

Job Order Contracting - Discussion Draft #2

** Indicates proposal offered by work group nonmember
Language that is bracketed and bolded indicates a proposed amendment*

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 2.2-4301, 2.2-4302.2, and 2.2-4337 of the Code of Virginia and to
2 amend the Code of Virginia by adding a section numbered 2.2-4303.1, relating to the Virginia
3 Public Procurement Act; job order contracting.

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

5 **1. That §§ 2.2-4301, 2.2-4302.2, and 2.2-4337 of the Code of Virginia are amended and reenacted**
6 **and that the Code of Virginia is amended by adding a section numbered 2.2-4303.1 as follows:**

7 **§ 2.2-4301. (Effective July 1, 2014) Definitions.**

8 As used in this chapter:

9 "Affiliate" means an individual or business that controls, is controlled by, or is under common
10 control with another individual or business. A person controls an entity if the person owns, directly or
11 indirectly, more than 10 percent of the voting securities of the entity. For the purposes of this definition
12 "voting security" means a security that (i) confers upon the holder the right to vote for the election of
13 members of the board of directors or similar governing body of the business or (ii) is convertible into, or
14 entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general
15 partnership interest shall be deemed to be a voting security.

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

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

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

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

22 "Construction" means building, altering, repairing, improving or demolishing any structure,
23 building or highway, and any draining, dredging, excavation, grading or similar work upon real
24 property. (Source: Current law eff. July 1, 2014).

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SUGGESTED OPTIONS

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"Construction" means building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property. "Construction" does not include architectural or engineering services. (Source: **Patrick Cushing, Esq., Architects and Professional Engineers**)

"Construction" means building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property, when the performance of such work requires a building permit or a Department of General Services annual permit. (Source: **Herschel Keller, Esq.***)

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

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

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

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

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

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50 **"Job order contracting"** means a method of procuring construction services by establishing a
51 book of unit prices and then obtaining a contractor to perform work as needed using the prices,
52 quantities, and specifications in the book as the basis of its pricing. The contractor may be selected
53 through either competitive sealed bidding or competitive negotiation depending on the needs of the
54 public body procuring the construction services. A minimum amount of work may be specified in the
55 contract. The contract term and the project amount shall not exceed the limitations specified in § 2.2-
56 4302.2 or 2.2-4303. (Source: Current law eff. July 1, 2014).

SUGGESTED OPTIONS

58 ~~"Job order contracting" means a method of procuring construction services by establishing a~~
59 ~~book of unit prices and then obtaining a contractor to perform work as needed using the prices,~~
60 ~~quantities, and specifications in the book as the basis of its pricing. The contractor may be selected~~
61 ~~through either competitive sealed bidding or competitive negotiation depending on the needs of the~~
62 ~~public body procuring the construction services. A minimum amount of work may be specified in the~~
63 ~~contract. The contract term and the project amount shall not exceed the limitations specified in § 2.2-~~
64 ~~4302.2 or 2.2-4303~~ construction and ancillary professional services through an indefinite delivery,
65 indefinite quantity term contract, using job orders as needed for individual, complete and useable
66 projects, where the project price is based on a book of pre-established unit prices and a price multiplier
67 or coefficient selected through either competitive sealed bidding or competitive negotiation. The price
68 book may include unit prices for professional services, which may be purchased when such services are
69 ancillary or directly related to a project. (Source: Julie Whitlock, DGS)

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71 "Job order contracting" means a method of procuring construction services by establishing a
72 book of unit prices and then obtaining a contractor to perform work as needed using the prices,
73 quantities, and specifications in the book as the basis of its pricing. The contractor may be selected
74 through either competitive sealed bidding or competitive negotiation depending on the needs of the
75 public body procuring the construction services. A minimum amount of work may be specified in the

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76 contract. The contract term and the project amount shall not exceed the limitations specified in § 2.2-
77 4302.2 or 2.2-4303. "Job order contracting" does not include the procurement of new capital
78 construction. (Source: Annette Cyphers, UVA and Elizabeth Dooley, Arlington County and Chris
79 Stone, P.E., President of Clark Nexen Architectural & Engineering)

