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SENATE BILL NO. 1371
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Joint Conference Committee
on February 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, 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, 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.

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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.

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

125 **§ 2.2-4302.2. Process for competitive negotiation.**

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

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

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

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

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

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

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

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

178 B. For multiple projects, a contract for architectural or professional engineering services relating to
179 construction projects, or a contract for job order contracting, may be negotiated by a public body,
180 provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly
181 identified in the Request for Proposal, and (iii) the contract is limited to a one-year term or when the
182 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

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

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

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

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

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

263 4. As otherwise provided in § 2.2-4308.

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

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

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

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

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

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

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

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

322 **§ 2.2-4303.1. Architectural and professional engineering term contracting; limitations.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

369 **§ 2.2-4303.2. Job order contracting; limitations.**

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

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

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

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

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

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

391 **§ 2.2-4304. Joint and cooperative procurement.**

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

398 A B. In addition, a public body may purchase from another public body's contract even if it did not
399 participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid
400 specified that the procurement was a cooperative procurement being conducted on behalf of other public
401 bodies, except for:

402 1. Contracts for architectural or engineering services; or

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

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

417 B. C. Subject to the provisions of §§ 2.2-1110, 2.2-1111, 2.2-1120 and 2.2-2012, any authority,
418 department, agency, or institution of the Commonwealth may participate in, sponsor, conduct, or
419 administer a ~~cooperative joint~~ procurement arrangement ~~on behalf of or~~ in conjunction with public
420 bodies, private health or educational institutions or with public agencies or institutions of the several
421 states, territories of the United States, or the District of Columbia, for the purpose of combining
422 requirements to effect cost savings or reduce administrative expense in any acquisition of goods and
423 services, other than professional services, and construction.

424 A public body may purchase from any authority, department, agency or institution of the
425 Commonwealth's contract even if it did not participate in the request for proposal or invitation to bid, if
426 the request for proposal or invitation to bid specified that the procurement was a cooperative
427 procurement being conducted on behalf of other public bodies. In such instances, deviation from the
428 procurement procedures set forth in this chapter and the administrative policies and procedures

429 established to implement this chapter shall be permitted, if approved by the Director of the Division of
430 Purchases and Supply.

431 Pursuant to § 2.2-2012, such approval is not required if the procurement arrangement is for
432 telecommunications and information technology goods and services of every description. In instances
433 where the procurement arrangement is for telecommunications and information technology goods and
434 services, such arrangement shall be permitted if approved by the Chief Information Officer of the
435 Commonwealth. However, such acquisitions shall be procured competitively.

436 Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that
437 will allow for participation in any such arrangement.

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

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

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

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

452 **§ 2.2-4343. Exemption from operation of chapter for certain transactions.**

453 A. The provisions of this chapter shall not apply to:

454 1. The Virginia Port Authority in the exercise of any of its powers in accordance with Chapter 10
455 (§ 62.1-128 et seq.) of Title 62.1, provided the Authority implements, by policy or regulation adopted by
456 the Board of Commissioners, procedures to ensure fairness and competitiveness in the procurement of
457 goods and services and in the administration of its capital outlay program. This exemption shall be
458 applicable only so long as such policies and procedures meeting the requirements remain in effect.

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

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

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

468 5. The College of William and Mary in Virginia, Virginia Commonwealth University, the University
469 of Virginia, and Virginia Polytechnic Institute and State University in the selection of services related to
470 the management and investment of their endowment funds, endowment income, gifts, all other
471 nongeneral fund reserves and balances, or local funds of or held by the College or Universities pursuant
472 to § 23-44.1, 23-50.10:01, 23-76.1, or 23-122.1. However, selection of these services shall be governed
473 by the Uniform Prudent Management of Institutional Funds Act (§ 64.2-1100 et seq.) as required by
474 §§ 23-44.1, 23-50.10:01, 23-76.1, and 23-122.1.

475 6. The Board of the Virginia College Savings Plan for the selection of services related to the
476 operation and administration of the Plan, including, but not limited to, contracts or agreements for the
477 management, purchase, or sale of authorized investments or actuarial, record keeping, or consulting
478 services. However, such selection shall be governed by the standard set forth in § 23-38.80.

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

482 8. The purchase of goods and services by agencies of the legislative branch that may be specifically
483 exempted therefrom by the Chairman of the Committee on Rules of either the House of Delegates or the
484 Senate. Nor shall the contract review provisions of § 2.2-2011 apply to such procurements. The
485 exemption shall be in writing and kept on file with the agency's disbursement records.

486 9. Any town with a population of less than 3,500, except as stipulated in the provisions of
487 §§ 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
488 2.2-4367 through 2.2-4377.

489 10. Any county, city or town whose governing body has adopted, by ordinance or resolution,
490 alternative policies and procedures which are (i) based on competitive principles and (ii) generally

491 applicable to procurement of goods and services by such governing body and its agencies, except as
492 stipulated in subdivision 12.

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

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

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

507 12. Notwithstanding the exemptions set forth in subdivisions 9 through 11, the provisions of
508 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,
509 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
510 and school divisions, and to all towns having a population greater than 3,500 in the Commonwealth.

