

23102401D

**HOUSE BILL NO. 1898**

Offered January 11, 2023

Prefiled January 10, 2023

*A BILL to amend and reenact §§ 2.2-4302.1, 2.2-4302.2, 2.2-4343, 23.1-203, and 23.1-1017 of the Code of Virginia and to amend the Code of Virginia by adding in Article 3 of Chapter 11 of Title 2.2 a section numbered 2.2-1128.1 and by adding sections numbered 2.2-4311.3 and 23.1-1304.2, relating to Virginia Public Procurement Act; public institutions of higher education; prohibition on boycotting Israel; civil penalty.*

Patrons—McGuire, Ballard, Campbell, E.H., Cordoza, Durant, Fariss, Fowler, Hodges, LaRock, Runion, Tata, Walker, Wiley and Williams

Referred to Committee on General Laws

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

**1. That §§ 2.2-4302.1, 2.2-4302.2, 2.2-4343, 23.1-203, and 23.1-1017 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 3 of Chapter 11 of Title 2.2 a section numbered 2.2-1128.1 and by adding sections numbered 2.2-4311.3 and 23.1-1304.2 as follows:**

**§ 2.2-1128.1. Database; contractor information; prohibition on boycotting Israel.**

*The Division shall establish and maintain a publicly available online database consisting of (i) every written certification provided by a contractor that is awarded a contract by a public body pursuant to subsection D of § 2.2-4311.3 and (ii) a list of contractors that have been debarred by a public body pursuant to subsection E of § 2.2-4311.3.*

**§ 2.2-4302.1. Process for competitive sealed bidding.**

The process for competitive sealed bidding shall include the following:

1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the public body has provided for prequalification of bidders, the Invitation to Bid shall include *the requirement outlined in subsection C of § 2.2-4311.3* and a statement of any *other* requisite qualifications of potential contractors. Any locality may include in the Invitation to Bid criteria that may be used in determining whether a bidder who is not prequalified by the Virginia Department of Transportation is a responsible bidder pursuant to § 2.2-4301. Such criteria may include a history or good faith assurances of (i) completion by the bidder and any potential subcontractors of specified safety training programs established by the U.S. Department of Labor, Occupational Safety and Health Administration; (ii) participation by the bidder and any potential subcontractors in apprenticeship training programs approved by state agencies or the U.S. Department of Labor; or (iii) maintenance by the bidder and any potential subcontractors of records of compliance with applicable local, state, and federal laws. No Invitation to Bid for construction services shall condition a successful bidder's eligibility on having a specified experience modification factor. When it is impractical to prepare initially a purchase description to support an award based on prices, an Invitation to Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation;

2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by posting on the Department of General Services' central electronic procurement website or other appropriate websites. In addition, public bodies may publish in a newspaper of general circulation. 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, bids 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;

3. Public opening and announcement of all bids received;

4. Evaluation of bids based upon the requirements set forth in the Invitation to Bid, which may include special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability; and

5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.

For the purposes of subdivision 1, "experience modification factor" means a value assigned to an employer as determined by a rate service organization in accordance with its uniform experience rating plan required to be filed pursuant to subsection D of § 38.2-1913.

**§ 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, indicating whether a numerical scoring system will be used in evaluation of the proposal, *containing the requirement outlined in subsection C of § 2.2-4311.3*, and containing or incorporating by reference ~~the~~ any other applicable contractual terms and conditions, including any unique capabilities, specifications or qualifications that will be required. Except with regard to contracts for architectural, professional engineering, transportation construction, or transportation-related construction services, a public body may include as a factor that will be used in evaluating a proposal the proposer's employment of persons with disabilities to perform the specifications of the contract. In the event that a numerical scoring system will be used in the evaluation of proposals, the point values assigned to each of the evaluation criteria shall be included in the Request for Proposal or posted at the location designated for public posting of procurement notices prior to the due date and time for receiving proposals. No Request for Proposal for construction authorized by this chapter shall condition a successful offeror's eligibility on having a specified experience modification factor;

