

## CHAPTER 369

*An Act to amend and reenact § 33.2-209 of the Code of Virginia, relating to Request for Proposal for design-build projects.*

[H 501]

Approved March 11, 2016

**Be it enacted by the General Assembly of Virginia:**

**1. That § 33.2-209 of the Code of Virginia is amended and reenacted as follows:**

**§ 33.2-209. Construction and maintenance contracts and activities related to passenger and freight rail and public transportation.**

A. The Board shall have the power and duty to let all contracts to be administered by the Department of Transportation or the Department of Rail and Public Transportation for the construction, maintenance, and improvement of the highways comprising systems of state highways and for all activities related to passenger and freight rail and public transportation in excess of \$5 million. The Commissioner of Highways has authority to let all Department of Transportation-administered contracts for highway construction, maintenance, and improvements up to \$5 million in value. The Director of the Department of Rail and Public Transportation has the authority to let contracts for passenger and freight rail and public transportation improvements up to \$5 million in value. The Commissioner of Highways is authorized to enter into agreements with localities, authorities, and transportation districts to administer projects and to allow those localities, authorities, and transportation districts to let contracts with no limit on contract value and without prior concurrence of the Commissioner of Highways or the Board for highway construction, maintenance, and improvements within their jurisdictions, in accordance with those provisions of this Code providing those localities, authorities, and transportation districts the ability to let such contracts. The Director of the Department of Rail and Public Transportation is authorized to enter into agreements with localities, authorities, and transportation districts to administer projects and to allow those localities, authorities, and transportation districts to let contracts with no limit on contract value and without prior concurrence of the Director of the Department of Rail and Public Transportation or the Board for passenger and freight rail and public transportation activities within their jurisdictions, in accordance with those provisions of this Code providing those localities, authorities, and transportation districts the ability to let such contracts. The Commissioner of Highways and the Director of the Department of Rail and Public Transportation shall report on their respective transportation contracting activities at least quarterly to the Board.

B. The Board may award contracts for the construction of transportation projects on a design-build basis. These contracts may be awarded after a written determination is made by the Commissioner of Highways or the Director of the Department of Rail and Public Transportation, pursuant to objective criteria previously adopted by the Board regarding the use of design-build, that delivery of the projects must be expedited and that it is not in the public interest to comply with the design and construction contracting procedures normally followed. Such objective criteria shall include requirements for prequalification of contractors and competitive bidding processes. These contracts shall be of such size and scope to encourage maximum competition and participation by agency prequalified and otherwise qualified contractors. Such determination shall be retained for public inspection in the official records of the Department of Transportation or the Department of Rail and Public Transportation, as the case may be, and shall include a description of the nature and scope of the project and the reasons for the Commissioner's or the Director's determination that awarding a design-build contract will best serve the public interest. *A Request for Proposal for transportation projects to be delivered on a design-build basis pursuant to this section may allow for the submission and consideration of alternative technical concepts in accordance with the procedures set forth in such Request for Proposal.* The provisions of this section shall supersede contrary provisions of subsection D of § 2.2-4303 and § 2.2-4306.

*For the purposes of this subsection, "alternative technical concepts" means proposed changes to agency-supplied base design configurations, project scope, design, or construction criteria that provide a solution that is equal to or better than the requirements in the Request for Proposal.*

C. The Board may award contracts for the provision of equipment, materials, and supplies to be used in construction of transportation projects on a fixed-price basis. Any such contract may provide that the price to be paid for the provision of equipment, materials, and supplies to be furnished in connection with the projects shall not be increased but shall remain fixed until completion of the projects specified in the contracts. Material components of any such contract for annual and multiyear programs, including maintenance, may be fixed at the outset of the projects and until completion based on best achievable prices.