

Move the language regarding A/E term contracts and JOC contracts out of the process for competitive negotiation and into their own statutes

1    **§ 2.2-4302.2. Process for competitive negotiation.**

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

3    1. Issuance of a written Request for Proposal ...

4    2. Public notice of the Request for Proposal ...

5    3. For goods, nonprofessional services, and insurance, selection shall be made of two or more  
6    offerors ...

7    4. For professional services, ...

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

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

18   ~~1. A state agency, as defined in § [2.2-4347](#), the sum of all projects performed in a one year  
19   contract term shall not exceed \$1 million as may be determined by the Director of the  
20   Department of General Services;~~

21   ~~2. Any locality or any authority, sanitation district, metropolitan planning organization or  
22   planning district commission with a population in excess of 80,000, or any city within Planning  
23   District 8, the sum of all projects performed in a one year contract term shall not exceed \$5  
24   million and those awarded for any airport as defined in § [5.1-1](#) and aviation transportation  
25   projects, the sum of all such projects shall not exceed \$1.5 million;~~

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

30   ~~4. Environmental, location, design, and inspection work regarding highways and bridges by the  
31   Commissioner of Highways, the initial contract term shall be limited to two years or when the  
32   cumulative total project fees reach \$5 million, whichever occurs first. Such contract may be~~

33 renewable for two additional one-year terms at the option of the Commissioner, and the sum of  
34 all projects in each one-year contract term shall not exceed \$5 million; and

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

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

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

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

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

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

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

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

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

-A/E term contract language moved from 2.2-4302.2 (above)  
-Prohibit “price-shopping” individual orders among awarded term contractors

1 **2.2-4303.1 ~~Architectural and professional engineering term contracting; limitations.~~**

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

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

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

13 1. A state agency, as defined in § [2.2-4347](#), the sum of all projects performed in a one-year  
14 contract term shall not exceed \$1 million ~~as may be determined by the Director of the~~  
15 ~~Department of General Services;~~

16 2. Any locality or any authority, sanitation district, metropolitan planning organization or  
17 planning district commission with a population in excess of 80,000, or any city within Planning  
18 District 8, the sum of all projects performed in a one-year contract term shall not exceed \$5  
19 million and those awarded for any airport as defined in § [5.1-1](#) and aviation transportation  
20 projects, the sum of all such projects shall not exceed \$1.5 million;

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

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

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

32 **C.** Competitive negotiations for such *architecture or professional engineering services* contracts  
33 may result in awards to more than one offeror provided (i) the Request for Proposal so states and  
34 (ii) the public body has established procedures for distributing multiple projects among the  
35 selected contractors during the contract term. *Such procedures shall prohibit requiring the*  
36 *selected contractors to compete for individual projects based on price.*

37 ~~D. For any single project, for (i) architectural or professional engineering services relating to~~  
38 ~~construction projects, or (ii) job order contracting, the project fee for any single project shall~~  
39 ~~not exceed \$100,000, or for architectural or engineering services for airports as defined in § 5.1-~~  
40 ~~1 and aviation transportation projects, the project fee of any single project shall not exceed~~  
41 ~~\$500,000, except that for:~~

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

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

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

47 The limitations imposed upon single project fees pursuant to this subsection shall not apply to  
48 environmental, location, design, and inspection work regarding highways and bridges by the  
49 Commissioner of Highways or architectural and engineering services for rail and public  
50 transportation project by the Director of the Department of Rail and Public Transportations.

51 ~~DE.~~ For the purposes of subsections B ~~and C~~, any unused amounts from ~~the first one~~ contract  
52 term shall not be carried forward to ~~the any~~ additional term.

- JOC contract language moved out of the current definition and out of the current competitive negotiation statute (above)
- Increase individual order cap from \$400k to \$500k, applicable to all entities
- Increase contract term/annual limits from \$2M to \$5M
- Decrease length of contract term from 1+4 to 1+2 terms
- Allow ancillary A/E services up to \$60k per job order (consistent with non-competition purchase authority for A/E services)

1 **2.2-4303.2 Job order contracting; limitations and modifications.**

2 ~~A.B. For multiple projects, a contract for architectural or professional engineering services~~  
 3 ~~relating to construction projects, or a contract for A-job order contracting, may be negotiated~~  
 4 ~~awarded by a public body for multiple jobs provided (i) the projects/jobs require similar~~  
 5 ~~experience and expertise, (ii) the nature of the projects/jobs is clearly identified in the Request for~~  
 6 ~~Proposal, and (iii) the contract is limited to a one-year term of one year or when the cumulative~~  
 7 ~~total project/job fees reach the maximum cost authorized in this subsection, whichever occurs~~  
 8 ~~first. Contractors may be selected through either competitive sealed bidding or competitive~~  
 9 ~~negotiation.~~

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

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

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

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

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

31 5. ~~Job order contracting, the sum of all projects/jobs performed in a one-year contract term shall~~  
 32 ~~not exceed \$210 million.~~

33 ~~Competitive negotiations for such contracts may result in a~~ Awards *made be made* to more than  
34 one offeror provided (i) the Request for Proposal so states and (ii) the public body has  
35 established procedures for distributing multiple ~~projects~~ jobs among the selected contractors  
36 during the contract term.

