

1 HOUSE BILL NO. 1835

2 AMENDMENT IN THE NATURE OF A SUBSTITUTE

3 (Proposed by the House Committee on General Laws

4 on _____)

5 (Patron Prior to Substitute--Delegate Gilbert)

6 A BILL to amend and reenact §§ 2.2-2012, 2.2-4301, 2.2-4302.2, 2.2-4303, 2.2-4304, 2.2-4343, 23-
7 38.110, and 33.2-283 of the Code of Virginia and to amend the Code of Virginia by adding
8 sections numbered 2.2-4303.1 and 2.2-4303.2, relating to the Virginia Public Procurement Act;
9 methods of procurement; job order contracting and cooperative procurement.

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

11 **1. That §§ 2.2-2012, 2.2-4301, 2.2-4302.2, 2.2-4303, 2.2-4304, 2.2-4343, 23-38.110, and 33.2-283 of**
12 **the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by**
13 **adding sections numbered 2.2-4303.1 and 2.2-4303.2 as follows:**

14 **§ 2.2-2012. Procurement of information technology and telecommunications goods and**
15 **services; computer equipment to be based on performance-based specifications.**

16 A. Information technology and telecommunications goods and services of every description shall
17 be procured by (i) VITA for its own benefit or on behalf of other state agencies and institutions or (ii)
18 such other agencies or institutions to the extent authorized by VITA. Such procurements shall be made
19 in accordance with the Virginia Public Procurement Act (§ 2.2-4300 et seq.), regulations that implement
20 the electronic and information technology accessibility standards of the Rehabilitation Act of 1973 (29
21 U.S.C. § 794d), as amended, and any regulations as may be prescribed by VITA. In no case shall such
22 procurements exceed the requirements of the regulations that implement the electronic and information
23 technology accessibility standards of the Rehabilitation Act of 1973, as amended.

24 The CIO shall disapprove any procurement that does not conform to the Commonwealth
25 strategic plan for information technology developed and approved pursuant to § 2.2-2007 or to the
26 individual strategic plans of state agencies or public institutions of higher education.

27 B. All statewide contracts and agreements made and entered into by VITA for the purchase of
28 communications services, telecommunications facilities, and information technology goods and services
29 shall provide for the inclusion of counties, cities, and towns in such contracts and agreements.
30 Notwithstanding the provisions of § 2.2-4301, 2.2-4302.1, ~~or 2.2-4302.2,~~ 2.2-4303.1, or 2.2-4303.2,
31 VITA may enter into multiple vendor contracts for the referenced services, facilities, and goods and
32 services.

33 C. VITA may establish contracts for the purchase of personal computers and related devices by
34 licensed teachers employed in a full-time teaching capacity in Virginia public schools or in state
35 educational facilities for use outside the classroom. The computers and related devices shall not be
36 purchased with public funds, but shall be paid for and owned by teachers individually provided that no
37 more than one such computer and related device per year shall be so purchased.

38 D. If VITA, or any agency or institution authorized by VITA, elects to procure personal
39 computers and related peripheral equipment pursuant to any type of blanket purchasing arrangement
40 under which public bodies, as defined in § 2.2-4301, may purchase such goods from any vendor
41 following competitive procurement but without the conduct of an individual procurement by or for the
42 using agency or institution, it shall establish performance-based specifications for the selection of
43 equipment. Establishment of such contracts shall emphasize performance criteria including price,
44 quality, and delivery without regard to "brand name." All vendors meeting the Commonwealth's
45 performance requirements shall be afforded the opportunity to compete for such contracts.

46 E. VITA shall allow private institutions of higher education chartered in Virginia and granted
47 tax-exempt status under § 501(c)(3) of the Internal Revenue Code to purchase directly from contracts
48 established for state agencies and public bodies by VITA.

49 F. This section shall not be construed or applied so as to infringe upon, in any manner, the
50 responsibilities for accounting systems assigned to the Comptroller under § 2.2-803.

51 **§ 2.2-4301. Definitions.**

52 As used in this chapter:

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

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

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

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

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

66 "Construction" means building, altering, repairing, improving or demolishing any structure,
67 building or highway, and any draining, dredging, excavation, grading or similar work upon real
68 property.