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. Public bodies may also 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 (i) any state public body and (ii) any local public body if such local public body elects not to publish notice of the Request for Proposal in a newspaper of general circulation in the area in which the contract is to be performed. 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. In the case of a proposal for information technology, as defined in § 2.2-2006, a public body shall not require an offeror to state in a proposal any exception to any liability provisions contained in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. The offeror shall state any exception to any liability provisions contained in the Request for Proposal in writing at the beginning of negotiations, and such exceptions shall be considered during negotiation. 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. For architectural or engineering services, the public body shall not request or require offerors to list any exceptions to proposed contractual terms and conditions, unless such terms and conditions are required by statute, regulation, ordinance, or standards developed pursuant to § 2.2-1132, until after the qualified offerors are ranked for negotiations. 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 and pursuant to contractual terms and conditions acceptable to the public body, 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. Multiphase professional services contracts satisfactory and advantageous to the completion of large, phased, or long-term projects may be negotiated and awarded based on a fair and reasonable price for the first phase only, where the completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to entering into any such contract, the public body shall (i) state the anticipated intended total scope of the project and (ii) determine in writing that the nature of the work is such that the best interests of the public body require awarding the contract.

For the purposes of subdivision A 1, "experience modification factor" means a value assigned to an employer as determined by a rate service organization in accordance with its uniform experience rating plan required to be filed pursuant to subsection D of § 38.2-1913.

**§ 2.2-4311.3. Prohibited contracts; contractors that boycott Israel; civil penalty.**

A. As used in this section, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with (i) the State of Israel; (ii) an entity or individual doing business in or with the State of Israel; or (iii) an entity authorized by, licensed by, or organized under the laws of the State of Israel.

B. No public body shall enter into a contract in excess of \$100,000 with any contractor having more than an average of 10 employees for the previous 12 months that boycotts Israel.

C. A public body shall include in every Invitation to Bid pursuant to § 2.2-4302.1 and every Request for Proposal pursuant to § 2.2-4302.2 a requirement that any contractor submitting a bid or proposal and that employs more than an average of 10 employees for the previous 12 months shall certify in writing that if it is awarded the contract and such contract is in excess of \$100,000 such contractor will not, during the performance of the contract, boycott Israel.

D. A public body that awards a contract in excess of \$100,000 to a contractor with more than an average of 10 employees for the previous 12 months shall require such contractor to certify in writing that it will not, during the performance of the contract, boycott Israel. Any such written certification shall be sent by the public body to the Department of General Services for inclusion on a publicly available online database.

E. Each public body shall conduct a review twice a year of all active contracts that are accompanied by a written certification pursuant to subsection D. If the public body determines that a contractor has, at some point during the performance of the contract, boycotted Israel, in violation of the written certification, such contractor shall be debarred from contracting with all public bodies of the Commonwealth until it can prove that it no longer boycotts Israel.

F. Each public body shall maintain a list of contractors that have been debarred pursuant to subsection E and shall submit such list to the Department of General Services at least once every six months.

G. A contractor that boycotts Israel in violation of the provisions of this section shall be subject to a civil penalty in an amount equal to three times the amount of the contract. The attorney for the Commonwealth shall initiate civil proceedings to enforce the civil penalties. Any civil penalties collected shall be payable to the State Treasurer for deposit to the general fund.

**§ 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

181 applicable only so long as such policies and procedures meeting the requirements remain in effect.

182 2. The Virginia Retirement System for selection of services related to the management, purchase or  
183 sale of authorized investments, actuarial services, and disability determination services. Selection of these  
184 services shall be governed by the standard set forth in § 51.1-124.30.

185 3. The State Treasurer in the selection of investment management services related to the external  
186 management of funds shall be governed by the standard set forth in § 2.2-4514, and shall be subject to  
187 competitive guidelines and policies that are set by the Commonwealth Treasury Board and approved by  
188 the Department of General Services.

189 4. The Department of Social Services or local departments of social services for the acquisition of  
190 motor vehicles for sale or transfer to Temporary Assistance to Needy Families (TANF) recipients.

