



**CITY OF HOPEWELL**

Hopewell, Virginia 23860

**AGENDA**

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**CITY COUNCIL**

Jackie M. Shornak, Mayor, Ward #7  
Jasmine E. Gore, Vice Mayor, Ward #4  
Christina J. Luman-Bailey, Councilor, Ward #1  
Arlene Holloway, Councilor, Ward #2  
Anthony J. Zevgolis, Councilor, Ward #3  
Janice Denton, Councilor, Ward #5  
Brenda S. Pelham, Councilor, Ward #6

Mark A. Haley, City Manager  
Stefan M. Calos, City Attorney  
Ronnieye Arrington, City Clerk

**Date: July 11, 2017**

**MUNICIPAL BUILDING**

**TIME:** Closed Meeting 6:30 p.m.  
Work Session: 7:00 p.m.  
Regular Meeting 7:30 p.m.

**OPEN MEETING**

**6:30 p.m.** Call to order, roll call, and welcome to visitors

**MOTION:** To amend/adopt agenda

**Roll Call**

**MOTION:** To go into closed meeting for (1) discussion of appointment or performance of specific appointees of city council (city manager, city clerk, board of architectural review); (2) consultation with legal counsel and briefings by staff members or consultants pertaining to actual litigation (The Beacon, EEOC), where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of City Council; and (3) consultation with legal counsel employed or retained by city council related thereto and regarding specific legal matters requiring the provision of legal advice by such counsel, in accordance with Virginia Code section 2.2-3711 (A) (1) and (7) (two items), respectively.

**Roll Call**

**CLOSED MEETING**

**RECONVENE OPEN MEETING**

**CERTIFICATION PURSUANT TO VIRGINIA CODE § 2.2-3712 (D):** *Were only public business matters (1) lawfully exempted from open-meeting requirements and (2) identified in the closed-meeting motion discussed in closed meeting?*

**Roll Call**

## WORK SESSIONS

**7:00 p.m.**      **WS-1**            **Discussion of City rates and fees (Recreation, Public Works, Planning & Development)**

## REGULAR MEETING

**7:30 p.m.**      Call to order, roll call, and welcome to visitors

Prayer by Chaplain Michael Wyche of John Randolph Medical Center Pastoral Care followed by the Pledge of Allegiance to the Flag of the United States of America led by Councilor Denton.

### Consent Agenda

*All matters listed under the Consent Agenda are considered routine by Council and will be approved or received by one motion in the form listed. Items may be removed from the Consent Agenda for discussion under the regular agenda at the request of any Councilor.*

- C-1**            Minutes: None
- C-2**            Pending List: Updated July 7, 2017
- C-3**            Routine Approval of Work Sessions:
- C-4**            Personnel Change Report & Financial Report: Personnel Report included
- C-5**            Ordinances on Second & Final Reading: None
- C-6**            Routine Grant Approval: None
- C-7**            Public Hearing Announcement: **August 8, 2017** – Conditional use permits for carport; driving school in Downtown Hopewell, and meadery; transfer of property  
**September 12, 2017** – Trash, sewer, wastewater collection
- C-8**            Information for Council Review: Hopewell School Board calendar; School Board agenda for July 13, 2017
- C-9**            Resolutions/Proclamations/Presentations: None
- C-10**          Additional Announcements: None

### Public Hearings

*Each person addressing the Council shall step to the microphone, give name and address and limit comments to **five (5) minutes** or less. No person shall be permitted to address Council a second time until all others have been heard once and no one shall speak more than twice on any subject in any one meeting. All remarks shall be addressed to Council as a body and not to any member thereof. No person other than the Council and the person having the floor shall enter into any discussion either directly or through a member of the Council without permission of the Mayor. No question shall be asked a Council member (including Administration) except through the presiding officer. (Rule 405.)*

#### **PH-1            Community Development Block Grant update and appropriation request**

**ISSUE:** The City of Hopewell received \$162,676 as its FY2018 allocation, which the CDBG Program is requesting be appropriated. Administration has reviewed all FY2018 agencies' applications for funding, and has developed a proposed CDBG spending plan for Council's consideration. The plan follows the

Strategic Plan. The Third Year Annual Action Plan describes the projects that will be funded in the third year of the Consolidated Plan. Additionally, one non-profit organization failed to spend its money timely, and the projects were cancelled. Administration requests that Council re-appropriate that \$7,368.