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

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

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

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

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

83 "Job order contracting" means a method of procuring construction ~~services~~ by establishing a
84 book of unit prices and then obtaining a contractor to perform work as needed using the prices,
85 quantities, and specifications in the book as the basis of its pricing. The contractor may be selected
86 through either competitive sealed bidding or competitive negotiation depending on the needs of the
87 public body procuring the construction services. A minimum amount of work may be specified in the
88 contract. The contract term and the project amount shall not exceed the limitations specified in § ~~2.2-~~
89 ~~4302.2 or 2.2-4303~~ 2.2-4303.2.

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

93 "Nonprofessional services" means any services not specifically identified as professional
94 services in the definition of professional services.

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

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

105 "Public body" means any legislative, executive or judicial body, agency, office, department,
106 authority, post, commission, committee, institution, board or political subdivision created by law to

107 exercise some sovereign power or to perform some governmental duty, and empowered by law to
108 undertake the activities described in this chapter. "Public body" shall include any metropolitan planning
109 organization or planning district commission which operates exclusively within the Commonwealth of
110 Virginia.

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

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

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

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

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

126 **§ 2.2-4302.2. Process for competitive negotiation.**

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

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

132 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of
133 proposals by posting on the Department of General Services' central electronic procurement website or

134 other appropriate websites. Additionally, public bodies shall publish in a newspaper of general
135 circulation in the area in which the contract is to be performed so as to provide reasonable notice to the
136 maximum number of offerors that can be reasonably anticipated to submit proposals in response to the
137 particular request. Posting on the Department of General Services' central electronic procurement
138 website shall be required of any state public body. Local public bodies are encouraged to utilize the
139 Department of General Services' central electronic procurement website to provide the public with
140 centralized visibility and access to the Commonwealth's procurement opportunities. In addition,
141 proposals may be solicited directly from potential contractors. Any additional solicitations shall include
142 certified businesses selected from a list made available by the Department of Small Business and
143 Supplier Diversity; and

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

155 4. For professional services, the public body shall engage in individual discussions with two or
156 more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with
157 emphasis on professional competence, to provide the required services. Repetitive informal interviews
158 shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and
159 performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In
160 addition, offerors shall be informed of any ranking criteria that will be used by the public body in

161 addition to the review of the professional competence of the offeror. The Request for Proposal shall not,
162 however, request that offerors furnish estimates of man-hours or cost for services. At the discussion
163 stage, the public body may discuss nonbinding estimates of total project costs, including, but not limited
164 to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. In accordance
165 with § 2.2-4342, proprietary information from competing offerors shall not be disclosed to the public or
166 to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation
167 factors published in the Request for Proposal and all information developed in the selection process to
168 this point, the public body shall select in the order of preference two or more offerors whose
169 professional qualifications and proposed services are deemed most meritorious.

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

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

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

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

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

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

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

193 ~~2. Any locality or any authority, sanitation district, metropolitan planning organization or~~
194 ~~planning district commission with a population in excess of 80,000, or any city within Planning District~~
195 ~~8, the sum of all projects performed in a one year contract term shall not exceed \$5 million and those~~
196 ~~awarded for any airport as defined in § 5.1-1 and aviation transportation projects, the sum of all such~~
197 ~~projects shall not exceed \$1.5 million;~~

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

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

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

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

212 ~~C. For any single project, for (i) architectural or professional engineering services relating to~~
213 ~~construction projects, or (ii) job order contracting, the project fee shall not exceed \$100,000, or for~~

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

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

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

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

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

230 **§ 2.2-4303. Methods of procurement.**

231 A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or
232 for the purchase of services, insurance, or construction, shall be awarded after competitive sealed
233 bidding, or competitive negotiation as provided in this section, unless otherwise authorized by law.

234 B. Professional services shall be procured by competitive negotiation.

235 C. ~~Upon a determination made in advance by the public body and set forth in writing that~~
236 ~~competitive sealed bidding is either not practicable or not fiscally advantageous to the public, goods,~~
237 ~~services, or insurance may be procured by competitive negotiation. The writing shall document the basis~~
238 ~~for this determination.~~

239 Upon a written determination made in advance by (i) the Governor or his designee in the case of
240 a procurement by the Commonwealth or by a department, agency or institution thereof or (ii) the local

241 governing body in the case of a procurement by a political subdivision of the Commonwealth, that
242 competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured
243 through a licensed agent or broker selected in the manner provided for the procurement of things other
244 than professional services set forth in § 2.2-4302.2. The basis for this determination shall be documented
245 in writing.