191 5. The College of William and Mary in Virginia, Virginia Commonwealth University, the University  
192 of Virginia, and Virginia Polytechnic Institute and State University in the selection of services related to  
193 the management and investment of their endowment funds, endowment income, gifts, all other  
194 nongeneral fund reserves and balances, or local funds of or held by the respective public institution of  
195 higher education pursuant to § 23.1-2210, 23.1-2306, 23.1-2604, or 23.1-2803. However, selection of  
196 these services shall be governed by the Uniform Prudent Management of Institutional Funds Act (§  
197 64.2-1100 et seq.) as required by §§ 23.1-2210, 23.1-2306, 23.1-2604, and 23.1-2803.

198 6. The Board of the Virginia College Savings Plan for the selection of services related to the  
199 operation and administration of the Plan, including, but not limited to, contracts or agreements for the  
200 management, purchase, or sale of authorized investments or actuarial, record keeping, or consulting  
201 services. However, such selection shall be governed by the standard set forth in § 23.1-706.

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

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

209 9. Any town with a population of less than 3,500, except as stipulated in the provisions of  
210 §§ 2.2-4305, 2.2-4311, 2.2-4311.3, 2.2-4315, 2.2-4330, 2.2-4333 through 2.2-4338, 2.2-4343.1, and  
211 2.2-4367 through 2.2-4377 and Chapter 43.1 (§ 2.2-4378 et seq.).

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

216 This exemption shall be applicable only so long as such policies and procedures, or other policies  
217 and procedures meeting the requirements of § 2.2-4300, remain in effect in such county, city or town.  
218 Such policies and standards may provide for incentive contracting that offers a contractor whose bid is  
219 accepted the opportunity to share in any cost savings realized by the locality when project costs are  
220 reduced by such contractor, without affecting project quality, during construction of the project. The fee,  
221 if any, charged by the project engineer or architect for determining such cost savings shall be paid as a  
222 separate cost and shall not be calculated as part of any cost savings.

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

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

230 12. Notwithstanding the exemptions set forth in subdivisions 9 through 11, the provisions of  
231 subsections B, C, and D of § 2.2-4303, §§ 2.2-4305, 2.2-4311, 2.2-4311.3, 2.2-4315, 2.2-4317,  
232 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  
233 43.1 (§ 2.2-4378 et seq.), and § 58.1-1902 shall apply to all counties, cities, and school divisions and to  
234 all towns having a population greater than 3,500 in the Commonwealth.

235 The method for procurement of professional services through competitive negotiation set forth in  
236 §§ 2.2-4302.2, 2.2-4303.1, and 2.2-4303.2 shall also apply to all counties, cities, and school divisions,  
237 and to all towns having a population greater than 3,500, where the cost of the professional service is  
238 expected to exceed \$80,000 in the aggregate or for the sum of all phases of a contract or project. A  
239 school board that makes purchases through its public school foundation or purchases educational  
240 technology through its educational technology foundation, either as may be established pursuant to  
241 § 22.1-212.2:2 shall be exempt from the provisions of this chapter, except, relative to such purchases,  
242 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 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].

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 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.

#### **§ 23.1-203. Duties of Council.**

The Council shall:

1. Develop a statewide strategic plan that (i) reflects the goals set forth in subsection A of § 23.1-1002 or (ii) once adopted, reflects the goals and objectives developed pursuant to subdivision B 5 of § 23.1-309 for higher education in the Commonwealth, identifies a coordinated approach to such state and regional goals, and emphasizes the future needs for higher education in the Commonwealth at both the undergraduate and the graduate levels and the mission, programs, facilities, and location of each of the existing institutions of higher education, each public institution's six-year plan, and such other

304 matters as the Council deems appropriate. The Council shall revise such plan at least once every six  
305 years and shall submit such recommendations as are necessary for the implementation of the plan to the  
306 Governor and the General Assembly.

