

# Publication of Requests for Proposals - Discussion Draft

SENATE BILL NO. \_\_\_\_\_ HOUSE BILL NO. \_\_\_\_\_

1 A BILL to amend and reenact § 2.2-4302.2 of the Code of Virginia and to amend the Code of Virginia  
2 by adding in article one of Chapter 11 of Title 2.2 a section numbered 2.2-1102.1, relating to the  
3 Virginia Public Procurement Act; competitive negotiation; newspaper publication of notices for  
4 requests for proposals.

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

6 **1. That the Code of Virginia is amended by adding in article one of Chapter 11 of Title 2.2 a**  
7 **section numbered 2.2-1102.1 as follows:**

8 A BILL to amend the Code of Virginia by adding a section numbered , relating to .

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

10 **1. That the Code of Virginia is amended by adding a section numbered \_\_ as follows:**

11 The Department of General Services shall (i) provide an electronic data file of the using agency's  
12 business opportunities at no charge to any requesting newspaper or other print publication with  
13 circulation in Virginia using the comma-separated values (CSV) format and (ii) send the data file  
14 automatically via electronic mail on a daily, weekly, or monthly basis as agreed to by the parties. The  
15 data file shall contain all active business opportunity notices posted on the Department of General  
16 Services' central electronic procurement website by all using agencies in accordance with the  
17 requirements of the Virginia Public Procurement Act (§ 2.2-4300 et seq.). The electronic business  
18 opportunity data shall include, at a minimum: (a) the name of the issuing using agency, (b) a description  
19 of goods or services to be purchased, (c) the date the bid or proposal is due, and (d) the point of contact  
20 for the using agency, including the contact's name, phone number, and email address.

21 **2. That § 2.2-4302.2 of the Code of Virginia is amended and reenacted as follows:**

22 **§ 2.2-4302.2. Process for competitive negotiation.**

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

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

28 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of  
29 proposals by posting on the Department of General Services' central electronic procurement website or  
30 other appropriate websites. Additionally, public bodies shall publish in a newspaper of general  
31 circulation in the area in which the contract is to be performed so as to provide reasonable notice to the  
32 maximum number of offerors that can be reasonably anticipated to submit proposals in response to the  
33 particular request. Beginning July 1, 2015 until June 30, 2018, public bodies that issue a Request for  
34 Proposal shall continue to publish a public notice of the Request for Proposal in a newspaper of general  
35 circulation in accordance with this subdivision, however such notice shall include a statement indicating  
36 the internet webpage, either the Department of General Services' central electronic procurement website  
37 (www.eva.virginia.gov) or the public body's public government or other appropriate website, where all  
38 public notices for Requests for Proposals issued from the public body can be found. Thereafter on July  
39 1, 2018, public bodies may post public notice for a Request for Proposal in a newspaper of general  
40 circulation in the area in which the contract is to be performed so as to provide reasonable notice to the  
41 maximum number of offerors that can be reasonably anticipated to submit proposals in response to the  
42 particular request.

43 Posting on the Department of General Services' central electronic procurement website shall be  
44 required of any state public body. Local public bodies are encouraged to utilize the Department of  
45 General Services' central electronic procurement website to provide the public with centralized visibility  
46 and access to the Commonwealth's procurement opportunities.

47 In addition, proposals may be solicited directly from potential contractors. Any additional  
48 solicitations shall include certified businesses selected from a list made available by the Department of  
49 Small Business and Supplier Diversity; and

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

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

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

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

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

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

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

- 96 1. A state agency, as defined in § 2.2-4347, the sum of all projects performed in a one-year  
97 contract term shall not exceed \$1 million as may be determined by the Director of the Department of  
98 General Services;
- 99 2. Any locality or any authority, sanitation district, metropolitan planning organization or  
100 planning district commission with a population in excess of 80,000, or any city within Planning District  
101 8, the sum of all projects performed in a one-year contract term shall not exceed \$5 million and those

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102 awarded for any airport as defined in § 5.1-1 and aviation transportation projects, the sum of all such  
103 projects shall not exceed \$1.5 million;

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

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

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

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

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

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

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

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

127 The limitations imposed upon single project fees pursuant to this subsection shall not apply to  
128 environmental, location, design, and inspection work regarding highways and bridges by the

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129 Commissioner of Highways or architectural and engineering services for rail and public transportation  
130 projects by the Director of the Department of Rail and Public Transportation.

