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SENATE BILL NO. 1371

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Governor
on March 27, 2015)

(Patron Prior to Substitute—Senator Ruff)

A *BILL to amend and reenact §§ 2.2-2012, 2.2-4301, 2.2-4302.2, 2.2-4303, 2.2-4304, 2.2-4343, 2.2-4364, 23-38.110, and 33.2-283 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 2.2-4303.1 and 2.2-4303.2, relating to the Virginia Public Procurement Act; methods of procurement; job order contracting and cooperative procurement.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-2012, 2.2-4301, 2.2-4302.2, 2.2-4303, 2.2-4304, 2.2-4343, 2.2-4364, 23-38.110, and 33.2-283 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 2.2-4303.1 and 2.2-4303.2 as follows:

§ 2.2-2012. Procurement of information technology and telecommunications goods and services; computer equipment to be based on performance-based specifications.

A. Information technology and telecommunications goods and services of every description shall be procured by (i) VITA for its own benefit or on behalf of other state agencies and institutions or (ii) such other agencies or institutions to the extent authorized by VITA. Such procurements shall be made in accordance with the Virginia Public Procurement Act (§ 2.2-4300 et seq.), regulations that implement the electronic and information technology accessibility standards of the Rehabilitation Act of 1973 (29 U.S.C. § 794d), as amended, and any regulations as may be prescribed by VITA. In no case shall such procurements exceed the requirements of the regulations that implement the electronic and information technology accessibility standards of the Rehabilitation Act of 1973, as amended.

The CIO shall disapprove any procurement that does not conform to the Commonwealth strategic plan for information technology developed and approved pursuant to § 2.2-2007 or to the individual strategic plans of state agencies or public institutions of higher education.

B. All statewide contracts and agreements made and entered into by VITA for the purchase of communications services, telecommunications facilities, and information technology goods and services shall provide for the inclusion of counties, cities, and towns in such contracts and agreements. Notwithstanding the provisions of § ~~2.2-4301~~, 2.2-4302.1, ~~or~~ 2.2-4302.2, 2.2-4303.1, ~~or~~ 2.2-4303.2, VITA may enter into multiple vendor contracts for the referenced services, facilities, and goods and services.

C. VITA may establish contracts for the purchase of personal computers and related devices by licensed teachers employed in a full-time teaching capacity in Virginia public schools or in state educational facilities for use outside the classroom. The computers and related devices shall not be purchased with public funds, but shall be paid for and owned by teachers individually provided that no more than one such computer and related device per year shall be so purchased.

D. If VITA, or any agency or institution authorized by VITA, elects to procure personal computers and related peripheral equipment pursuant to any type of blanket purchasing arrangement under which public bodies, as defined in § 2.2-4301, may purchase such goods from any vendor following competitive procurement but without the conduct of an individual procurement by or for the using agency or institution, it shall establish performance-based specifications for the selection of equipment. Establishment of such contracts shall emphasize performance criteria including price, quality, and delivery without regard to "brand name." All vendors meeting the Commonwealth's performance requirements shall be afforded the opportunity to compete for such contracts.

E. VITA shall allow private institutions of higher education chartered in Virginia and granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code to purchase directly from contracts established for state agencies and public bodies by VITA.

F. This section shall not be construed or applied so as to infringe upon, in any manner, the responsibilities for accounting systems assigned to the Comptroller under § 2.2-803.

§ 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.

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

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

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

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

66 "Construction" means building, altering, repairing, improving or demolishing any structure, building
67 or highway, and any draining, dredging, excavation, grading or similar work upon real property.

68 "Construction management contract" means a contract in which a party is retained by the owner to
69 coordinate and administer contracts for construction services for the benefit of the owner, and may also
70 include, if provided in the contract, the furnishing of construction services to the owner.

71 "Design-build contract" means a contract between a public body and another party in which the party
72 contracting with the public body agrees to both design and build the structure, roadway or other item
73 specified in the contract.