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81 ["New capital construction" means the construction of a new public building, structure or
82 infrastructure facility. "New capital construction" does not include the demolition, alteration,
83 addition, renovation, maintenance, repair, equipment acquisition, or improvements to a public
84 building, structure or infrastructure facility or any ancillary new construction required to
85 properly complete any demolition, alteration, addition, renovation, maintenance, repair,
86 equipment acquisition, or improvements.] (Source: Tray Adams, Esq.,* The Gordian Group)

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88 "Job order contracting" means a method of procuring construction services, including incidental
89 architectural or engineering services related to the work, by establishing a book of unit prices and then
90 obtaining a contractor to perform work as needed using the prices, quantities, and specifications in the
91 book as the basis of its pricing. The contractor may be selected through either competitive sealed
92 bidding or competitive negotiation depending on the needs of the public body procuring the construction
93 services. A minimum amount of work may be specified in the contract. The contract term and the
94 project amount shall not exceed the limitations specified in § 2.2-4302.2 or 2.2-4303. (Source: Bert
95 Jones, VCCS)

96 *****

97 "Job order contracting" means a method of procuring construction services by establishing a
98 book of unit prices and then obtaining a contractor to perform work as needed using the prices,
99 quantities, and specifications in the book as the basis of its pricing. The contractor may be selected
100 through either competitive sealed bidding or competitive negotiation depending on the needs of the
101 public body procuring the construction services. A minimum amount of work may be specified in the

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102 contract. The contract term and the project amount shall not exceed the limitations specified in § 2.2-
103 4302.2 or 2.2-4303. **(Source: Patrick Cushing, Esq., Architects and Professional Engineers)**

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105 "Job order contracting" means a method of procuring ~~construction~~ maintenance or repair services
106 for a public building, structure or infrastructure facility by establishing a book of unit prices and then
107 obtaining a contractor to perform work as needed using the prices, quantities, and specifications in the
108 book as the basis of its pricing. The contractor may be selected through either competitive sealed
109 bidding or competitive negotiation depending on the needs of the public body procuring ~~the construction~~
110 such maintenance or repair services. A minimum amount of work may be specified in the contract. The
111 contract term and the project amount shall not exceed the limitations specified in § 2.2-4302.2 or 2.2-
112 4303. "Job order contracting" does not include the procurement of architectural or engineering services.

113 **(Source: Jeff Southard, VTCA, Chris Stone, P.E., President of Clark Nexen Architectural &
114 Engineering, and Matt Benka,* Coalition for Procurement Reform)**

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116 "Job order contracting" means ~~a method of procuring construction services by establishing a~~
117 ~~book of unit prices and then obtaining a contractor to perform work as needed using the prices,~~
118 ~~quantities, and specifications in the book as the basis of its pricing~~ an indefinite quantity, indefinite
119 delivery, multi-task contract, under which contractors submit coefficients to be applied to a set of pre-
120 established unit prices calculated using local prevailing wage rates, local material costs, and local
121 equipment costs for tasks to be performed under the contract. Job order contracting may be used for any
122 tasks other than new capital construction The contractor may be selected through either competitive
123 sealed bidding or competitive negotiation depending on the needs of the public body procuring the
124 construction services. A minimum amount of work may be specified in the contract. ~~The contract term~~
125 ~~and the project amount shall not exceed the limitations specified in § 2.2 4302.2 or 2.2 4303.~~

126 **(Source: Tray Adams, Esq.,* The Gordian Group)**

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128 "Job order contracting" means a method of procuring construction services by establishing a
129 book of unit prices and then obtaining a contractor to perform work as needed using the prices,
130 quantities, and specifications in the book as the basis of its pricing. The contractor may be selected
131 through either competitive sealed bidding or competitive negotiation depending on the needs of the
132 public body procuring the construction services. A minimum amount of work may be specified in the
133 contract. The contract term and the project amount shall not exceed the limitations specified in § 2.2-
134 4302.2 or 2.2-4303 through an indefinite delivery, indefinite quantity term contract, using task orders a
135 needed for individual projects, where the task order price is **[substantially]** based on a book of pre-
136 established unit prices. (Source: Thomas Julian, Centennial Contractors Enterprises, Inc.)