246 D. Construction may be procured only by competitive sealed bidding, except that competitive
247 negotiation may be used in the following instances upon a determination made in advance by the public
248 body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally
249 advantageous to the public, which writing shall document the basis for this determination:

250 1. By the Commonwealth, its departments, agencies and institutions on a fixed price design-build
251 basis or construction management basis under § 2.2-4306;

252 2. By any public body for the construction of highways and any draining, dredging, excavation,
253 grading or similar work upon real property;

254 3. By any governing body of a locality with a population in excess of 100,000, provided that the
255 locality has the personnel, procedures, and expertise to enter into a contract for construction on a fixed
256 price or not-to-exceed price design-build or construction management basis and shall otherwise be in
257 compliance with the provisions of this section, § 2.2-4308, and other applicable law governing design-
258 build or construction management contracts for public bodies other than the Commonwealth. The
259 procedures of the local governing body shall be consistent with the two-step competitive negotiation
260 process established in § 2.2-4302.2; or

261 4. As otherwise provided in § 2.2-4308.

262 E. Upon a determination in writing that there is only one source practicably available for that
263 which is to be procured, a contract may be negotiated and awarded to that source without competitive
264 sealed bidding or competitive negotiation. The writing shall document the basis for this determination.
265 The public body shall issue a written notice stating that only one source was determined to be
266 practicably available, and identifying that which is being procured, the contractor selected, and the date
267 on which the contract was or will be awarded. This notice shall be posted on the Department of General

268 Services' central electronic procurement website or other appropriate websites, and in addition, public
269 bodies may publish in a newspaper of general circulation on the day the public body awards or
270 announces its decision to award the contract, whichever occurs first. Posting on the Department of
271 General Services' central electronic procurement website shall be required of any state public body.
272 Local public bodies are encouraged to utilize the Department of General Services' central electronic
273 procurement website to provide the public with centralized visibility and access to the Commonwealth's
274 procurement opportunities.

275 F. In case of emergency, a contract may be awarded without competitive sealed bidding or
276 competitive negotiation; however, such procurement shall be made with such competition as is
277 practicable under the circumstances. A written determination of the basis for the emergency and for the
278 selection of the particular contractor shall be included in the contract file. The public body shall issue a
279 written notice stating that the contract is being awarded on an emergency basis, and identifying that
280 which is being procured, the contractor selected, and the date on which the contract was or will be
281 awarded. This notice shall be posted on the Department of General Services' central electronic
282 procurement website or other appropriate websites, and in addition, public bodies may publish in a
283 newspaper of general circulation on the day the public body awards or announces its decision to award
284 the contract, whichever occurs first, or as soon thereafter as is practicable. Posting on the Department of
285 General Services' central electronic procurement website shall be required of any state public body.
286 Local public bodies are encouraged to utilize the Department of General Services' central electronic
287 procurement website to provide the public with centralized visibility and access to the Commonwealth's
288 procurement opportunities.

289 G. A public body may establish purchase procedures, if adopted in writing, not requiring
290 competitive sealed bids or competitive negotiation for single or term contracts for (i) goods and services
291 other than professional services and (ii) construction, if the aggregate or the sum of all phases is not
292 expected to exceed \$100,000; however, such small purchase procedures shall provide for competition
293 wherever practicable. ~~For local public bodies, such~~ Such purchase procedures may allow for single or
294 term contracts for professional services without requiring competitive negotiation, provided the

295 aggregate or the sum of all phases is not expected to exceed \$60,000. Where small purchase procedures
296 are adopted for construction, the procedures shall not waive compliance with the Uniform State Building
297 Code.

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

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

309 ~~I.~~ Upon a determination made in advance by a public body and set forth in writing that the
310 purchase of goods, products or commodities from a public auction sale is in the best interests of the
311 public, such items may be purchased at the auction, including online public auctions. Purchase of
312 information technology and telecommunications goods and nonprofessional services from a public
313 auction sale shall be permitted by any authority, department, agency, or institution of the
314 Commonwealth if approved by the Chief Information Officer of the Commonwealth. The writing shall
315 document the basis for this determination. However, bulk purchases of commodities used in road and
316 highway construction and maintenance, and aggregates shall not be made by online public auctions.

