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**SENATE BILL NO. 584**

Offered January 10, 2018

Prefiled January 9, 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; service disabled veteran businesses procurement enhancement program.*

Patron—DeSteph

Referred to Committee on General Laws and Technology

**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.

"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.

"Service disabled veteran business" means the same as that term is defined in § 2.2-4310.

"Small business" means a business that is at least 51 percent independently owned and controlled by one or more individuals who are U.S. citizens or legal resident aliens and, together with affiliates, has

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59 250 or fewer employees or average annual gross receipts of \$10 million or less averaged over the  
60 previous three years. One or more of the individual owners shall control both the management and daily  
61 business operations of the small business.

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

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

69 **§ 2.2-1605. Powers and duties of Department.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

118 **§ 2.2-4310. Discrimination prohibited; participation of small, women-owned, minority-owned,**  
119 **and service disabled veteran-owned business and employment services organization.**

120 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 service disabled veteran business 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.

"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

182 and who is regarded as such by the community of which this person claims to be a part or who is  
183 recognized by a tribal organization.

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

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

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

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

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

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

215 **§ 2.2-4310.1:1. Service disabled veteran business procurement enhancement program; report.**

216 A. As used in this section:

217 "Program" means the service disabled veteran business procurement enhancement program.

218 "Service disabled veteran business" means a business concern that is at least 51 percent owned by  
219 one or more service disabled veterans or, in the case of a corporation, partnership, or limited liability  
220 company or other entity, at least 51 percent of the equity ownership interest in the corporation,  
221 partnership, or limited liability company or other entity is owned by one or more individuals who are  
222 service disabled veterans and both the management and daily business operations are controlled by one  
223 or more individuals who are service disabled veterans. "Service disabled veteran business" includes a  
224 joint venture where at least one member of such joint venture is a service disabled veteran business and  
225 a small business.

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

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

229 B. It shall be the policy of the Commonwealth, to the greatest extent possible, to facilitate the  
230 participation of service disabled veteran businesses in state procurement. To that end, a service disabled  
231 veteran business procurement enhancement plan is hereby established. The goal of the Program shall be  
232 the achievement of five percent of service disabled veteran business utilization in all discretionary  
233 spending by state agencies in procurement orders, prime contracts, and subcontracts. The Department of  
234 Small Business and Supplier Diversity shall be responsible for implementing the Program.

235 C. The Program shall include a set-aside for competition among all service disabled veteran  
236 businesses for state agency purchases when the price quoted is fair and reasonable.

237 D. Each state agency subject to the provisions of this section shall designate an existing employee as  
238 a procurement equity officer whose responsibility shall be to ensure equity for service disabled veteran  
239 businesses in (i) the solicitation of procurement proposals and bids and (ii) the award of contracts.

240 E. The Department of Small Business and Supplier Diversity, in conjunction with the Department of  
241 General Services, the Virginia Information Technologies Agency, the Department of Transportation, and  
242 public institutions of higher education that have executed a valid management agreement under the  
243 Restructured Higher Education Financial and Administrative Operations Act (§ 23.1-1000 et seq.), shall

implement initiatives to enhance the development of service disabled veteran businesses 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; and

4. Statewide mentor and joint venture programs.

F. 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 service disabled veteran businesses procurement enhancement program established pursuant to § 2.2-4310.1:1 for 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 services. However, such selection shall be governed by the standard set forth in § 23.1-706.

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

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

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

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

This exemption shall be applicable only so long as such policies and procedures, or other policies and procedures meeting the requirements of § 2.2-4300, remain in effect in such county, city or town.

Such policies and standards may provide for incentive contracting that offers a contractor whose bid is accepted the opportunity to share in any cost savings realized by the locality when project costs are reduced by such contractor, without affecting project quality, during construction of the project. The fee, if any, charged by the project engineer or architect for determining such cost savings shall be paid as a separate cost and shall not be calculated as part of any cost savings.

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

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

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

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

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

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

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

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

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

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

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

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

21. [Expired].

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

23. The Virginia Industries for the Blind when procuring components, materials, supplies, or services for use in commodities and services furnished to the federal government in connection with its operation as an AbilityOne Program-qualified nonprofit agency for the blind under the Javits-Wagner-O'Day Act, 41 U.S.C. §§ 8501-8506, provided that the procurement is accomplished using procedures that ensure

367 that funds are used as efficiently as practicable. Such procedures shall require documentation of the  
368 basis for awarding contracts. Notwithstanding the provisions of § 2.2-1117, no public body shall be  
369 required to purchase such components, materials, supplies, services, or commodities.

370 B. Where a procurement transaction involves the expenditure of federal assistance or contract funds,  
371 the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or  
372 regulations not in conformance with the provisions of this chapter, a public body may comply with such  
373 federal requirements, notwithstanding the provisions of this chapter, only upon the written determination  
374 of the Governor, in the case of state agencies, or the governing body, in the case of political  
375 subdivisions, that acceptance of the grant or contract funds under the applicable conditions is in the  
376 public interest. Such determination shall state the specific provision of this chapter in conflict with the  
377 conditions of the grant or contract.