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138 **["Maintenance" means building, altering, repairing, improving or demolishing any**
139 **structure, building or highway, and any draining, dredging, excavation, grading or similar work**
140 **upon real property, when the performance of such work does not require the issuance of a**
141 **building permit or a Department of General Services annual permit.]** (Source: Herschel Keller,
142 Esq.*)

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

146 "Nonprofessional services" means any services not specifically identified as professional
147 services in the definition of professional services.

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

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

158 "Public body" means any legislative, executive or judicial body, agency, office, department,
159 authority, post, commission, committee, institution, board or political subdivision created by law to
160 exercise some sovereign power or to perform some governmental duty, and empowered by law to
161 undertake the activities described in this chapter. "Public body" shall include any metropolitan planning
162 organization or planning district commission which operates exclusively within the Commonwealth of
163 Virginia.

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

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

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

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

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

179 **§ 2.2-4302.2. (Effective July 1, 2014) Process for competitive negotiation.**

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- 180 A. The process for competitive negotiation shall include the following:
- 181 1. Issuance of a written Request for Proposal indicating in general terms that which is sought to
182 be procured, specifying the factors that will be used in evaluating the proposal and containing or
183 incorporating by reference the other applicable contractual terms and conditions, including any unique
184 capabilities, specifications or qualifications that will be required;
- 185 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of
186 proposals by posting on the Department of General Services' central electronic procurement website or
187 other appropriate websites. Additionally, public bodies shall publish in a newspaper of general
188 circulation in the area in which the contract is to be performed so as to provide reasonable notice to the
189 maximum number of offerors that can be reasonably anticipated to submit proposals in response to the
190 particular request. Posting on the Department of General Services' central electronic procurement
191 website shall be required of any state public body. Local public bodies are encouraged to utilize the
192 Department of General Services' central electronic procurement website to provide the public with
193 centralized visibility and access to the Commonwealth's procurement opportunities. In addition,
194 proposals may be solicited directly from potential contractors. Any additional solicitations shall include
195 certified businesses selected from a list made available by the Department of Small Business and
196 Supplier Diversity; and
- 197 3. For goods, nonprofessional services, and insurance, selection shall be made of two or more
198 offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of
199 the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal.
200 Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but
201 need not be the sole or primary determining factor. After negotiations have been conducted with each
202 offeror so selected, the public body shall select the offeror which, in its opinion, has made the best
203 proposal and provides the best value, and shall award the contract to that offeror. When the terms and
204 conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more
205 than one offeror. Should the public body determine in writing and in its sole discretion that only one

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206 offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under
207 consideration, a contract may be negotiated and awarded to that offeror; or

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

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

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

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

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

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

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

246 2. Any locality or any authority, sanitation district, metropolitan planning organization or
247 planning district commission with a population in excess of 80,000, or any city within Planning District
248 8, the sum of all projects performed in a one-year contract term shall not exceed \$5 million and those
249 awarded for any airport as defined in § 5.1-1 and aviation transportation projects, the sum of all such
250 projects shall not exceed \$1.5 million;

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

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

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

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

265 C. For ~~any single project, for (i) architectural or professional engineering services relating to a~~
266 multiple construction projects, or (ii) job order contracting project contract, the project fee for any single
267 project shall not exceed \$100,000, or for architectural or engineering services for airports as defined in §
268 5.1-1 and aviation transportation projects, the project fee of any single project shall not exceed
269 \$500,000, except that for:

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

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

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

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

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

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

288 § 2.2-4303.1. Job order contracting; limitations.

289 A. Contractors may be selected for job order contracts through either competitive sealed bidding
290 or competitive negotiation depending on the needs of the public body procuring the construction
291 services. A minimum amount of work may be specified in the contract. The contract term and the
292 project amount shall not exceed the limitations specified in this section. (Source: Current law eff.
293 July 1, 2014)

SUGGESTED OPTIONS

295 A. Contractors may be selected for job order contracts through either competitive sealed bidding
296 or competitive negotiation [Strike:"depending on the needs of the public body procuring the
297 construction services"]. A minimum amount of work may be specified in the contract. The contract
298 term [Strike:"the project, or] and the [job order] amount shall not exceed the limitations specified in
299 this section. (Source: Julie Whitlock, DGS)

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301 A. Contractors may be selected for job order contracts through either competitive sealed bidding
302 or competitive negotiation depending on the needs of the public body procuring the construction
303 services. A minimum amount of work [shall] be specified in the contract. The contract term and the
304 project amount shall not exceed the limitations specified in this section. (Source: Thomas Julian,
305 Centennial Contractors Enterprises, Inc.)