317 ~~J.~~ ~~I.~~ The purchase of goods or nonprofessional services, but not construction or professional
318 services, may be made by reverse auctioning. However, bulk purchases of commodities used in road and
319 highway construction and maintenance, and aggregates shall not be made by reverse auctioning.

320 § 2.2-4303.1. Architectural and professional engineering term contracting; limitations.

321 A. A contract for architectural or professional engineering services relating to multiple
322 construction projects may be awarded by a public body, provided (i) the projects require similar
323 experience and expertise, (ii) the nature of the projects is clearly identified in the Request for Proposal,
324 and (iii) the contract is limited to a term of one year or when the cumulative total project fees reach the
325 maximum authorized in this section, whichever occurs first.

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

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

331 1. A state agency, as defined in § 2.2-4347, the sum of all projects performed in a one-year
332 contract term shall not exceed \$1 million;

333 2. Any locality or any authority, sanitation district, metropolitan planning organization or
334 planning district commission with a population in excess of 80,000, or any city within Planning District
335 8, the sum of all projects performed in a one-year contract term shall not exceed \$5 million and those
336 awarded for any airport as defined in § 5.1-1 and aviation transportation projects, the sum of all such
337 projects shall not exceed \$1.5 million;

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

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

347 C. Competitive negotiations for such architectural or professional engineering services contracts
348 may result in awards to more than one offeror, provided (i) the Request for Proposal so states and (ii) the
349 public body has established procedures for distributing multiple projects among the selected contractors
350 during the contract term. Such procedures shall prohibit requiring the selected contractors to compete for
351 individual projects based on price.

352 D. The fee for any single project shall not exceed \$100,000; however, for architectural or
353 engineering services for airports as defined in § 5.1-1 and aviation transportation projects, the project fee
354 of any single project shall not exceed \$500,000, except that for:

355 1. A state agency as defined in § 2.2-4347, the project fee shall not exceed \$200,000, as may be
356 determined by the Director of the Department of General Services or as otherwise provided by the
357 Restructured Higher Education Financial and Administrative Operations Act (§ 23-38.88 et seq.); and

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

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

364 E. For the purposes of subsection B, any unused amounts from one contract term shall not be
365 carried forward to any additional term, except as otherwise provided by the Restructured Higher
366 Education Financial and Administrative Operations Act (§ 23-38.88 et seq.).

367 **§ 2.2-4303.2. Job order contracting; limitations.**

368 A. A job order contract may be awarded by a public body for multiple jobs, provided (i) the jobs
369 require similar experience and expertise, (ii) the nature of the jobs is clearly identified in the solicitation,
370 and (iii) the contract is limited to a term of one year or when the cumulative total project fees reach the
371 maximum authorized in this section, whichever occurs first. Contractors may be selected through either
372 competitive sealed bidding or competitive negotiation.

373 B. Such contracts may be renewable for two additional one-year terms at the option of the public
374 body. The fair and reasonable prices as negotiated shall be used in determining the cost of each job
375 performed, and the sum of all jobs performed in a one-year contract term shall not exceed \$5 million.
376 Individual job orders shall not exceed \$500,000.

377 C. For the purposes of this section, any unused amounts from one contract term shall not be
378 carried forward to any additional term.

379 D. Order splitting with the intent of keeping a job order under the maximum dollar amounts
380 prescribed in subsection B is prohibited.

381 E. No public body shall procure architectural or engineering services through a job order
382 contract.

383 F. Job order contracting shall not be used for construction, maintenance, or asset management
384 services for a highway, bridge, tunnel, or overpass.

385 **§ 2.2-4304. Joint and cooperative procurement.**

386 A. Any public body may participate in, sponsor, conduct, or administer a ~~cooperative joint~~
387 procurement agreement ~~on behalf of or~~ in conjunction with one or more other public bodies, or public
388 agencies or institutions or localities of the several states, of the United States or its territories, the
389 District of Columbia, or the U.S. General Services Administration, for the purpose of combining
390 requirements to increase efficiency or reduce administrative expenses in any acquisition of goods ~~and,~~
391 services, or construction.