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

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

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

82 "Job order contracting" means a method of procuring construction services by establishing a book of
83 unit prices and then obtaining a contractor to perform work as needed using the prices, quantities, and
84 specifications in the book as the basis of its pricing. The contractor may be selected through either
85 competitive sealed bidding or competitive negotiation depending on the needs of the public body
86 procuring the construction services. A minimum amount of work may be specified in the contract. The
87 contract term and the project amount shall not exceed the limitations specified in § ~~2.2-4302.2 or~~
88 ~~2.2-4303 or 2.2-4303.2.~~

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

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

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

100 "Professional services" means work performed by an independent contractor within the scope of the
101 practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law,
102 dentistry, medicine, optometry, pharmacy or professional engineering. "Professional services" shall also
103 include the services of an economist procured by the State Corporation Commission.

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

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

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

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

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

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

§ 2.2-4302.2. Process for competitive negotiation.

A. The process for competitive negotiation shall include the following:

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities, specifications or qualifications that will be required;

2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of proposals by posting on the Department of General Services' central electronic procurement website or other appropriate websites. Additionally, public bodies shall publish in a newspaper of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities. In addition, proposals may be solicited directly from potential contractors. Any additional solicitations shall include certified businesses selected from a list made available by the Department of Small Business and Supplier Diversity; and

3. For goods, nonprofessional services, and insurance, selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole or primary determining factor. After negotiations have been conducted with each offeror so selected, the public body shall select the offeror which, in its opinion, has made the best proposal and provides the best value, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror; or

4. For professional services, the public body shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In addition, offerors shall be informed of any ranking criteria that will be used by the public body in addition to the review of the professional competence of the offeror. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the public body may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. In accordance with § 2.2-4342, proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the public body shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious.

Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the public body can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price.

Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the Request for Proposal, a public body may award contracts to more than one offeror.

Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

B. For multiple projects, a contract for architectural or professional engineering services relating to construction projects, or a contract for job order contracting, may be negotiated by a public body, provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the Request for Proposal, and (iii) the contract is limited to a one-year term or when the cumulative total project fees reach the maximum cost authorized in this subsection, whichever occurs

183 first.

184 Such contracts may be renewable for four additional one-year terms at the option of the public body.
185 The fair and reasonable prices as negotiated shall be used in determining the cost of each project
186 performed and the sum of all projects performed in a one-year contract term shall not exceed \$500,000,
187 except that for:

188 1. A state agency, as defined in § 2.2-4347, the sum of all projects performed in a one-year contract
189 term shall not exceed \$1 million as may be determined by the Director of the Department of General
190 Services;

191 2. Any locality or any authority, sanitation district, metropolitan planning organization or planning
192 district commission with a population in excess of 80,000, or any city within Planning District 8, the
193 sum of all projects performed in a one-year contract term shall not exceed \$5 million and those awarded
194 for any airport as defined in § 5.1-1 and aviation transportation projects, the sum of all such projects
195 shall not exceed \$1.5 million;

196 3. Architectural and engineering services for rail and public transportation projects by the Director of
197 the Department of Rail and Public Transportation, the sum of all projects in a one-year contract term
198 shall not exceed \$2 million. Such contract may be renewable for two additional one-year terms at the
199 option of the Director;

200 4. Environmental location, design and inspection work regarding highways and bridges by the
201 Commissioner of Highways, the initial contract term shall be limited to two years or when the
202 cumulative total project fees reach \$5 million, whichever occurs first. Such contract may be renewable
203 for two additional one-year terms at the option of the Commissioner, and the sum of all projects in each
204 one-year contract term shall not exceed \$5 million; and

205 5. Job order contracting, the sum of all projects performed in a one-year contract term shall not
206 exceed \$2 million.

207 Competitive negotiations for such contracts may result in awards to more than one offeror provided
208 (i) the Request for Proposal so states and (ii) the public body has established procedures for distributing
209 multiple projects among the selected contractors during the contract term.

210 C. For any single project, for (i) architectural or professional engineering services relating to
211 construction projects, or (ii) job order contracting, the project fee shall not exceed \$100,000, or for
212 architectural or engineering services for airports as defined in § 5.1-1 and aviation transportation
213 projects, the project fee of any single project shall not exceed \$500,000, except that for:

214 1. A state agency as defined in § 2.2-4347, the project fee shall not exceed \$200,000, as may be
215 determined by the Director of the Department of General Services;

216 2. Any locality or any authority or sanitation district with a population in excess of 80,000, or any
217 city within Planning District 8, the project fee shall not exceed \$2 million; and

218 3. Job order contracting, the project fee shall not exceed \$400,000.

