

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

1 A BILL to amend and reenact § 2.2-4302.2 of the Code of Virginia and to require the Department of  
2 General Services and local public bodies to provide procurement data files to requesting  
3 newspapers, relating to the Virginia Public Procurement Act; competitive negotiation; newspaper  
4 publication of notices for requests for proposals.

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

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

7 **§ 2.2-4302.2. Process for competitive negotiation.**

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

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

13 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of  
14 proposals by posting on the Department of General Services' central electronic procurement website or  
15 other appropriate websites. Additionally, public bodies shall publish in a newspaper of general  
16 circulation in the area in which the contract is to be performed so as to provide reasonable notice to the  
17 maximum number of offerors that can be reasonably anticipated to submit proposals in response to the  
18 particular request. From July 1, 2015, until June 30, 2017, public bodies that issue a Request for  
19 Proposal shall continue to publish a public notice of the Request for Proposal in a newspaper of general  
20 circulation in accordance with this subdivision; however, such notice shall include a statement indicating  
21 the Internet website address, either the Department of General Services' central electronic procurement  
22 website (www.eva.virginia.gov) or the public body's public government or other appropriate website,  
23 where all public notices for Requests for Proposals issued from the public body are located.

24 Posting on the Department of General Services' central electronic procurement website shall be  
25 required of any state public body. Local public bodies are encouraged to utilize the Department of

26 General Services' central electronic procurement website to provide the public with centralized visibility  
27 and access to the Commonwealth's procurement opportunities.

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

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

42 4. For professional services, the public body shall engage in individual discussions with two or  
43 more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with  
44 emphasis on professional competence, to provide the required services. Repetitive informal interviews  
45 shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and  
46 performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In  
47 addition, offerors shall be informed of any ranking criteria that will be used by the public body in  
48 addition to the review of the professional competence of the offeror. The Request for Proposal shall not,  
49 however, request that offerors furnish estimates of man-hours or cost for services. At the discussion  
50 stage, the public body may discuss nonbinding estimates of total project costs, including, but not limited  
51 to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. In accordance  
52 with § 2.2-4342, proprietary information from competing offerors shall not be disclosed to the public or

53 to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation  
54 factors published in the Request for Proposal and all information developed in the selection process to  
55 this point, the public body shall select in the order of preference two or more offerors whose  
56 professional qualifications and proposed services are deemed most meritorious.

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

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

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

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

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

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

80           2. Any locality or any authority, sanitation district, metropolitan planning organization or  
81 planning district commission with a population in excess of 80,000, or any city within Planning District  
82 8, the sum of all projects performed in a one-year contract term shall not exceed \$5 million and those  
83 awarded for any airport as defined in § 5.1-1 and aviation transportation projects, the sum of all such  
84 projects shall not exceed \$1.5 million;

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

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

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

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

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

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

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

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

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

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

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

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

122 **§ 2.2-4302.2. Process for competitive negotiation.**

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

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

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

134 website shall be required of any state public body. Local public bodies are encouraged to utilize the  
135 Department of General Services' central electronic procurement website to provide the public with  
136 centralized visibility and access to the Commonwealth's procurement opportunities. In addition,  
137 proposals may be solicited directly from potential contractors. Any additional solicitations shall include  
138 certified businesses selected from a list made available by the Department of Small Business and  
139 Supplier Diversity; and

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

151 4. For professional services, the public body shall engage in individual discussions with two or  
152 more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with  
153 emphasis on professional competence, to provide the required services. Repetitive informal interviews  
154 shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and  
155 performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In  
156 addition, offerors shall be informed of any ranking criteria that will be used by the public body in  
157 addition to the review of the professional competence of the offeror. The Request for Proposal shall not,  
158 however, request that offerors furnish estimates of man-hours or cost for services. At the discussion  
159 stage, the public body may discuss nonbinding estimates of total project costs, including, but not limited  
160 to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. In accordance

161 with § 2.2-4342, proprietary information from competing offerors shall not be disclosed to the public or  
162 to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation  
163 factors published in the Request for Proposal and all information developed in the selection process to  
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165 professional qualifications and proposed services are deemed most meritorious.

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

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

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

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

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

189 2. Any locality or any authority, sanitation district, metropolitan planning organization or  
190 planning district commission with a population in excess of 80,000, or any city within Planning District  
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192 awarded for any airport as defined in § 5.1-1 and aviation transportation projects, the sum of all such  
193 projects shall not exceed \$1.5 million;

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

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

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

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

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



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

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

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

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

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

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

230 3. § 1. That the Department of General Services shall (i) provide an electronic data file of all agencies'  
231 business opportunities posted on the Department's central electronic procurement website at no charge to  
232 any requesting newspaper or other print publication with circulation in Virginia using the comma-  
233 separated values (CSV) format, another available format used by the Department, or a file format as  
234 agreed to by the parties and (ii) send the data file automatically via electronic mail on a daily, weekly, or  
235 monthly basis as agreed to by the parties. The data file shall contain all active business opportunity  
236 notices posted on the Department's central electronic procurement website in accordance with the  
237 requirements of the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). The  
238 electronic business opportunity data shall include, at a minimum: (a) the name of the issuing agency, (b)

239 a description of goods or services to be purchased, (c) the date the bid or proposal is due, and (d) the  
240 point of contact for the using agency, including the contact's name, phone number, and email address.

241 § 2. Local public bodies shall either (i) post all business opportunities on the Department's  
242 central electronic procurement website or (ii) provide an electronic data file of all business opportunities  
243 at no charge to any requesting newspaper or other print publication with circulation in Virginia using the  
244 comma-separated values (CSV) format, another available format used by the local public body, or a file  
245 format as agreed to by the parties and (ii) send the data file automatically via electronic mail on a daily,  
246 weekly, or monthly basis as agreed to by the parties. The data file shall contain all active business  
247 opportunity notices issued by the local public body in accordance with the requirements of the Virginia  
248 Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). The electronic business  
249 opportunity data shall include, at a minimum: (a) the name of the issuing local public body, (b) a  
250 description of goods or services to be purchased, (c) the date the bid or proposal is due, and (d) the point  
251 of contact for the local public body, including the contact's name, phone number, and email address.

252 **4. That the provisions of the first and fifth enactments of this act shall become effective on July 1,**  
253 **2015, and shall expire on July 1, 2017; the provisions of the second enactment of this act shall**  
254 **become effective July 1, 2017; and the provisions of the third enactment of this act shall become**  
255 **effective July 1, 2015.**

256 **5. That all public bodies issuing Requests for Proposals on or after July 1, 2015, through June 30,**  
257 **2016, shall ascertain the method by which an offeror submitting a proposal in response to the**  
258 **Request for Proposal became aware of the solicitation, whether by newspaper publication, website**  
259 **posting, other method, or combination of the above. Such public bodies shall report such findings**  
260 **by October 1, 2016, to the Chairmen of the House Committee on General Laws and the Senate**  
261 **Committee on General Laws and Technology.**

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