307 2. Review and approve or disapprove any proposed change in the statement of mission of any public  
308 institution of higher education and define the mission of all newly created public institutions of higher  
309 education. The Council shall report such approvals, disapprovals, and definitions to the Governor and  
310 the General Assembly at least once every six years. No such actions shall become effective until 30  
311 days after adjournment of the session of the General Assembly next following the filing of such a  
312 report. Nothing in this subdivision shall be construed to authorize the Council to modify any mission  
313 statement adopted by the General Assembly or empower the Council to affect, either directly or  
314 indirectly, the selection of faculty or the standards and criteria for admission of any public institution of  
315 higher education, whether relating to academic standards, residence, or other criteria. Faculty selection  
316 and student admission policies shall remain a function of the individual public institutions of higher  
317 education.

318 3. Study any proposed escalation of any public institution of higher education to a degree-granting  
319 level higher than that level to which it is presently restricted and submit a report and recommendation to  
320 the Governor and the General Assembly relating to the proposal. The study shall include the need for  
321 and benefits or detriments to be derived from the escalation. No such institution shall implement any  
322 such proposed escalation until the Council's report and recommendation have been submitted to the  
323 General Assembly and the General Assembly approves the institution's proposal.

324 4. Review and approve or disapprove all enrollment projections proposed by each public institution  
325 of higher education. The Council's projections shall be organized numerically by level of enrollment and  
326 shall be used solely for budgetary, fiscal, and strategic planning purposes. The Council shall develop  
327 estimates of the number of degrees to be awarded by each public institution of higher education and  
328 include those estimates in its reports of enrollment projections. The student admissions policies for such  
329 institutions and their specific programs shall remain the sole responsibility of the individual governing  
330 boards but all baccalaureate public institutions of higher education shall adopt dual admissions policies  
331 with comprehensive community colleges as required by § 23.1-907.

332 5. Review and approve or disapprove all new undergraduate or graduate academic programs that any  
333 public institution of higher education proposes.

334 6. Review and require the discontinuance of any undergraduate or graduate academic program that is  
335 presently offered by any public institution of higher education when the Council determines that such  
336 academic program is (i) nonproductive in terms of the number of degrees granted, the number of  
337 students served by the program, the program's effectiveness, and budgetary considerations or (ii)  
338 supported by state funds and unnecessarily duplicative of academic programs offered at other public  
339 institutions of higher education. The Council shall make a report to the Governor and the General  
340 Assembly with respect to the discontinuance of any such academic program. No such discontinuance  
341 shall become effective until 30 days after the adjournment of the session of the General Assembly next  
342 following the filing of such report.

343 7. Review and approve or disapprove the establishment of any department, school, college, branch,  
344 division, or extension of any public institution of higher education that such institution proposes to  
345 establish, whether located on or off the main campus of such institution. If any organizational change is  
346 determined by the Council to be proposed solely for the purpose of internal management and the  
347 institution's curricular offerings remain constant, the Council shall approve the proposed change. Nothing  
348 in this subdivision shall be construed to authorize the Council to disapprove the establishment of any  
349 such department, school, college, branch, division, or extension established by the General Assembly.

350 8. Review the proposed closure of any academic program in a high demand or critical shortage area,  
351 as defined by the Council, by any public institution of higher education and assist in the development of  
352 an orderly closure plan, when needed.

353 9. Develop a uniform, comprehensive data information system designed to gather all information  
354 necessary to the performance of the Council's duties. The system shall include information on  
355 admissions, enrollment, self-identified students with documented disabilities, personnel, programs,  
356 financing, space inventory, facilities, and such other areas as the Council deems appropriate. When  
357 consistent with the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq.),  
358 the Virginia Unemployment Compensation Act (§ 60.2-100 et seq.), and applicable federal law, the  
359 Council, acting solely or in partnership with the Virginia Department of Education or the Virginia  
360 Employment Commission, may contract with private entities to create de-identified student records in  
361 which all personally identifiable information has been removed for the purpose of assessing the  
362 performance of institutions and specific programs relative to the workforce needs of the Commonwealth.

