

Job Order Contracting - Discussion Draft #3

**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.

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

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

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

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

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

39 "**Job order contracting**" means a method of procuring construction services by establishing a
40 book of unit prices and then obtaining a contractor to perform work as needed using the prices,
41 quantities, and specifications in the book as the basis of its pricing. The contractor may be selected
42 through either competitive sealed bidding or competitive negotiation depending on the needs of the
43 public body procuring the construction services. A minimum amount of work may be specified in the
44 contract. The contract term and the project amount shall not exceed the limitations specified in § 2.2-
45 4302.2 or 2.2-4303. (Source: **Current law eff. July 1, 2014**).

46 ***SUGGESTED OPTIONS***

47 "~~Job order contracting~~" means a method of procuring ~~construction services by establishing a~~
48 ~~book of unit prices and then obtaining a contractor to perform work as needed using the prices,~~
49 ~~quantities, and specifications in the book as the basis of its pricing. The contractor may be selected~~
50 ~~through either competitive sealed bidding or competitive negotiation depending on the needs of the~~

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51 ~~public body procuring the construction services. A minimum amount of work may be specified in the~~
 52 ~~contract. The contract term and the project amount shall not exceed the limitations specified in § 2.2-~~
 53 ~~4302.2 or 2.2-4303~~ construction and ancillary professional services through an indefinite delivery,
 54 indefinite quantity term contract, using job orders as needed for individual, complete and useable
 55 projects, where the project price is based on a book of pre-established unit prices and a price multiplier
 56 or coefficient selected through either competitive sealed bidding or competitive negotiation. The price
 57 book may include unit prices for professional services, which may be purchased when such services are
 58 ancillary or directly related to a project. (Source: Julie Whitlock, DGS)

59 *****

60 "Job order contracting" means a method of procuring construction services by establishing a
 61 book of unit prices and then obtaining a contractor to perform work as needed using the prices,
 62 quantities, and specifications in the book as the basis of its pricing. The contractor may be selected
 63 through either competitive sealed bidding or competitive negotiation depending on the needs of the
 64 public body procuring the construction services. A minimum amount of work may be specified in the
 65 contract. The contract term and the project amount shall not exceed the limitations specified in § 2.2-
 66 4302.2 or 2.2-4303. "Job order contracting" does not include the procurement of new capital
 67 construction. (Source: Annette Cyphers, UVA and Elizabeth Dooley, Arlington County and Chris
 68 Stone, P.E., President of Clark Nexsen Architectural & Engineering)

69 *****

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

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

85 *****

86 "Job order contracting" means a method of procuring construction ~~services~~ by establishing a
 87 book of unit prices and then obtaining a contractor to perform work as needed using the prices,
 88 quantities, and specifications in the book as the basis of its pricing. The contractor may be selected
 89 through either competitive sealed bidding or competitive negotiation depending on the needs of the
 90 public body procuring the construction services. A minimum amount of work may be specified in the
 91 contract. The contract term and the project amount shall not exceed the limitations specified in § 2.2-
 92 4302.2 or 2.2-4303. **(Source: Patrick Cushing, Esq., Architects and Professional Engineers)**

93 *****

94 "Job order contracting" means a method of procuring ~~construction~~ maintenance or repair services
 95 for a public building, structure or infrastructure facility by establishing a book of unit prices and then
 96 obtaining a contractor to perform work as needed using the prices, quantities, and specifications in the
 97 book as the basis of its pricing. The contractor may be selected through either competitive sealed
 98 bidding or competitive negotiation depending on the needs of the public body procuring ~~the construction~~
 99 such maintenance or repair services. A minimum amount of work may be specified in the contract. The
 100 contract term and the project amount shall not exceed the limitations specified in § 2.2-4302.2 or 2.2-
 101 4303. "Job order contracting" does not include the procurement of architectural or engineering services.

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

104 *****

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

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

116 *****

117 "Job order contracting" means a method of procuring construction services ~~by establishing a~~
118 ~~book of unit prices and then obtaining a contractor to perform work as needed using the prices,~~
119 ~~quantities, and specifications in the book as the basis of its pricing. The contractor may be selected~~
120 ~~through either competitive sealed bidding or competitive negotiation depending on the needs of the~~
121 ~~public body procuring the construction services. A minimum amount of work may be specified in the~~
122 ~~contract. The contract term and the project amount shall not exceed the limitations specified in § 2.2-~~
123 ~~4302.2 or 2.2 4303~~ through an indefinite delivery, indefinite quantity term contract, using task orders a
124 needed for individual projects, where the task order price is [substantially] based on a book of pre-
125 established unit prices. (Source: Thomas Julian, Centennial Contractors Enterprises, Inc.)

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

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

135 "Nonprofessional services" means any services not specifically identified as professional
136 services in the definition of professional services.

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

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

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

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

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

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

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

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

168 **§ 2.2-4302.2. (Effective July 1, 2014) Process for competitive negotiation.**

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

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

174 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of
175 proposals by posting on the Department of General Services' central electronic procurement website or
176 other appropriate websites. Additionally, public bodies shall publish in a newspaper of general
177 circulation in the area in which the contract is to be performed so as to provide reasonable notice to the
178 maximum number of offerors that can be reasonably anticipated to submit proposals in response to the

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179 particular request. Posting on the Department of General Services' central electronic procurement
180 website shall be required of any state public body. Local public bodies are encouraged to utilize the
181 Department of General Services' central electronic procurement website to provide the public with
182 centralized visibility and access to the Commonwealth's procurement opportunities. In addition,
183 proposals may be solicited directly from potential contractors. Any additional solicitations shall include
184 certified businesses selected from a list made available by the Department of Small Business and
185 Supplier Diversity; and