219 The limitations imposed upon single project fees pursuant to this subsection shall not apply to
220 environmental, location, design, and inspection work regarding highways and bridges by the
221 Commissioner of Highways or architectural and engineering services for rail and public transportation
222 projects by the Director of the Department of Rail and Public Transportation.

223 D. For the purposes of subsections B and C, any unused amounts from the first contract term shall
224 not be carried forward to the additional term.

225 E. Multiphase professional services contracts satisfactory and advantageous to the completion of
226 large, phased, or long term *long-term* projects may be negotiated and awarded based on a fair and
227 reasonable price for the first phase only, where the completion of the earlier phases is necessary to
228 provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior
229 to the entering into any such contract, the public body shall (i) state the anticipated intended total scope
230 of the project and (ii) determine in writing that the nature of the work is such that the best interests of
231 the public body require awarding the contract.

232 **§ 2.2-4303. Methods of procurement.**

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

236 B. Professional services shall be procured by competitive negotiation.

237 C. Upon a determination made in advance by the public body and set forth in writing that
238 competitive sealed bidding is either not practicable or not fiscally advantageous to the public, goods,
239 services, or insurance may be procured by competitive negotiation. The writing shall document the basis
240 for this determination.

241 Upon a written determination made in advance by (i) the Governor or his designee in the case of a
242 procurement by the Commonwealth or by a department, agency or institution thereof or (ii) the local
243 governing body in the case of a procurement by a political subdivision of the Commonwealth, that
244 competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured

through a licensed agent or broker selected in the manner provided for the procurement of things other than professional services set forth in § 2.2-4302.2. The basis for this determination shall be documented in writing.

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

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

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

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

4. As otherwise provided in § 2.2-4308.

E. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The public body shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the Department of General Services' central electronic procurement website or other appropriate websites, and in addition, public bodies may publish in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

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

G. A public body may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts for (i) goods and services other than professional services and (ii) *non transportation-related construction*, if the aggregate or the sum of all phases is not expected to exceed \$100,000; however, such small purchase procedures shall provide for competition wherever practicable. ~~For local public bodies, such~~ *Such* purchase procedures may allow for single or term contracts for professional services without requiring competitive negotiation, provided the aggregate or the sum of all phases is not expected to exceed \$60,000. *Where small purchase procedures are adopted for construction, the procedures shall not waive compliance with the Uniform State Building Code.*

For state public bodies, purchases under this subsection that are expected to exceed \$30,000 shall require the ~~(i)~~ (a) written informal solicitation of a minimum of four bidders or offerors and ~~(ii)~~ (b) posting of a public notice on the Department of General Services' central electronic procurement website or other appropriate websites. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public

with centralized visibility and access to the Commonwealth's procurement opportunities.

H. A state public body may establish purchase procedures, if adopted in writing, not requiring competitive negotiation for single or term contracts for professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; however such small purchase procedures shall provide for competition wherever practicable.

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

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

§ 2.2-4303.1. Architectural and professional engineering term contracting; limitations.

A. A contract for architectural or professional engineering services relating to multiple construction projects may be awarded by a public body, provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the Request for Proposal, and (iii) the contract is limited to a term of one year or when the cumulative total project fees reach the maximum authorized in this section, whichever occurs first.

Such contracts may be renewable for four additional one-year terms at the option of the public body. The fair and reasonable prices as negotiated shall be used in determining the cost of each project performed.

B. The sum of all projects performed in a one-year contract term shall not exceed \$500,000, except that for:

1. A state agency, as defined in § 2.2-4347, the sum of all projects performed in a one-year contract term shall not exceed \$1 million;

2. Any locality or any authority, sanitation district, metropolitan planning organization or planning district commission with a population in excess of 80,000, or any city within Planning District 8, the sum of all projects performed in a one-year contract term shall not exceed \$5 million and those awarded for any airport as defined in § 5.1-1 and aviation transportation projects, the sum of all such projects shall not exceed \$1.5 million;

3. Architectural and engineering services for rail and public transportation projects by the Director of the Department of Rail and Public Transportation, the sum of all projects in a one-year contract term shall not exceed \$2 million. Such contract may be renewable for two additional one-year terms at the option of the Director; and

4. Environmental location, design, and inspection work regarding highways and bridges by the Commissioner of Highways, the initial contract term shall be limited to two years or when the cumulative total project fees reach \$5 million, whichever occurs first. Such contract may be renewable for two additional one-year terms at the option of the Commissioner, and the sum of all projects in each one-year contract term shall not exceed \$5 million.

