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HOUSE BILL NO. 1784

Offered January 13, 2021

Prefiled December 31, 2020

A *BILL to amend and reenact §§ 2.2-1604, 2.2-1605, 2.2-4310, 2.2-4310.3, and 2.2-4343, as it is currently effective and as it shall become effective, of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 16.1 of Title 2.2 an article numbered 4, consisting of sections numbered 2.2-1618 through 2.2-1623, relating to the Department of Small Business and Supplier Diversity; Small Business Procurement Enhancement Program established; report.*

Patrons—Ward and Willett; Senators: McClellan and Locke

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, as it is currently effective and as it shall become effective, of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 16.1 of Title 2.2 an article numbered 4, consisting of sections numbered 2.2-1618 through 2.2-1623, 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 college or 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 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

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59 corporation, partnership, or limited liability company or other entity, the equity ownership interest in the
60 corporation, partnership, or limited liability company or other entity.

61 "Small business" means a business that is at least 51 percent independently owned and controlled by
62 one or more individuals who are U.S. citizens or legal resident aliens and, together with affiliates, has
63 250 or fewer employees or average annual gross receipts of \$10 million or less averaged over the
64 previous three years. One or more of the individual owners shall control both the management and daily
65 business operations of the small business *holds a valid certification issued by the Department pursuant*
66 *to § 2.2-1620.*

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

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

74 **§ 2.2-1605. Powers and duties of Department.**

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

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

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

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

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

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

93 6. *Implement the Small Business Procurement Enhancement Program established by Article 4*
94 *(§ 2.2-1618 et seq.);*

95 7. Implement any remediation or enhancement measure for small, women-owned, or minority-owned
96 businesses as may be authorized by the Governor pursuant to subsection C of § 2.2-4310 and develop
97 regulations, consistent with prevailing law, for program implementation. Such regulations shall be
98 developed in consultation with the state agencies with procurement responsibility and promulgated by
99 those agencies in accordance with applicable law; and

100 7. 8. Receive and coordinate, with the appropriate state agency, the investigation of complaints that a
101 business certified pursuant to this chapter has failed to comply with its subcontracting plan under
102 subsection D of § 2.2-4310. If the Department determines that a business certified pursuant to this
103 chapter has failed to comply with the subcontracting plan, the business shall provide a written
104 explanation.

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

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

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

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

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

118 5. Develop statistical reports on job creation and the general economic conditions in the
119 Commonwealth.

120 C. All agencies of the Commonwealth shall assist the Department upon request and furnish such

information and assistance as the Department may require in the discharge of its duties.

Article 4.

Small Business Procurement Enhancement Program.

§ 2.2-1618. Definitions.

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

"Microbusiness" means the same as that term is defined in § 2.2-1604. "Microbusiness" includes women-owned businesses and minority-owned businesses, as those terms are defined in § 2.2-1604, that have been certified as microbusinesses by the Department.

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

"Program" means the Small Business Procurement Enhancement Program.

"Small business set-aside" means the reserving of a procurement exclusively for participation by small business concerns.

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

§ 2.2-1619. Small Business Procurement Enhancement Program established; designation of small business procurement enhancement liaison.

A. The Small Business Procurement Enhancement Program is hereby established to facilitate the participation of small businesses in state procurement to the greatest extent possible. The goal of the Program shall be the achievement of 42 percent of small business utilization in all discretionary spending by state agencies in procurement orders, prime contracts, and subcontracts. In addition, for all new capital outlay construction solicitations that are issued there shall be a target goal of 50 percent subcontracting to small businesses. The Department shall be responsible for implementing the Program.

B. The Program shall include a small business set-aside for competition among all businesses meeting the certification criteria established in § 2.2-1620 for state agency purchases of up to \$100,000 for goods, nonprofessional services, and construction and up to \$80,000 for professional services when the price quoted is fair and reasonable and does not exceed five percent of the lowest responsive and responsible noncertified bidder. In addition, a small business set-aside for competition among microbusinesses is established to include purchases under \$10,000 when the price quoted is fair and reasonable.