363 10. In cooperation with public institutions of higher education, develop guidelines for the assessment  
364 of student achievement. Each such institution shall use an approved program that complies with the  
365 guidelines of the Council and is consistent with the institution's mission and educational objectives in

the development of such assessment. The Council shall report each institution's assessment of student achievement in the revisions to the Commonwealth's statewide strategic plan for higher education.

11. In cooperation with the appropriate state financial and accounting officials, develop and establish uniform standards and systems of accounting, recordkeeping, and statistical reporting for public institutions of higher education.

12. Review biennially and approve or disapprove all changes in the inventory of educational and general space that any public institution of higher education proposes and report such approvals and disapprovals to the Governor and the General Assembly. No such change shall become effective until 30 days after the adjournment of the session of the General Assembly next following the filing of such report.

13. Visit and study the operations of each public institution of higher education at such times as the Council deems appropriate and conduct such other studies in the field of higher education as the Council deems appropriate or as may be requested by the Governor or the General Assembly.

14. Provide advisory services to each accredited nonprofit private institution of higher education whose primary purpose is to provide collegiate or graduate education and not to provide religious training or theological education on academic, administrative, financial, and space utilization matters. The Council may review and advise on joint activities, including contracts for services between public institutions of higher education and such private institutions of higher education or between such private institutions of higher education and any agency or political subdivision of the Commonwealth.

15. Adopt such policies and regulations as the Council deems necessary to implement its duties established by state law. Each public institution of higher education shall comply with such policies and regulations.

16. Issue guidelines consistent with the provisions of the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g), requiring public institutions of higher education to release a student's academic and disciplinary record to a student's parent.

17. Require each institution of higher education formed, chartered, or established in the Commonwealth after July 1, 1980, to ensure the preservation of student transcripts in the event of institutional closure or revocation of approval to operate in the Commonwealth. An institution may ensure the preservation of student transcripts by binding agreement with another institution of higher education with which it is not corporately connected or in such other way as the Council may authorize by regulation. In the event that an institution closes or has its approval to operate in the Commonwealth revoked, the Council, through its director, may take such action as is necessary to secure and preserve the student transcripts until such time as an appropriate institution accepts all or some of the transcripts. Nothing in this subdivision shall be deemed to interfere with the right of a student to his own transcripts or authorize disclosure of student records except as may otherwise be authorized by law.

18. Require the development and submission of articulation, dual admissions, and guaranteed admissions agreements between associate-degree-granting and baccalaureate public institutions of higher education.

19. Provide periodic updates of base adequacy funding guidelines adopted by the Joint Subcommittee Studying Higher Education Funding Policies for each public institution of higher education.

20. Develop, pursuant to the provisions of § 23.1-907, guidelines for articulation, dual admissions, and guaranteed admissions agreements, including guidelines related to a one-year Uniform Certificate of General Studies Program and a one-semester Passport Program to be offered at each comprehensive community college. The guidelines developed pursuant to this subdivision shall be developed in consultation with all public institutions of higher education in the Commonwealth, the Department of Education, and the Virginia Association of School Superintendents and shall ensure standardization, quality, and transparency in the implementation of the programs and agreements. At the discretion of the Council, private institutions of higher education eligible for tuition assistance grants may also be consulted.

21. Cooperate with the Board of Education in matters of interest to both public elementary and secondary schools and public institutions of higher education, particularly in connection with coordination of the college admission requirements, coordination of teacher training programs with the public school programs, and the Board of Education's Six-Year Educational Technology Plan for Virginia. The Council shall encourage public institutions of higher education to design programs that include the skills necessary for the successful implementation of such Plan.

22. Advise and provide technical assistance to the Brown v. Board of Education Scholarship Committee in the implementation and administration of the Brown v. Board of Education Scholarship Program pursuant to Chapter 34.1 (§ 30-231.01 et seq.) of Title 30.

23. Insofar as possible, seek the cooperation and utilize the facilities of existing state departments, institutions, and agencies in carrying out its duties.