392 ~~A-B. In addition, a~~ public body may purchase from another public body's contract even if it did
393 not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to
394 bid specified that the procurement was a cooperative procurement being conducted on behalf of other
395 public bodies, except for:

- 396 1. Contracts for architectural or engineering services; or
- 397 2. Construction ~~in excess of \$200,000 by a local public body from the contract of another local~~
398 ~~public body that is more than a straight line distance of 75 miles from the territorial limits of the local~~
399 ~~public body procuring the construction. The installation of artificial turf or other athletic surfaces shall~~

400 ~~not be subject to the limitations prescribed in this subdivision. Nothing in this subdivision shall be~~
401 ~~construed to prohibit sole source or emergency procurements awarded pursuant to subsections E and F~~
402 ~~of § 2.2-4303.~~

403 In instances where any authority, department, agency, or institution of the Commonwealth
404 desires to purchase information technology and telecommunications goods and services from another
405 public body's contract and the procurement was conducted on behalf of other public bodies, such
406 purchase shall be permitted if approved by the Chief Information Officer of the Commonwealth. Any
407 public body that enters into a cooperative procurement agreement with a county, city, or town whose
408 governing body has adopted alternative policies and procedures pursuant to subdivisions A 9 and A 10
409 of § 2.2-4343 shall comply with the alternative policies and procedures adopted by the governing body
410 of such county, city, or town.

411 ~~B-C.~~ Subject to the provisions of §§ 2.2-1110, 2.2-1111, 2.2-1120 and 2.2-2012, any authority,
412 department, agency, or institution of the Commonwealth may participate in, sponsor, conduct, or
413 administer a cooperative joint procurement arrangement ~~on behalf of or~~ in conjunction with public
414 bodies, private health or educational institutions or with public agencies or institutions of the several
415 states, territories of the United States, or the District of Columbia, for the purpose of combining
416 requirements to effect cost savings or reduce administrative expense in any acquisition of goods and
417 services, other than professional services, and construction.

418 A public body may purchase from any authority, department, agency or institution of the
419 Commonwealth's contract even if it did not participate in the request for proposal or invitation to bid, if
420 the request for proposal or invitation to bid specified that the procurement was a cooperative
421 procurement being conducted on behalf of other public bodies. In such instances, deviation from the
422 procurement procedures set forth in this chapter and the administrative policies and procedures
423 established to implement this chapter shall be permitted, if approved by the Director of the Division of
424 Purchases and Supply.

425 Pursuant to § 2.2-2012, such approval is not required if the procurement arrangement is for
426 telecommunications and information technology goods and services of every description. In instances

427 where the procurement arrangement is for telecommunications and information technology goods and
428 services, such arrangement shall be permitted if approved by the Chief Information Officer of the
429 Commonwealth. However, such acquisitions shall be procured competitively.

430 Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee
431 that will allow for participation in any such arrangement.

432 ~~C.~~D. As authorized by the United States Congress and consistent with applicable federal
433 regulations, and provided the terms of the contract permit such purchases:

434 1. Any authority, department, agency, or institution of the Commonwealth may purchase goods
435 and nonprofessional services, other than telecommunications and information technology, from a U.S.
436 General Services Administration contract or a contract awarded by any other agency of the U.S.
437 government, upon approval of the director of the Division of Purchases and Supply of the Department of
438 General Services;

439 2. Any authority, department, agency, or institution of the Commonwealth may purchase
440 telecommunications and information technology goods and nonprofessional services from a U.S.
441 General Services Administration contract or a contract awarded by any other agency of the U.S.
442 government, upon approval of the Chief Information Officer of the Commonwealth; and

443 3. Any county, city, town, or school board may purchase goods and nonprofessional services
444 from a U.S. General Services Administration contract or a contract awarded by any other agency of the
445 U.S. government.