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307 A. Contractors may be selected for job order contracts through either competitive sealed bidding
 308 or competitive negotiation depending on the needs of the public body procuring the construction
 309 services, [except that contracts for architectural or engineering services shall be procured only
 310 through competitive negotiation]. A minimum amount of work may be specified in the contract. The
 311 contract term and the project amount shall not exceed the limitations specified in this section. (Source
 312 Jeff Gore, Esq. for Bill Hefty, Hefty and Wiley)

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314 [A. Job order contracts shall be awarded through competitive sealed bidding or
 315 competitive negotiation, depending on the needs of the public body procuring the construction
 316 services, and may be awarded to multiple bidders provided the public body has established
 317 procedures for distributing the projects among the contractors during the contract term. Public
 318 bodies may establish multiple job order contracts. Each contract shall be limited as set forth in
 319 subsection C.

320 B. Notwithstanding the provisions of this chapter, job order contracting may be used to
 321 procure professional services ancillary to a construction project:

322 C. Job order contracts shall be limited to a one-year term and may be renewable for four
 323 additional one-year terms. The sum of all individual job orders performed during a one-year
 324 contract term shall not exceed \$20 million unless approved pursuant to the provisions of
 325 subsection D. A single job order under a job order contract shall not exceed \$1.5 million, unless
 326 approved pursuant to the provisions of subsection D.

327 D. The limitations on job order contracts and individual job orders set forth in subsection
 328 C may be exceeded with the written approval of the Director of the Department of General
 329 Services, in the case of contracts with the Commonwealth, and, in the case of contracts with all
 330 other public bodies, the chief executive officer of such public body.

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331 E. The limitations on job order contracts and individual job orders set forth in subsection
332 C shall be adjusted annually based on the Consumer Price Index as calculated by the Bureau of
333 Labor Statistics.] (Source: Tray Adams, Esq.,* The Gordian Group)

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336 B. Job order contracts shall be limited to a one-year term or when the cumulative total project
337 fees reach the maximum cost authorized in this section, whichever occurs first. Such contracts may be
338 renewable for four additional one-year terms at the option of the public body. The fair and reasonable
339 prices as negotiated shall be used in determining the cost of each project performed and the sum of all
340 projects performed in a one-year contract term shall not exceed \$2 million. (Source: Current law eff.
341 July 1, 2014)

SUGGESTED OPTIONS

343 B. Job order contracts shall be limited to a one-year term or when the cumulative total project
344 fees reach the maximum cost authorized in this section, whichever occurs first. Such contracts may be
345 renewable for four additional one-year terms at the option of the public body. The fair and reasonable
346 prices as negotiated shall be used in determining the cost of each project performed and the sum of all
347 projects performed in a one-year contract term shall not exceed [\$5] million. (Source: Tony Arnold,
348 VA Beach Public Schools)

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350 B. Job order contracts shall be limited to a one-year term or when the cumulative total project
351 fees reach the maximum cost authorized in this section, whichever occurs first. Such contracts may be
352 renewable for four additional one-year terms at the option of the public body. The fair and reasonable
353 prices as negotiated shall be used in determining the cost of each project performed and the sum of all
354 projects performed in a one-year contract term shall not exceed \$[10] million. (Source: Jeff Gore, Esq.
355 for Bill Hefty, Hefty and Wiley)

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357 B. Job order contracts shall be limited to a one-year term or when the [cumulative total project
358 sum of all projects performed] reach the maximum cost authorized in this section, whichever occurs
359 first. Such contracts may be renewable for four additional one-year terms at the option of the public
360 body. The fair and reasonable prices as negotiated shall be used in determining the cost of each project
361 performed and the sum of all projects performed in a one-year contract term shall not exceed [\$5
362 million]. (Source: Thomas Julian, P.E., Centennial Contractors Enterprises, Inc.)