C. Competitive negotiations for such architectural or professional engineering services contracts may result in awards to more than one offeror, provided (i) the Request for Proposal so states and (ii) the public body has established procedures for distributing multiple projects among the selected contractors during the contract term. Such procedures shall prohibit requiring the selected contractors to compete for individual projects based on price.

D. The fee for any single project shall not exceed \$100,000; however, for architectural or engineering services for airports as defined in § 5.1-1 and aviation transportation projects, the project fee of any single project shall not exceed \$500,000, except that for:

1. A state agency as defined in § 2.2-4347, the project fee shall not exceed \$200,000, as may be determined by the Director of the Department of General Services or as otherwise provided by the Restructured Higher Education Financial and Administrative Operations Act (§ 23-38.88 et seq.); and

2. Any locality or any authority or sanitation district with a population in excess of 80,000, or any city within Planning District 8, the project fee shall not exceed \$2 million.

The limitations imposed upon single-project fees pursuant to this subsection shall not apply to environmental, location, design, and inspection work regarding highways and bridges by the Commissioner of Highways or architectural and engineering services for rail and public transportation projects by the Director of the Department of Rail and Public Transportation.

E. For the purposes of subsection B, any unused amounts from one contract term shall not be carried forward to any additional term, except as otherwise provided by the Restructured Higher

Education Financial and Administrative Operations Act (§ 23-38.88 et seq.).

§ 2.2-4303.2. Job order contracting; limitations.

A. A job order contract may be awarded by a public body for multiple jobs, provided (i) the jobs require similar experience and expertise, (ii) the nature of the jobs is clearly identified in the solicitation, and (iii) the contract is limited to a term of one year or when the cumulative total project fees reach the maximum authorized in this section, whichever occurs first. Contractors may be selected through either competitive sealed bidding or competitive negotiation depending on the needs of the public body.

B. Such contracts may be renewable for two additional one-year terms at the option of the public body. The fair and reasonable prices as negotiated shall be used in determining the cost of each job performed, and the sum of all jobs performed in a one-year contract term shall not exceed \$5 million. Individual job orders shall not exceed \$500,000.

C. For the purposes of this section, any unused amounts from one contract term shall not be carried forward to any additional term.

D. Order splitting with the intent of keeping a job order under the maximum dollar amounts prescribed in subsection B is prohibited.

E. No public body shall issue or use a job order, under a job order contract, solely for the purpose of receiving professional architectural or engineering services that constitute the practice of architecture or the practice of engineering as those terms are defined in § 54.1-400. However, professional architectural or engineering services may be included on a job order where such professional services are (i) incidental and directly related to the job, (ii) do not exceed \$25,000 per job order, and (iii) do not exceed \$75,000 per contract term.

F. Job order contracting shall not be used for construction, maintenance, or asset management services for a highway, bridge, tunnel, or overpass.

§ 2.2-4304. Joint and cooperative procurement.

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

A B. In addition, a public body may purchase from another public body'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, except for:

1. Contracts for architectural or engineering services; or
2. Construction in excess of \$200,000 by a local public body from the contract of another local public body that is more than a straight line distance of 75 miles from the territorial limits of the local public body procuring the construction. The installation of artificial turf or other athletic surfaces shall not be subject to the limitations prescribed in this subdivision. Nothing in this subdivision shall be construed to prohibit sole source or emergency procurements awarded pursuant to subsections E and F of § 2.2-4303.

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

B. 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 ~~cooperative joint~~ procurement arrangement ~~on behalf of or~~ 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.

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

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

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

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

§ 2.2-4343. 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 College or Universities pursuant to § 23-44.1, 23-50.10:01, 23-76.1, or 23-122.1. 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 §§ 23-44.1, 23-50.10:01, 23-76.1, and 23-122.1.