24. Serve as the coordinating council for public institutions of higher education.

25. Serve as the planning and coordinating agency for all postsecondary educational programs for all health professions and occupations and make recommendations, including those relating to financing, for providing adequate and coordinated educational programs to produce an appropriate supply of properly trained personnel. The Council may conduct such studies as it deems appropriate in furtherance of the requirements of this subdivision. All state departments and agencies shall cooperate with the Council in the execution of its responsibilities under this subdivision.

26. Carry out such duties as the Governor may assign to it in response to agency designations requested by the federal government.

27. Insofar as practicable, preserve the individuality, traditions, and sense of responsibility of each public institution of higher education in carrying out its duties.

28. Insofar as practicable, seek the assistance and advice of each public institution of higher education in fulfilling its duties and responsibilities.

29. Administer the Virginia Longitudinal Data System as a multiagency partnership for the purposes of developing educational, health, social service, and employment outcome data; improving the efficacy of state services; and aiding decision making.

30. Assist the Department of Education with collecting and compiling information for distribution to high school students that assist such students in making more informed decisions about post-high-school educational and training opportunities pursuant to § 22.1-206.2.

31. *Establish and maintain a publicly available online database consisting of every written certification provided by an entity under the control of a governing board of a public institution of higher education, as well as each quarterly report produced by any such governing board and any resulting penalty information pursuant to § 23.1-1304.2.*

**§ 23.1-1017. Covered institutions; operational authority; procurement.**

A. Subject to the express provisions of the management agreement, each covered institution may be exempt from the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.), except for §§ 2.2-4311.3, 2.2-4340, 2.2-4340.1, 2.2-4340.2, 2.2-4342, and 2.2-4376.2, which shall not be construed to require compliance with the prequalification application procedures of subsection B of § 2.2-4317, provided, however, that (i) any deviations from the Virginia Public Procurement Act in the management agreement shall be uniform across all covered institutions and (ii) the governing board of the covered institution shall adopt, and the covered institution shall comply with, policies for the procurement of goods and services, including professional services, that shall (a) be based upon competitive principles; (b) in each instance seek competition to the maximum practical degree; (c) implement a system of competitive negotiation for professional services pursuant to §§ 2.2-4303.1 and 2.2-4302.2; (d) prohibit discrimination in the solicitation and award of contracts on the basis of the bidder's or offeror's race, religion, color, sex, sexual orientation, gender identity, national origin, age, or disability or on any other basis prohibited by state or federal law; (e) incorporate the prompt payment principles of §§ 2.2-4350 and 2.2-4354; (f) consider the impact on correctional enterprises under § 53.1-47; and (g) 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.

B. Such policies may (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, or 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 other states, the District of Columbia, the territories, or the United States, and any combination of such organizations and entities.

C. Nothing in this section shall preclude a covered institution from requesting and utilizing the assistance of the Virginia Information Technologies Agency for information technology procurements and covered institutions are encouraged to utilize such assistance.

D. Each covered 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.

E. As part of any procurement provisions of the management agreement, the governing board of a covered institution shall identify the public, educational, and operational interests served by any procurement rule that deviates from procurement rules in the Virginia Public Procurement Act (§ 2.2-4300 et seq.).

**§ 23.1-1304.2. Governing boards; additional duties; prohibition on boycotting Israel.**

A. As used in this section, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or



489 *limit commercial relations with (i) the State of Israel; (ii) an entity or individual doing business in or*  
490 *with the State of Israel; or (iii) an entity authorized by, licensed by, or organized under the laws of the*  
491 *State of Israel.*

492 *B. No public institution of higher education shall boycott Israel. The governing board of each public*  
493 *institution of higher education shall establish guidelines that require (i) any entity under the control of*  
494 *the governing board to certify in writing that it shall not boycott Israel; (ii) a quarterly review and*  
495 *report by the governing board of all such entities to determine whether any such entity has boycotted*  
496 *Israel in violation of this section; (iii) appropriate penalties for any entity that boycotts Israel in*  
497 *violation of this section; and (iv) all written certifications, quarterly reports, and penalty information to*  
498 *be sent to the Council for inclusion in a publicly available online database.*

**INTRODUCED**

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