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364 B. Job order contracts shall be limited to a one-year term or when the cumulative total project
365 fees reach the maximum cost authorized in this section, whichever occurs first. Such contracts may be
366 renewable for four additional one-year terms at the option of the public body. The fair and reasonable
367 prices as negotiated shall be used in determining the cost of each project performed and the sum of all
368 projects performed in a one-year contract term shall not exceed [\$4 million]. (Source: Bert Jones,
369 VCCS)

370 *****

371 B. Job order contracts shall be limited to a one-year term or when the cumulative total project
372 fees reach the maximum cost authorized in this section, whichever occurs first. Such contracts may be
373 renewable for [two] additional one-year terms at the option of the public body. The fair and reasonable
374 prices as negotiated shall be used in determining the cost of each project performed and the sum of all
375 projects performed in a one-year contract term shall not exceed [\$5 million]. (Source: Jeff Southard,
376 VTCA)

377 *****

378 B. Job order contracts shall be limited to a one-year term or when the cumulative total project
379 fees reach the maximum cost authorized in this section, whichever occurs first. Such contracts may be
380 renewable for four additional one-year terms at the option of the public body. The fair and reasonable
381 prices as negotiated shall be used in determining the cost of each project performed and the sum of all
382 projects performed in a one-year contract term shall not exceed [\$20 million]. (Source: Chris Stone,

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383 P.E., President of Clark Nexsen Architectural & Engineering and Tray Adams, Esq.,* The
384 Gordian Group)

385 *****

386 B. Job order contracts shall be limited to a one-year term or when the cumulative total project
387 fees reach the maximum cost authorized in this section, whichever occurs first. Such contracts may be
388 renewable for [two] additional one-year terms at the option of the public body. The fair and reasonable
389 prices as negotiated shall be used in determining the cost of each project performed and the sum of all
390 projects performed in a one-year contract term shall not exceed \$2 million. (Source: Matt Benka,*

391 Coalition for Procurement Reform)

392 *****

393
394 C. A single task order under a job order contract shall not exceed \$400,000. (Source: Current
395 law eff. July 1, 2014)

SUGGESTED OPTIONS

397 C. A single task order under a job order contract shall not exceed [\$500,000]. (Source: Tony
398 Arnold, VA Beach Public Schools)

399 *****

400 C. A single task order under a job order contract shall not exceed [\$500,000]. (Source: Jeff
401 Gore, Esq. for Bill Hefty, Hefty and Wiley)

402 *****

403 C. A single task order under a job order contract shall not exceed [\$1 million]. (Source: Thomas
404 Julian, P.E., Centennial Contractors Enterprises, Inc.)

405 *****

406 C. A single task order under a job order contract shall not exceed [\$400,000]. (Source: Bert
407 Jones, VCCS)

408 *****

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409 C. A single task order under a job order contract shall not exceed **[\$1.5 million]**. (Source: Tray
410 Adams, Esq.,* The Gordian Group)

411 *****

412 [C. Individual job orders shall not exceed \$500,000.

413 D. The cumulative amount of all job orders under any contract shall not exceed the
414 following limits during any term of the contract:

415 1. For a contract procured by the Department of General Services or a local public body
416 with a population in excess of 200,000, the cumulative amount shall not exceed \$50 million;

417 2. For a contract procured by a state public body, other than the Department of General
418 Services, or a local public body with a population less than 200,000, the cumulative amount shall
419 not exceed \$10 million.](Source: Julie Whitlock, DGS. Tiering concept also supported by Steve
420 Vermillion, ACG and Uwe Wiendal, P. E., Frederick County Sanitation Authority)

421 *****

422 D. Any unused amounts from one contract term shall not be carried forward to any additional
423 term.

424 *****

425 [E. Posting on the Department of General Services' central electronic procurement website
426 shall be required of any public body using job order contracting to provide the public with
427 centralized visibility and access to the Commonwealth's procurement opportunities.]
428 (Source: Matt Benka,* Coalition for Procurement Reform)

429 *****

430 [F. The execution of a given job order shall result in a complete and usable amount of
431 construction that will stand alone without additional action or funding. Project splitting is
432 prohibited. For the purposes of this subsection, "project splitting" means the use of multiple job
433 order to complete a renovation of an entire building or to incrementally complete construction
434 that results in the addition of square footage.