446 **§ 2.2-4343. Exemption from operation of chapter for certain transactions.**

447 A. The provisions of this chapter shall not apply to:

448 1. The Virginia Port Authority in the exercise of any of its powers in accordance with Chapter 10
449 (§ 62.1-128 et seq.) of Title 62.1, provided the Authority implements, by policy or regulation adopted by
450 the Board of Commissioners, procedures to ensure fairness and competitiveness in the procurement of
451 goods and services and in the administration of its capital outlay program. This exemption shall be
452 applicable only so long as such policies and procedures meeting the requirements remain in effect.

453 2. The Virginia Retirement System for selection of services related to the management, purchase
454 or sale of authorized investments, actuarial services, and disability determination services. Selection of
455 these services shall be governed by the standard set forth in § 51.1-124.30.

456 3. The State Treasurer in the selection of investment management services related to the external
457 management of funds shall be governed by the standard set forth in § 2.2-4514, and shall be subject to
458 competitive guidelines and policies that are set by the Commonwealth Treasury Board and approved by
459 the Department of General Services.

460 4. The Department of Social Services or local departments of social services for the acquisition
461 of motor vehicles for sale or transfer to Temporary Assistance to Needy Families (TANF) recipients.

462 5. The College of William and Mary in Virginia, Virginia Commonwealth University, the
463 University of Virginia, and Virginia Polytechnic Institute and State University in the selection of
464 services related to the management and investment of their endowment funds, endowment income, gifts,
465 all other nongeneral fund reserves and balances, or local funds of or held by the College or Universities
466 pursuant to § 23-44.1, 23-50.10:01, 23-76.1, or 23-122.1. However, selection of these services shall be
467 governed by the Uniform Prudent Management of Institutional Funds Act (§ 64.2-1100 et seq.) as
468 required by §§ 23-44.1, 23-50.10:01, 23-76.1, and 23-122.1.

469 6. The Board of the Virginia College Savings Plan for the selection of services related to the
470 operation and administration of the Plan, including, but not limited to, contracts or agreements for the
471 management, purchase, or sale of authorized investments or actuarial, record keeping, or consulting
472 services. However, such selection shall be governed by the standard set forth in § 23-38.80.

473 7. Public institutions of higher education for the purchase of items for resale at retail bookstores
474 and similar retail outlets operated by such institutions. However, such purchase procedures shall provide
475 for competition where practicable.

476 8. The purchase of goods and services by agencies of the legislative branch that may be
477 specifically exempted therefrom by the Chairman of the Committee on Rules of either the House of
478 Delegates or the Senate. Nor shall the contract review provisions of § 2.2-2011 apply to such

479 procurements. The exemption shall be in writing and kept on file with the agency's disbursement
480 records.

481 9. Any town with a population of less than 3,500, except as stipulated in the provisions of §§ 2.2-
482 4305, 2.2-4308, 2.2-4311, 2.2-4315, 2.2-4330, 2.2-4333 through 2.2-4338, 2.2-4343.1, and 2.2-4367
483 through 2.2-4377.

484 10. Any county, city or town whose governing body has adopted, by ordinance or resolution,
485 alternative policies and procedures which are (i) based on competitive principles and (ii) generally
486 applicable to procurement of goods and services by such governing body and its agencies, except as
487 stipulated in subdivision 12.

488 This exemption shall be applicable only so long as such policies and procedures, or other policies
489 and procedures meeting the requirements of § 2.2-4300, remain in effect in such county, city or town.
490 Such policies and standards may provide for incentive contracting that offers a contractor whose bid is
491 accepted the opportunity to share in any cost savings realized by the locality when project costs are
492 reduced by such contractor, without affecting project quality, during construction of the project. The fee,
493 if any, charged by the project engineer or architect for determining such cost savings shall be paid as a
494 separate cost and shall not be calculated as part of any cost savings.

495 11. Any school division whose school board has adopted, by policy or regulation, alternative
496 policies and procedures that are (i) based on competitive principles and (ii) generally applicable to
497 procurement of goods and services by the school board, except as stipulated in subdivision 12.

498 This exemption shall be applicable only so long as such policies and procedures, or other policies
499 or procedures meeting the requirements of § 2.2-4300, remain in effect in such school division. This
500 provision shall not exempt any school division from any centralized purchasing ordinance duly adopted
501 by a local governing body.