C. Each state agency subject to the provisions of this article shall designate an existing employee as a small business procurement enhancement liaison whose responsibility shall be to ensure participation in the Program by small businesses and serve as an advocate for small businesses that hold active contracts with such state agency.

§ 2.2-1620. Certification criteria for participation in the Program.

A. The Department shall certify as a small business qualified to participate in the Program any business that (i) is independently owned and controlled by one or more individuals who are U.S. citizens or legal resident aliens, (ii) is not dominant in its field of business operation, and (iii) meets one of the following business operation criteria for total employees or gross receipts:

1. For wholesale operations, the business has 50 or fewer employees or annual gross receipts of \$4 million or less, each to be averaged over the previous three years.

2. For manufacturing operations, the business has 100 or fewer employees or annual gross receipts of \$2 million or less, each to be averaged over the previous three years.

3. For retail operations, the business has 30 or fewer employees or annual gross receipts of \$3 million or less, each to be averaged over the previous three years.

4. For service operations, the business has 100 or fewer employees or annual gross receipts of \$15 million or less, each to be averaged over the previous three years.

5. For construction operations, the business has 50 or fewer employees or annual gross receipts of \$7 million or less, each to be averaged over the previous three years.

6. For architectural and engineering operations, the business has 100 or fewer employees or annual gross receipts of \$4.5 million or less, each to be averaged over the previous three years.

B. In the case of any business that has not existed for a period of three years, the employment and gross receipts average shall be the average for each year or part of a year during which the business has been operational.

§ 2.2-1621. Small, woman-owned, and minority-owned business procurement plan required for certain proposals or bids; report.

A. State agencies shall require each prime contractor to include in each proposal or bid a small, woman-owned, and minority-owned business (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

182 included in the SWaM procurement plan, the prime contractor shall provide a written explanation that
183 shall be made a part of the contract file. The record of a prime contractor's compliance with SWaM
184 procurement plan requirements shall be considered in the prospective award of a contract or renewal of
185 an existing contract. The Department shall (i) develop guidelines providing a uniform methodology for
186 evaluating and monitoring SWaM procurement plans and (ii) implement processes for producing reliable
187 data on the utilization of SWaM subcontractors by prime contractors.

188 B. State agencies shall submit to the Department on or before September 1 of each year their SWaM
189 procurement plans, to include promotion and utilization of small, any subcategory of small, small
190 women-owned, small minority-owned, and small service disabled-veteran owned businesses, and
191 employment services organizations.

192 **§ 2.2-1622. Department to lead implementation of small business enhancement initiatives.**

193 The Department, in conjunction with the Department of General Services, the Virginia Information
194 Technologies Agency, the Department of Transportation, and public institutions of higher education that
195 have executed a valid management agreement under the Restructured Higher Education Financial and
196 Administrative Operations Act (§ 23.1-1000 et seq.), shall implement initiatives to enhance the
197 development of small businesses and microbusinesses in the Commonwealth, including (i) provision of
198 information regarding access to capital, including contract financing and bonding support and other
199 opportunities for economic development; (ii) management and technical assistance programs; (iii)
200 partnerships and outreach with local business groups and other organizations to develop a diverse
201 vendor base; and (iv) statewide mentor and joint venture programs.

202 **§ 2.2-1623. Report.**

203 On or before November 30 of each year, the Director shall report to the Governor and the General
204 Assembly on the implementation and effectiveness of the Program.

205 **§ 2.2-4310. Discrimination prohibited; participation of small, women-owned, minority-owned,
206 and service disabled veteran-owned businesses and employment services organizations.**