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435 G. Professional services that are ancillary and directly related to a project may be ordered
436 using job order contracting.

437 H. A job order contract for a single project may include provisions for modification during
438 the performance of the contract, but shall not be increased by more than 10 percent of the amount
439 of the job order or \$50,000, whichever is greater, without the advance written approval of the
440 Governor or his designee in the case of state public bodies, or the governing body of any local
441 public body or local political subdivision. In no event shall the amount of any job order, without
442 adequate consideration, be increased for any purpose, including relief of a job order contractor
443 from the consequences of an error in its cost estimate.] (Source: Julie Whitlock, DGS)

444 **§ 2.2-4337. Performance and payment bonds.**

445 A. Except as provided in subsection H, upon the award of any (i) public construction contract
446 exceeding \$500,000 awarded to any prime contractor; (ii) construction contract exceeding \$500,000
447 awarded to any prime contractor requiring the performance of labor or the furnishing of materials for
448 buildings, structures or other improvements to real property owned or leased by a public body; (iii)
449 construction contract exceeding \$500,000 in which the performance of labor or the furnishing of
450 materials will be paid with public funds; or (iv) transportation-related projects exceeding \$350,000 that
451 are partially or wholly funded by the Commonwealth, the contractor shall furnish to the public body the
452 following bonds:

453 1. A performance bond in the sum of the contract amount conditioned upon the faithful
454 performance of the contract in strict conformity with the plans, specifications and conditions of the
455 contract. For transportation-related projects authorized under § 33.1-12, such bond shall be in a form and
456 amount satisfactory to the public body.

457 2. A payment bond in the sum of the contract amount. The bond shall be for the protection of
458 claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the
459 contract was awarded, or to any subcontractors, in furtherance of the work provided for in the contract,
460 and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or

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461 performed in the furtherance of the work. For transportation-related projects authorized under § 33.1-12
462 and partially or wholly funded by the Commonwealth, such bond shall be in a form and amount
463 satisfactory to the public body.

464 "Labor or materials" shall include public utility services and reasonable rentals of equipment, but
465 only for periods when the equipment rented is actually used at the site.

466 B. For nontransportation-related construction contracts in excess of \$100,000 but less than
467 \$500,000, where the bid bond requirements are waived, prospective contractors shall be prequalified for
468 each individual project in accordance with § 2.2-4317.

469 C. Each of the bonds shall be executed by one or more surety companies selected by the
470 contractor that are authorized to do business in Virginia.

471 D. If the public body is the Commonwealth, or any agency or institution thereof, the bonds shall
472 be payable to the Commonwealth of Virginia, naming also the agency or institution thereof. Bonds
473 required for the contracts of other public bodies shall be payable to such public body.

474 E. Each of the bonds shall be filed with the public body that awarded the contract, or a
475 designated office or official thereof.

476 F. Nothing in this section shall preclude a public body from requiring payment or performance
477 bonds for construction contracts below \$500,000 for nontransportation-related projects or \$350,000 for
478 transportation-related projects authorized under § 33.1-12 and partially or wholly funded by the
479 Commonwealth.

480 G. Nothing in this section shall preclude the contractor from requiring each subcontractor to
481 furnish a payment bond with surety thereon in the sum of the full amount of the contract with such
482 subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are
483 directly with the subcontractor for performing labor and furnishing materials in the prosecution of the
484 work provided for in the subcontract.

485 H. The performance and payment bond requirements of subsection A for transportation-related
486 projects that are valued in excess of \$250,000 but less than \$350,000 may only be waived by a public

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487 body if the bidder provides evidence, satisfactory to the public body, that a surety company has declined
488 an application from the contractor for a performance or payment bond.

489 **II. Where a job order contract is used, the provisions of this section shall apply to each**
490 **individual project or task order; but shall not apply to the overall job order contract term**
491 **contract.** (Source: Julie Whitlock, DGS)

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