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 § 23-38.80.

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 § 2.2-2011 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, 2.2-4308, 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.

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, and §§ 2.2-4305, 2.2-4308, 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 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 ~~subsection B of § 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 \$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.

18. The University of Virginia Medical Center to the extent provided by subdivision B 3 of § 23-77.4.

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 under a remedial plan established by the Governor pursuant to subsection C of § 2.2-4310 or 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].

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.

§ 2.2-4364. Legal actions.

A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the appropriate circuit court, *unless subsection G provides otherwise*, challenging that decision; ~~which~~. *The decision* shall be reversed only if the petitioner establishes that the decision was not (i) an honest exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in subsection B of § 2.2-4317. In the event the apparent low bidder, having been previously determined by the public body to be not responsible in accordance with § 2.2-4301, is found by the court to be a responsible bidder, the court may direct the public body to award the contract to such bidder in accordance with the requirements of this section and the Invitation to Bid.

B. A bidder denied withdrawal of a bid under § 2.2-4358 may bring an action in the appropriate circuit court, *unless subsection G provides otherwise*, challenging that decision; ~~which~~. *The decision* shall be reversed only if the bidder establishes that the decision of the public body was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid.

C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis in the manner provided in § 2.2-4303, whose protest of an award or decision to award under § 2.2-4360 is denied, may bring an action in the appropriate circuit court, *unless subsection G provides otherwise*, challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.

D. If injunctive relief is granted, the court, upon request of the public body, shall require the posting of reasonable security to protect the public body.

E. A contractor may bring an action involving a contract dispute with a public body in the appropriate circuit court, *unless subsection G provides otherwise*. Notwithstanding any other provision of law, the Comptroller shall not be named as a defendant in any action brought pursuant to this chapter or § 33.2-1103, except for disputes involving contracts of the Office of the Comptroller or the Department of Accounts.

F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of § 2.2-4365, if available, but if those procedures are invoked by the bidder, offeror or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the public body agrees otherwise.

G. *If no circuit court is determined to have jurisdiction with respect to an action challenging a decision as set forth in this section due to the application of Article IX, Section 4 of the Constitution of Virginia, then an action under subsection A, B, C, or E may be brought in the Supreme Court of Virginia.*

H. Nothing herein shall be construed to prevent a public body from instituting legal action against a contractor.

§ 23-38.110. Procurement; discrimination prohibited; participation of small, women-owned, and minority-owned business enterprises.

A. Subject to the express provisions of the management agreement described in § 23-38.88, covered institutions may be exempt from the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.), except for § 2.2-4342 (which section shall not be construed to require compliance with the prequalification application procedures of subsection B of § 2.2-4317); provided, however, that any deviations from the Virginia Public Procurement Act approved in a Management Agreement shall be uniform across all covered institutions; and provided further that the governing body of a covered institution shall adopt, and the covered institution shall comply with, policies for the procurement of goods and services, including professional services, that shall be based upon competitive principles and shall in each instance seek competition to the maximum practical degree. The policies shall implement a system of competitive negotiation for professional services pursuant to § 2.2-4303.1 and subsections A, B, and C of § 2.2-4302.2; shall prohibit discrimination because of race, religion, color, sex or national origin of the bidder or offeror in the solicitation or award of contracts; shall incorporate the prompt

payment principles of §§ 2.2-4350 and 2.2-4354; and shall consider the impact on correctional enterprises under § 53.1-47.

B. Such policies may, among other things, (i) provide for consideration of the dollar amount of the intended procurement, the term of the anticipated contract, and the likely extent of competition; (ii) implement a prequalification procedure for contractors or products; and (iii) include provisions for cooperative arrangements with other covered institutions, other public or private educational institutions, other public or private organizations or entities, including public-private partnerships, public bodies, charitable organizations, health care provider alliances or purchasing organizations or entities, state agencies or institutions of the Commonwealth or the several states, the District of Columbia, the territories and the United States, and any combination thereof. Nothing in this section shall preclude a covered institution from requesting and utilizing, and covered institutions are hereby encouraged to utilize, the assistance of the Virginia Information Technologies Agency in information technology procurements.