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

197 4. For professional services, the public body shall engage in individual discussions with two or
198 more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with
199 emphasis on professional competence, to provide the required services. Repetitive informal interviews
200 shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and
201 performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In
202 addition, offerors shall be informed of any ranking criteria that will be used by the public body in
203 addition to the review of the professional competence of the offeror. The Request for Proposal shall not,
204 however, request that offerors furnish estimates of man-hours or cost for services. At the discussion

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205 stage, the public body may discuss nonbinding estimates of total project costs, including, but not limited
206 to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. In accordance
207 with § 2.2-4342, proprietary information from competing offerors shall not be disclosed to the public or
208 to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation
209 factors published in the Request for Proposal and all information developed in the selection process to
210 this point, the public body shall select in the order of preference two or more offerors whose
211 professional qualifications and proposed services are deemed most meritorious.

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

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

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

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

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

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

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

235 2. Any locality or any authority, sanitation district, metropolitan planning organization or
236 planning district commission with a population in excess of 80,000, or any city within Planning District
237 8, the sum of all projects performed in a one-year contract term shall not exceed \$5 million and those
238 awarded for any airport as defined in § 5.1-1 and aviation transportation projects, the sum of all such
239 projects shall not exceed \$1.5 million;

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

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

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

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

254 C. For any single project, for (i) architectural or professional engineering services relating to a
255 multiple construction projects, or (ii) job order contracting project contract, the project fee for any single

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256 project shall not exceed \$100,000, or for architectural or engineering services for airports as defined in §
257 5.1-1 and aviation transportation projects, the project fee of any single project shall not exceed
258 \$500,000, except that for:

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

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

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

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

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

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

277 § 2.2-4303.1. Job order contracting; limitations.

278 A. Contractors may be selected for job order contracts through either competitive sealed bidding
279 or competitive negotiation depending on the needs of the public body procuring the construction
280 services. A minimum amount of work may be specified in the contract. The contract term and the

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281 project amount shall not exceed the limitations specified in this section. (Source: Current law eff.
282 July 1, 2014)

283 ***SUGGESTED OPTIONS***

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

289 *****

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

295 *****

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

302 *****

303 [A. Job order contracts shall be awarded through competitive sealed bidding or
304 competitive negotiation, depending on the needs of the public body procuring the construction
305 services, and may be awarded to multiple bidders provided the public body has established
306 procedures for distributing the projects among the contractors during the contract term. Public

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307 bodies may establish multiple job order contracts. Each contract shall be limited as set forth in
308 subsection C.

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

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

314 *****

316 B. Job order contracts shall be limited to a one-year term or when the cumulative total project
317 fees reach the maximum cost authorized in this section, whichever occurs first. Such contracts may be
318 renewable for two additional one-year terms at the option of the public body. The fair and reasonable
319 prices as negotiated shall be used in determining the cost of each project performed and the sum of all
320 projects performed in a one-year contract term shall not exceed \$4/\$5 million.

321 C. A single task order under a job order contract shall not exceed \$400,000/\$500,000.

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

324 *****

325 [E. Posting on the Department of General Services' central electronic procurement website
326 shall be required of any public body using job order contracting to provide the public with
327 centralized visibility and access to the Commonwealth's procurement opportunities.]

328 (Source: Matt Benka,* Coalition for Procurement Reform)

329 *****

330 F. The execution of a given job order shall result in a complete and usable amount of
331 construction that will stand alone without additional action or funding. Project splitting is
332 prohibited. For the purposes of this subsection, "project splitting" means the use of multiple job order to

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333 complete a renovation of an entire building or to incrementally complete construction that results in the
334 addition of square footage. Note: This new subsection F was agreed to by work group #1 at the July
335 23, 2014 meeting.

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

338 H. Job order contracting shall not be used for maintenance or asset management services
339 for a transportation facility, as defined in the Public-Private Transportation Act of 1995 (§ 33.2-
340 1800 et seq.), which is a highway, bridge, tunnel, or overpass. (Source: Phil Abraham, Esq.)

341 **§ 2.2-4337. Performance and payment bonds.**

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

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

354 2. A payment bond in the sum of the contract amount. The bond shall be for the protection of
355 claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the
356 contract was awarded, or to any subcontractors, in furtherance of the work provided for in the contract,
357 and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or
358 performed in the furtherance of the work. For transportation-related projects authorized under § 33.1-12

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359 and partially or wholly funded by the Commonwealth, such bond shall be in a form and amount
360 satisfactory to the public body.

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

363 B. For nontransportation-related construction contracts in excess of \$100,000 but less than
364 \$500,000, where the bid bond requirements are waived, prospective contractors shall be prequalified for
365 each individual project in accordance with § 2.2-4317.

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

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

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

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

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

382 H. The performance and payment bond requirements of subsection A for transportation-related
383 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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**Indicates proosal offered by work group nonmember*

Language that is bracketed and bolded indicates a proposed amendment

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

386 1. Where a job order contract is used, the provisions of this section shall apply to each
387 individual project or task order; but shall not apply to the overall job order contract term
388 contract.] (Source: Julie Whitlock, DGS)

389 **2. That by July 1, 2016, the Department of General Services, the Department of Small Business**
390 **and Supplier Diversity, and the Virginia Association of Counties and the Virginia Municipal**
391 **League on behalf of local public bodies, shall report their respective experiences and findings**
392 **relating to the appropriateness or sufficiency of the job order contract project cost limitations set**
393 **forth in subsections B and C of § 2.2-4303.1 of this act to the Chairmen of the House Committee**
394 **on General Laws and the Senate Committee on General Laws and Technology.**

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