**RECOMMENDATION:** Administration recommends approval of the appropriation, and re-appropriation of funds.

**MOTION:** To appropriate \$170,044 which includes the \$162,676 allocated by HUD for FY2018 from the CDBG Program, to re-appropriate \$7,368 from cancelled projects, and to authorize the City Manager to submit the Third Year Annual Action Plan per HUD.

## Roll Call

### Communications from Citizens

*A Communications from Citizens period, limited in total time to 30 minutes, shall be part of the Order of Business at each regular Council meeting. **Each speaker** will be limited to **three (3) minutes**. No citizen will be permitted to speak on any item scheduled for consideration on the regular agenda of the meeting. (Rule 405.)*

### Regular Business

#### Reports of City Manager:

#### **R-1 Approval and appropriation of grant funds from John Randolph Foundation to the Fire Department**

**ISSUE:** John Randolph Foundation is providing \$22,500 in grant funds to fund the purchase of two LUCAS™ chest compression devices. Total cost of the devices is \$30,000, with the Fire Department paying the remaining \$7,500.

**RECOMMENDATION:** Staff recommends approval and appropriation.

**MOTION:** To adopt budget amendment resolution accepting the \$22,500 grant from John Randolph Foundation to the Fire Department.

## Roll Call

#### **R-2 Presentation regarding the classification and compensation study results by John Anzivino of Springsted Incorporated.**

**ISSUE:** Classification and Compensation study contractor to present its findings.

**RECOMMENDATION:** Staff recommends approval and adoption of the study.

**MOTION:** To approve and adopt the Springsted Class and Comp Study.

## Roll Call

**R-3 Sewer Service Rate**

**A. Sewer Service Rate Adjustment**

**ISSUE:** There is a need to adjust the current residential and commercial sewer rates by 5% to ensure that the operational reserve fund and the rate stabilization fund for bonds remain at required levels, and provide for the increased operation expenses resulting from completion of the Phase 2 Nitrogen Reduction project.

**RECOMMENDATION:** Staff and James Sanderson of Davenport & Company recommend approval of the 5% rate increase, and changing metered consumption from cubic feet to gallons.

**MOTION: To approve a 5% increase in sewer rates, and to change metered consumption from cubic feet to gallons.**

**B. Repeal of sewer rates-based on meter water consumption**

**ISSUE:** Due to changing metered consumption from cubic feet to gallons, Sec. 31-11.1 of Article I, Chapter 31 of the Hopewell City Code would no longer be accurate or necessary.

**RECOMMENDATION:** Staff recommends repealing Sec. 31-11.1.

**MOTION: To repeal Article I, Chapter 31, Sec. 31-11.1 of the Hopewell City Code.**

**Roll Call**

**R-4 Repeal and replace Chapter 2A of the City Code**

**ISSUE:** The current procurement chapter is outdated and noncompliant with State Code, and needs to be replaced with the Virginia Public Procurement Act (VPPA).

**RECOMMENDATION:** Staff recommends approval and adoption.

**MOTION: To repeal Chapter 2A of the City Code and replace it with the proposed ordinance, which incorporates the VPPA.**

**Roll Call.**

**R-5 Approval of Hopewell Water Renewal Fund (Fund 032) Capital Projects Budget Amendment**

**ISSUE:** Past budgeting practices did not require Hopewell Water Renewal to budget for capital projects in Enterprise Fund 32. As good financial practice, the Interim Finance Director is requiring that capital projects be included in the budget to document proposed project expenses and revenues for each fiscal year. We therefore request

amendment to the FY2018 budget to add a capital project. In addition, a project previously brought before Council for approval was bid at an amount higher than projected, thus we are requesting amendment of the budget to include that increase.

**RECOMMENDATION:** Staff recommends approval of the budget amendment.

**MOTION:** To approve amendment of FY 2018 Fund 032 capital projects budget to increase the total funding and appropriations by \$2,650,000.