C. In the solicitation and awarding of contracts, no covered institution shall discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state or federal law. The procurement policies of a covered institution shall provide that, whenever solicitations are made seeking competitive procurement of goods or services, it shall be a priority of the institution to provide for fair and reasonable consideration of small, women-owned, and minority-owned businesses and to promote and encourage a diversity of suppliers. The institution shall post on the Department of General Services' central electronic procurement website all Invitations to Bid, Requests for Proposal, sole source award notices, and emergency award notices to ensure visibility and access to the Commonwealth's procurement opportunities on one website.

D. As part of any procurement provisions of a management agreement, the governing board of a covered institution shall identify the public, educational, and operational interests served by any procurement rule or rules that deviate from those in the Virginia Public Procurement Act.

§ 33.2-283. Powers and duties of the Director of the Department of Rail and Public Transportation.

Except such powers as are conferred by law upon the Board, or such services as are performed by the Department of Transportation pursuant to law, the Director of the Department of Rail and Public Transportation shall have the power to do all acts necessary or convenient for establishing, maintaining, improving, and promoting public transportation, transportation demand management, ridesharing, and passenger and freight rail transportation in the Commonwealth and to procure architectural and engineering services for rail and public transportation projects as specified in § 2.2-4302.2 2.2-4303.1.

2. That by October 1, 2017, the Department of Small Business and Supplier Diversity, public institutions of higher education having level 2 or 3 authority under the Restructured Higher Education Financial and Administrative Operations Act of 2005 (§ 23-38.88 et seq. of the Code of Virginia), state agencies utilizing job order contracting, and the Virginia Association of Counties, the Virginia Municipal League, and the Virginia Association of Governmental Purchasing on behalf of local public bodies working cooperatively shall report their respective experiences and findings relating to the appropriateness and effectiveness of (i) job order contracting in general, (ii) the project cost limitations set forth in § 2.2-4303.2, as added by this act, and (iii) the architectural and professional engineering term contract limits set forth in § 2.2-4303.1, as added by this act, to the Chairmen of the House Committee on General Laws and the Senate Committee on General Laws and Technology.

3. That the provisions of this act shall not apply to any solicitation issued or contract awarded before July 1, 2015, except that the provisions of subsection B of § 2.2-4303.2, as added by this act, shall apply to any renewal of a job order contract.

4. That all public bodies as defined in § 2.2-4301 of the Code of Virginia, including public institutions of higher education, shall submit a written report to the Director of the Department of General Services (the Director) for any nontransportation-related construction project in excess of \$2 million that was procured by any method other than competitive sealed bidding. Such report shall be in a form and manner prescribed by the Director after consultation with the contractor community and state and local government procurement officials. The report, at a minimum, shall identify the justification for the procurement method chosen and contain such other information deemed necessary or appropriate by the Director, including whether or not the procurement meets the standards as set forth by the Secretary of Administration guidelines. The Director shall (i) report such information quarterly to the Chairmen of the House Committee on General Laws and the Senate Committee on General Laws and Technology and (ii) post such reports on the Department of General Services' central electronic procurement website. In addition, on or before December 1 of each year, the Director shall submit an annual report to the Governor and the Chairmen of the House Committee on General Laws and Senate Committee on General Laws and

675 Technology that includes (a) the Director's evaluation of and findings regarding the methods of
676 procurement used for such construction procured by design-build or construction management at
677 risk method and (b) any recommendations for the improvement of (1) the method of procuring
678 construction generally and (2) the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code
679 of Virginia).

680 5. That the provisions of the fourth enactment of this act shall expire on July 1, 2017.

681 6. That by December 1, 2015, the State Corporation Commission (the Commission) shall develop a
682 process for the administrative review of its procurement decisions that is consistent with § 2.2-4365
683 of the Code of Virginia and the Constitution of Virginia and that addresses standing to request
684 and participate in the administrative review. The administrative review shall be conducted by a
685 person who is not an employee of the Commission. The process developed by the Commission for
686 the administrative review of its procurement decisions may address compensation for the person
687 appointed by the Commission to conduct the administrative review in accordance with the
688 provisions of this enactment. The reviewer shall file a report directly to the Commissioners of the
689 Commission.