502 12. Notwithstanding the exemptions set forth in subdivisions 9 through 11, the provisions of
503 subsections C and D of § 2.2-4303, and §§ 2.2-4305, 2.2-4308, 2.2-4311, 2.2-4315, 2.2-4317, 2.2-4330,
504 2.2-4333 through 2.2-4338, 2.2-4343.1, and 2.2-4367 through 2.2-4377 shall apply to all counties, cities
505 and school divisions, and to all towns having a population greater than 3,500 in the Commonwealth.

506 The method for procurement of professional services through competitive negotiation set forth in
507 subsection B of § ~~2.2-4302.2~~ 2.2-4303.1 shall also apply to all counties, cities and school divisions, and
508 to all towns having a population greater than 3,500, where the cost of the professional service is
509 expected to exceed \$60,000 in the aggregate or for the sum of all phases of a contract or project. A
510 school board that makes purchases through its public school foundation or purchases educational
511 technology through its educational technology foundation, either as may be established pursuant to §
512 22.1-212.2:2 shall be exempt from the provisions of this chapter, except, relative to such purchases, the
513 school board shall comply with the provisions of §§ 2.2-4311 and 2.2-4367 through 2.2-4377.

514 13. A public body that is also a utility operator may purchase services through or participate in
515 contracts awarded by one or more utility operators that are not public bodies for utility marking services
516 as required by the Underground Utility Damage Prevention Act (§ 56-265.14 et seq.). A purchase of
517 services under this subdivision may deviate from the procurement procedures set forth in this chapter
518 upon a determination made in advance by the public body and set forth in writing that competitive
519 sealed bidding is either not practicable or not fiscally advantageous to the public, and the contract is
520 awarded based on competitive principles.

521 14. Procurement of any construction or planning and design services for construction by a
522 Virginia nonprofit corporation or organization not otherwise specifically exempted when (i) the
523 planning, design or construction is funded by state appropriations of \$10,000 or less or (ii) the Virginia
524 nonprofit corporation or organization is obligated to conform to procurement procedures that are
525 established by federal statutes or regulations, whether those federal procedures are in conformance with
526 the provisions of this chapter.

527 15. Purchases, exchanges, gifts or sales by the Citizens' Advisory Council on Furnishing and
528 Interpreting the Executive Mansion.

529 16. The Eastern Virginia Medical School in the selection of services related to the management
530 and investment of its endowment and other institutional funds. The selection of these services shall,
531 however, be governed by the Uniform Prudent Management of Institutional Funds Act (§ 64.2-1100 et
532 seq.).

533 17. The Department of Corrections in the selection of pre-release and post-incarceration services.

534 18. The University of Virginia Medical Center to the extent provided by subdivision B 3 of § 23-
535 77.4.

536 19. The purchase of goods and services by a local governing body or any authority, board,
537 department, instrumentality, institution, agency or other unit of state government when such purchases
538 are made under a remedial plan established by the Governor pursuant to subsection C of § 2.2-4310 or
539 by a chief administrative officer of a county, city or town pursuant to § 15.2-965.1.

540 20. The contract by community services boards or behavioral health authorities with an
541 administrator or management body pursuant to a joint agreement authorized by § 37.2-512 or 37.2-615.

542 21. [Expired].

543 B. Where a procurement transaction involves the expenditure of federal assistance or contract
544 funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws
545 or regulations not in conformance with the provisions of this chapter, a public body may comply with
546 such federal requirements, notwithstanding the provisions of this chapter, only upon the written
547 determination of the Governor, in the case of state agencies, or the governing body, in the case of
548 political subdivisions, that acceptance of the grant or contract funds under the applicable conditions is in
549 the public interest. Such determination shall state the specific provision of this chapter in conflict with
550 the conditions of the grant or contract.

