-generation agreement shall not be defined as*  
66 *a professional service, notwithstanding any reference to "professional services" in a request for proposal*  
67 *for a solar services agreement, solar power purchase agreement, or solar self-generation agreement.*

68 "Public body" means any legislative, executive or judicial body, agency, office, department, authority,  
69 post, commission, committee, institution, board or political subdivision created by law to exercise some  
70 sovereign power or to perform some governmental duty, and empowered by law to undertake the  
71 activities described in this chapter. "Public body" shall include (i) any independent agency of the  
72 Commonwealth, and (ii) any metropolitan planning organization or planning district commission which  
73 operates exclusively within the Commonwealth of Virginia.

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

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

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

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

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

89 **§ 2.2-4304. Joint and cooperative procurement.**

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

96 B. In addition, a public body may purchase from another public body's contract or from the contract  
97 of the Metropolitan Washington Council of Governments or the Virginia Sheriffs' Association even if it  
98 did not participate in the request for proposal or invitation to bid, if the request for proposal or  
99 invitation to bid specified that the procurement was a cooperative procurement being conducted on  
100 behalf of other public bodies, except for:

101 1. Contracts for architectural or engineering services; or

102 2. Construction, except for the installation of artificial turf and track surfaces, including all associated  
103 and necessary construction, which shall not be subject to the limitations prescribed in this subdivision.  
104 Nothing in this subdivision shall be construed to prohibit sole source or emergency procurements  
105 awarded pursuant to subsections E and F of § 2.2-4303.

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

114 *Notwithstanding any other provision of law, any contracting entity may purchase services under a*  
115 *solar services agreement, solar power purchase agreement, or solar self-generation agreement entered*  
116 *into by another contracting entity, even if it did not participate in the request for proposals, if the*  
117 *request for proposals specified that the procurement was being conducted on behalf of other contracting*  
118 *entities. One or more project agreements for power purchase agreements whereby the terms and*  
119 *conditions are defined under and referenced to a master solar power purchase agreement, whether or*  
120 *not the master power purchase agreement is still in effect, shall be treated as wholly binding and*

effective stand-alone agreements for as long as the life of the project agreements, and may be used by a contracting entity to purchase services under a cooperative procurement agreement.

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. That the provisions of this act shall become effective on January 1, 2019.**