511 The method for procurement of professional services through competitive negotiation set forth in
512 ~~subsection B of § 2.2-4302.2~~ §§ 2.2-4303.1 and 2.2-4303.2 shall also apply to all counties, cities and
513 school divisions, and to all towns having a population greater than 3,500, where the cost of the
514 professional service is expected to exceed \$60,000 in the aggregate or for the sum of all phases of a
515 contract or project. A school board that makes purchases through its public school foundation or
516 purchases educational technology through its educational technology foundation, either as may be
517 established pursuant to § 22.1-212.2:2 shall be exempt from the provisions of this chapter, except,
518 relative to such purchases, the school board shall comply with the provisions of §§ 2.2-4311 and
519 2.2-4367 through 2.2-4377.

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

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

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

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

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

539 18. The University of Virginia Medical Center to the extent provided by subdivision B 3 of
540 § 23-77.4.

541 19. The purchase of goods and services by a local governing body or any authority, board,
542 department, instrumentality, institution, agency or other unit of state government when such purchases
543 are made under a remedial plan established by the Governor pursuant to subsection C of § 2.2-4310 or
544 by a chief administrative officer of a county, city or town pursuant to § 15.2-965.1.

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

547 21. [Expired].

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

552 of the Governor, in the case of state agencies, or the governing body, in the case of political
553 subdivisions, that acceptance of the grant or contract funds under the applicable conditions is in the
554 public interest. Such determination shall state the specific provision of this chapter in conflict with the
555 conditions of the grant or contract.

556 **§ 23-38.110. Procurement; discrimination prohibited; participation of small, women-owned, and**
557 **minority-owned business enterprises.**

558 A. Subject to the express provisions of the management agreement described in § 23-38.88, covered
559 institutions may be exempt from the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et
560 seq.), except for § 2.2-4342 (which section shall not be construed to require compliance with the
561 prequalification application procedures of subsection B of § 2.2-4317); provided, however, that any
562 deviations from the Virginia Public Procurement Act approved in a Management Agreement shall be
563 uniform across all covered institutions; and provided further that the governing body of a covered
564 institution shall adopt, and the covered institution shall comply with, policies for the procurement of
565 goods and services, including professional services, that shall be based upon competitive principles and
566 shall in each instance seek competition to the maximum practical degree. The policies shall implement a
567 system of competitive negotiation for professional services pursuant to § 2.2-4303.1 and subsections A,
568 B, and E C of § 2.2-4302.2; shall prohibit discrimination because of race, religion, color, sex or national
569 origin of the bidder or offeror in the solicitation or award of contracts; shall incorporate the prompt
570 payment principles of §§ 2.2-4350 and 2.2-4354; and shall consider the impact on correctional
571 enterprises under § 53.1-47.

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

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

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

595 **§ 33.2-283. Powers and duties of the Director of the Department of Rail and Public**
596 **Transportation.**

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

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

- 614 3. That the provisions of this act shall not apply to any solicitation issued or contract awarded
615 before July 1, 2015, except that the provisions of subsection B of § 2.2-4303.2, as added by this act,
616 shall apply to any renewal of a job order contract.
- 617 4. That all public bodies as defined in § 2.2-4301 of the Code of Virginia, including public
618 institutions of higher education, shall submit a written report to the Director of the Department of
619 General Services (the Director) for any nontransportation-related construction project in excess of
620 \$2 million that was procured by any method other than competitive sealed bidding. Such report
621 shall be in a form and manner prescribed by the Director after consultation with the contractor
622 community and state and local government procurement officials. The report, at a minimum, shall
623 identify the justification for the procurement method chosen and contain such other information
624 deemed necessary or appropriate by the Director, including whether or not the procurement meets
625 the standards as set forth by the Secretary of Administration guidelines. The Director shall (i)
626 report such information quarterly to the Chairmen of the House Committee on General Laws and
627 the Senate Committee on General Laws and Technology and (ii) post such reports on the
628 Department of General Services' central electronic procurement website. In addition, on or before
629 December 1 of each year, the Director shall submit an annual report to the Governor and the
630 Chairmen of the House Committee on General Laws and Senate Committee on General Laws and
631 Technology that includes (a) the Director's evaluation of and findings regarding the methods of
632 procurement used for such construction procured by design-build or construction management at
633 risk method and (b) any recommendations for the improvement of (1) the method of procuring
634 construction generally and (2) the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code
635 of Virginia).
- 636 5. That the provisions of the fourth enactment of this act shall expire on July 1, 2017.
- 637 6. That by December 1, 2015, the State Corporation Commission (the Commission) shall develop a
638 process for the administrative review of its procurement decisions that is consistent with the
639 Constitution of Virginia and that addresses standing to request and participate in the
640 administrative review. The administrative review shall be conducted by a person who is not an
641 employee of the Commission. The process developed by the Commission for the administrative
642 review of its procurement decisions may address compensation for the person appointed by the
643 Commission to conduct the administrative review in accordance with the provisions of this
644 enactment. The reviewer shall file a report directly to the Commissioners of the Commission.