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

213 B. All public bodies shall establish programs consistent with this chapter to facilitate the participation
214 of small businesses, businesses owned by women, minorities, and service disabled veterans, and
215 employment services organizations in procurement transactions. The programs established shall be in
216 writing and shall comply with the *Small Business Procurement Enhancement Program established*
217 *pursuant to Article 4 (§ 2.2-1618 et seq.) of Chapter 16.1* and the provisions of any enhancement or
218 remedial measures authorized by the Governor pursuant to subsection C or, where applicable, by the
219 chief executive of a local governing body pursuant to § 15.2-965.1, and shall include specific plans to
220 achieve any goals established therein. State agencies shall submit annual progress reports on (i) small,
221 women-owned, and minority-owned business procurement, (ii) service disabled veteran-owned business
222 procurement, and (iii) employment services organization procurement to the Department of Small
223 Business and Supplier Diversity in a form specified by the Department of Small Business and Supplier
224 Diversity. Contracts and subcontracts awarded to employment services organizations and service disabled
225 veteran-owned businesses shall be credited toward the small business, women-owned, and
226 minority-owned business contracting and subcontracting goals of state agencies and contractors. The
227 Department of Small Business and Supplier Diversity shall make information on service disabled
228 veteran-owned procurement available to the Department of Veterans Services upon request.

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

240 D. In awarding a contract for services to a small, women-owned, or minority-owned business that is
241 certified in accordance with § 2.2-1606, or to a business identified by a public body as a service
242 disabled veteran-owned business where the award is being made pursuant to an enhancement or remedial
243 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 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 as defined in § 2.2-1604, 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" means a veteran who (i) served on active duty in the United States military ground, naval, or air service, (ii) was discharged or released under conditions other than dishonorable, and (iii) has a service-connected disability rating fixed by the United States Department of Veterans Affairs.

"Service disabled veteran business" means a business that is at least 51 percent owned by one or more service disabled veterans 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 individuals who are service disabled veterans and both the management and daily business operations are controlled by one or more individuals who are service disabled veterans.

"Small business" means a business, ~~independently owned and controlled by one or more individuals who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees, or annual gross receipts of \$10 million or less averaged over the previous three years. One or more of the individual owners shall control both the management and daily business operations of the small business that holds a valid certification issued by the Department of Small Business and Supplier Diversity pursuant to § 2.2-1620.~~

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

"Women-owned business" means a business that is at least 51 percent owned by one or more women 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 is owned by one or more women who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women.

§ 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 Procurement Enhancement Program established pursuant to Article 4 (§ 2.2-1618 et seq.) of Chapter 16.1* 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. (Effective until March 1, 2021) 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 B, 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, 2.2-4342, 2.2-4343.1, and 2.2-4367 through 2.2-4377, Chapter 43.1 (§ 2.2-4378 et seq.), and § 58.1-1902 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 §§ 2.2-4302.2, 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 \$80,000 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 *Small Business Procurement Enhancement Program established pursuant to Article 4 (§ 2.2-1618 et seq.) of Chapter 16.1*, (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, provided that the procurement is accomplished by (i) obtaining written informal solicitation of a minimum of three bidders or offerors if practicable and (ii) including a written statement regarding the basis for awarding the contract.

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

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

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

§ 2.2-4343. (Effective March 1, 2021) 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 B, 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, 2.2-4342, 2.2-4343.1, and 2.2-4367 through 2.2-4377, Chapter 43.1 (§ 2.2-4378 et seq.), and § 58.1-1902 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 §§ 2.2-4302.2, 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 \$80,000 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 *Small Business Procurement Enhancement Program established pursuant to Article 4 (§ 2.2-1618 et seq.) of Chapter 16.1*, (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, provided that the procurement is accomplished by (i) obtaining written informal solicitation of a minimum of three bidders or offerors if practicable and (ii) including a written statement regarding the basis for awarding the contract.

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

24. The purchase of personal protective equipment for private, nongovernmental entities by the Governor pursuant to subdivision (11) of § 44-146.17 during a disaster caused by a communicable disease of public health threat for which a state of emergency has been declared. However, such purchase shall provide for competition where practicable and include a written statement regarding the basis for awarding any contract.

B. Where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the provisions of this chapter, a public body may comply with such federal requirements, notwithstanding the provisions of this chapter, only upon the written determination of the Governor, in the case of state agencies, or the governing body, in the case of political

551 subdivisions, that acceptance of the grant or contract funds under the applicable conditions is in the
552 public interest. Such determination shall state the specific provision of this chapter in conflict with the
553 conditions of the grant or contract.