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

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

### 140 3. That § 2.2-4302.2 of the Code of Virginia as follows:

#### 141 § 2.2-4302.2. Process for competitive negotiation.

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

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

147 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of  
148 proposals by posting on the Department of General Services' central electronic procurement website or  
149 other appropriate websites. Additionally, public bodies ~~shall~~ may publish in a newspaper of general  
150 circulation in the area in which the contract is to be performed so as to provide reasonable notice to the  
151 maximum number of offerors that can be reasonably anticipated to submit proposals in response to the  
152 particular request. Posting on the Department of General Services' central electronic procurement  
153 website shall be required of any state public body. Local public bodies are encouraged to utilize the  
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155 centralized visibility and access to the Commonwealth's procurement opportunities. In addition,

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156 proposals may be solicited directly from potential contractors. Any additional solicitations shall include  
157 certified businesses selected from a list made available by the Department of Small Business and  
158 Supplier Diversity; and

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160 offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of  
161 the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal.  
162 Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but  
163 need not be the sole or primary determining factor. After negotiations have been conducted with each  
164 offeror so selected, the public body shall select the offeror which, in its opinion, has made the best  
165 proposal and provides the best value, and shall award the contract to that offeror. When the terms and  
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168 offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under  
169 consideration, a contract may be negotiated and awarded to that offeror; or

170 4. For professional services, the public body shall engage in individual discussions with two or  
171 more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with  
172 emphasis on professional competence, to provide the required services. Repetitive informal interviews  
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174 performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In  
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177 however, request that offerors furnish estimates of man-hours or cost for services. At the discussion  
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179 to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. In accordance  
180 with § 2.2-4342, proprietary information from competing offerors shall not be disclosed to the public or  
181 to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation  
182 factors published in the Request for Proposal and all information developed in the selection process to

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183 this point, the public body shall select in the order of preference two or more offerors whose  
184 professional qualifications and proposed services are deemed most meritorious.

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186 satisfactory and advantageous to the public body can be negotiated at a price considered fair and  
187 reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first  
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189 such a contract can be negotiated at a fair and reasonable price.

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191 the Request for Proposal, a public body may award contracts to more than one offeror.

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196 to construction projects, or a contract for job order contracting, may be negotiated by a public body,  
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198 identified in the Request for Proposal, and (iii) the contract is limited to a one-year term or when the  
199 cumulative total project fees reach the maximum cost authorized in this subsection, whichever occurs  
200 first.

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203 performed and the sum of all projects performed in a one-year contract term shall not exceed \$500,000,  
204 except that for:

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232 determined by the Director of the Department of General Services;

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234 any city within Planning District 8, the project fee shall not exceed \$2 million; and

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

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

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

249 **4. That the provisions of the first enactment of this act shall become effective July 1, 2015, the**  
250 **provisions of the second and fifth enactments of this act shall become effective on July 1, 2015 and**  
251 **shall expire on July 1, 2018, and the provisions of the third enactment of this act shall become**  
252 **effective on July 1, 2018.**

253 **5. That all public bodies issuing Requests for Proposals on or after July 1, 2015 through June 30,**  
254 **2018, shall ascertain the method, either newspaper publication or website posting, or both, by**  
255 **which an offeror submitting a proposal in response to the Request for Proposal became aware of**  
256 **the solicitation. Such public bodies shall report such findings by July 1, 2016 and annually**  
257 **thereafter to the Chairmen of the House Committee on General Laws and the Senate Committee**  
258 **on General Laws and Technology.**

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