551 **§ 23-38.110. Procurement; discrimination prohibited; participation of small, women-**
552 **owned, and minority-owned business enterprises.**

553 A. Subject to the express provisions of the management agreement described in § 23-38.88,
554 covered institutions may be exempt from the provisions of the Virginia Public Procurement Act (§ 2.2-
555 4300 et seq.), except for § 2.2-4342 (which section shall not be construed to require compliance with the
556 prequalification application procedures of subsection B of § 2.2-4317)^{5.2}; provided, however, that any
557 deviations from the Virginia Public Procurement Act approved in a Management Agreement shall be
558 uniform across all covered institutions; and provided further that the governing body of a covered
559 institution shall adopt, and the covered institution shall comply with, policies for the procurement of

560 goods and services, including professional services, that shall be based upon competitive principles and
561 shall in each instance seek competition to the maximum practical degree. The policies shall implement a
562 system of competitive negotiation for professional services pursuant to ~~subsections A, B, and E of § 2.2-~~
563 ~~4302.2, § 2.2-4303.1;~~ shall prohibit discrimination because of race, religion, color, sex or national origin
564 of the bidder or offeror in the solicitation or award of contracts; shall incorporate the prompt payment
565 principles of §§ 2.2-4350 and 2.2-4354; and shall consider the impact on correctional enterprises under
566 § 53.1-47.

567 B. Such policies may, among other things, (i) provide for consideration of the dollar amount of
568 the intended procurement, the term of the anticipated contract, and the likely extent of competition; (ii)
569 implement a prequalification procedure for contractors or products; and (iii) include provisions for
570 cooperative arrangements with other covered institutions, other public or private educational institutions,
571 other public or private organizations or entities, including public-private partnerships, public bodies,
572 charitable organizations, health care provider alliances or purchasing organizations or entities, state
573 agencies or institutions of the Commonwealth or the several states, the District of Columbia, the
574 territories and the United States, and any combination thereof. Nothing in this section shall preclude a
575 covered institution from requesting and utilizing, and covered institutions are hereby encouraged to
576 utilize, the assistance of the Virginia Information Technologies Agency in information technology
577 procurements.

578 C. In the solicitation and awarding of contracts, no covered institution shall discriminate against
579 a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis
580 prohibited by state or federal law. The procurement policies of a covered institution shall provide that,
581 whenever solicitations are made seeking competitive procurement of goods or services, it shall be a
582 priority of the institution to provide for fair and reasonable consideration of small, women-owned, and
583 minority-owned businesses and to promote and encourage a diversity of suppliers. The institution shall
584 post on the Department of General Services' central electronic procurement website all Invitations to
585 Bid, Requests for Proposal, sole source award notices, and emergency award notices to ensure visibility
586 and access to the Commonwealth's procurement opportunities on one website.

587 D. As part of any procurement provisions of a management agreement, the governing board of a
588 covered institution shall identify the public, educational, and operational interests served by any
589 procurement rule or rules that deviate from those in the Virginia Public Procurement Act.

590 **§ 33.2-283. Powers and duties of the Director of the Department of Rail and Public**
591 **Transportation.**

592 Except such powers as are conferred by law upon the Board, or such services as are performed
593 by the Department of Transportation pursuant to law, the Director of the Department of Rail and Public
594 Transportation shall have the power to do all acts necessary or convenient for establishing, maintaining,
595 improving, and promoting public transportation, transportation demand management, ridesharing, and
596 passenger and freight rail transportation in the Commonwealth and to procure architectural and
597 engineering services for rail and public transportation projects as specified in § ~~2.2-4302.2~~ 2.2-4303.1.

598 **2. That by October 1, 2017, the Department of Small Business and Supplier Diversity, public**
599 **institutions of higher education having level 2 or 3 authority under the Restructured Higher**
600 **Education Financial and Administrative Operations Act of 2005 (§ 23-38.88 et seq. of the Code of**
601 **Virginia), state agencies utilizing job order contracting, and the Virginia Association of Counties,**
602 **the Virginia Municipal League, and the Virginia Association of Governmental Purchasing on**
603 **behalf of local public bodies working cooperatively shall report their respective experiences and**
604 **findings relating to the appropriateness and effectiveness of (i) job order contracting in general,**
605 **(ii) the project cost limitations set forth in subsections B and C of § 2.2-4303.1, as added by this**
606 **act, and (iii) the architectural and professional engineering term contract limits set forth in § 2.2-**
607 **4303.1, as added by this act, to the Chairmen of the House Committee on General Laws and the**
608 **Senate Committee on General Laws and Technology.**

609 **3. That the provisions of this act shall not apply to any solicitation issued or contract awarded**
610 **before July 1, 2015, except that the provisions of subsection B of § 2.2-4303.2, as added by this act,**
611 **shall apply to any renewal of a job order contract.**

612 #