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

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

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

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

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

50 *C. Individual job orders shall not exceed \$500,000.*

51 *D. For the purposes of subsections B and C, any unused amounts from ~~the first one~~ contract term*  
52 *shall not be carried forward to ~~the~~ any additional term.*

53 *E. The issuance of an individual job order shall result in a complete and usable amount of*  
54 *construction which will stand alone without additional action or funding. ~~Project~~Job*  
55 *“splitting” (i.e., the use of multiple job orders to complete a renovation of an entire building or*  
56 *to incrementally complete construction which results in the addition of square footage) is*  
57 *prohibited.*

58 *F. Professional services which are ancillary and directly related to a job order, and which do*  
59 *not exceed \$60,000, may be ordered in the job order.*

-No change to ability to jointly procure  
-No change to prohibition against “piggy backing” on A/E contracts  
-Complete prohibition against “piggy backing” on construction contracts  
(DGS to propose its own legislation for authorizing DGS to establish statewide contracts)

1    **§ 2.2-4304. Cooperative procurement.**

2    A. Any public body may participate in, sponsor, conduct, or administer a cooperative  
3    procurement agreement on behalf of or in conjunction with one or more other public bodies, or  
4    public agencies or institutions or localities of the several states, of the United States or its  
5    territories, the District of Columbia, or the U.S. General Services Administration, for the purpose  
6    of combining requirements to increase efficiency or reduce administrative expenses in any  
7    acquisition of goods and services.

8    A public body may purchase from another public body's contract even if it did not participate in  
9    the request for proposal or invitation to bid, if the request for proposal or invitation to bid  
10   specified that the procurement was being conducted on behalf of other public bodies, except for:

11   1. Contracts for architectural or engineering services; or

12   2. ~~Construction in excess of \$200,000 by a local public body from the contract of another local~~  
13   ~~public body that is more than a straight line distance of 75 miles from the territorial limits of the~~  
14   ~~local public body procuring the construction.~~ The installation of artificial turf or other athletic  
15   surfaces shall not be subject to the limitations prescribed in this subdivision. Nothing in this  
16   subdivision shall be construed to prohibit sole source or emergency procurements awarded  
17   pursuant to subsections E and F of § [2.2-4303](#).

18   In instances where any authority, department, agency, or institution of the Commonwealth  
19   desires to purchase information technology and telecommunications goods and services from  
20   another public body's contract and the procurement was conducted on behalf of other public  
21   bodies, such purchase shall be permitted if approved by the Chief Information Officer of the  
22   Commonwealth. Any public body that enters into a cooperative procurement agreement with a  
23   county, city, or town whose governing body has adopted alternative policies and procedures  
24   pursuant to subdivisions A 9 and A 10 of § [2.2-4343](#) shall comply with the alternative policies  
25   and procedures adopted by the governing body of such county, city, or town.

26   \*\*\*\*\*

-Clarify that small purchase procedures may be adopted for construction  
-Make cap for non-competition of professional services consistent for state and local public bodies (no change to local cap, increase for state bodies' cap from \$50k to \$60k)

1 **§ 2.2-4303. Methods of procurement.**

2 \*\*\*\*\*

3 G. A public body may establish purchase procedures, if adopted in writing, not requiring  
4 competitive sealed bids or competitive negotiation for single or term contracts for goods and  
5 services, *or construction*, other than professional services if the aggregate or the sum of all  
6 phases is not expected to exceed \$100,000; however, such small purchase procedures shall  
7 provide for competition wherever practicable. ~~For local public bodies, such~~ purchase  
8 procedures may allow for single or term contracts for professional services without requiring  
9 competitive negotiation, provided the aggregate or the sum of all phases is not expected to  
10 exceed \$60,000. *Where small purchase procedures are adopted for construction, the procedures*  
11 *shall require compliance with the Uniform State Building Code.*

12 For state public bodies, purchases under this subsection that are expected to exceed \$30,000 shall  
13 require the (i) written informal solicitation of a minimum of four bidders or offerors and (ii)  
14 posting of a public notice on the Department of General Services' central electronic procurement  
15 website or other appropriate websites. Posting on the Department of General Services' central  
16 electronic procurement website shall be required of any state public body. Local public bodies  
17 are encouraged to utilize the Department of General Services' central electronic procurement  
18 website to provide the public with centralized visibility and access to the Commonwealth's  
19 procurement opportunities.

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