**Roll Call.**

**Reports of the City Attorney:**

**Reports of the City Clerk:**

**Reports of City Council:**

**Committees**

**Individual Councilors**

**Citizen/Councilor Requests**

**CCR-1 Report on Spot Blight – Councilor Luman-Bailey**

**Other Council Communications**

**Adjournment**

# **Work Session**

**FY2018-2019**  
**PROPOSED FEES**

**CITY COUNCIL WORK SESSION**  
**JULY 11, 2017**

# OVERVIEW OF FEES

- Proposed fees for three Departments

  - Public Works

  - Recreation & Parks

  - Development

- To be implemented in the FY2018-2019 Budget

- Current fees & new fees

# FEES APPLICABLE TO PUBLIC WORKS

1. Trash Collection
2. Leaf Collection
3. Convenience Center
4. Stormwater



# TRASH COLLECTION

- CVWMA Contract - Waste and Recycling:

**No Changes Proposed**

## Current Fees

Curbside service:        \$20.65/month

Commercial service:    \$24.06/month

# CONVENIENCE CENTER

- Citizen's Convenience Center - Residential Solid Waste

	<u>Current</u>	<u>Proposed</u>
Car	\$3.25	<b>\$3.00 (.25 cents Decrease)</b>
Pick up or small trailer	\$10.25	<b>\$10.00 (.25 cents Decrease)</b>
Dual axle trailer	\$20.50	<b>\$35.00 (\$14.50 Increase)</b>

- Citizen's Convenience Center - Construction and Demolition

	<u>Current</u>	<u>Proposed</u>
Car	\$3.25	<b>\$3.00 (.25 cents Decrease)</b>
Pick up or small trailer	\$20.50	<b>\$20.00 (.50 cents Decrease)</b>
Dual axle trailer*	\$30.75	<b>\$50.00 (\$19.25 Increase)</b>

# TRASH COLLECTION (CONT.)

- Citizen's Convenience Center - Brush and Yard Waste

	Current	Proposed
Car	No Charge	No Charge
Pick up or small trailer	No Charge	No Charge
Dual axle trailer	No Charge	\$10.00



## Financial Performance:

	Revenue	Expenses	Net Cost of Program
• FY 15/16	\$10,100	\$145,200	\$135,100
• FY 16/17	\$23,000	\$109,000	\$86,000

# ESTIMATES

## REVENUES

VS.

## EXPENDITURES

FOR

FY2015-2016

<u>Year</u>	<u>Revenue</u>	<u>Expenses</u>	<u>Net Cost for</u>
• FY 15/16	\$10,100	\$145,200	\$135,100
• FY 17/18	\$23,000	\$109,000	\$86,000

### Comments:

- An increase in dual axle trailer fees may discourage businesses from utilizing the City's convenience center.
- If the number of loaded dual axle trailers at the Convenience Center are reduced by 50%, the City could realize a savings of \$37,000 +/-

Hopewell Convenience Center Statistics				2016
<u>Number of Visits:</u>		<u>Total Revenue -</u>		<u>Significant Expenses -</u>
Solid Waste Visitors - 1619		Tipping fee - \$10,118		"Roll off" containers - \$86,447
Brush - 2609		Tires - \$77		Tub Grinding - \$9,219
Tires - 270		Mulch - \$0		Staffing - \$50,000
<b>Hopewell Fees:</b>				
	Res solid waste	Const and Demolition		Brush and Yard Waste
Car	\$3.25	\$3.25		No Charge
Pick up and small trailer	\$10.25	\$20.50		No Charge
Dual axle trailer	\$20.50	\$30.75		No Charge
<b>Surrounding Juristictions Fees</b>				
Petersburg:	No solid waste collection center - citizens directed to landfill			
Colonial Heights:	No solid waste collection center			
Powhatan County	\$30 for small pickup through \$70 for volumes up to 10 CY			
Prince George County	\$.06 per pound (min \$3 per visit) with proof of residency			
	\$.04 per pound for yard waste, \$25 per TV, \$3 per propane tank, and \$5 per tire			
Chesterfield County	\$15 – 1 pickup truck load			
	\$30 – 1 pickup truck load with 10' or smaller trailer load			
	\$45 – 1 pickup truck load with trailer load longer than 10' and shorter than 20'			
	\$60 – 1 pickup truck load with a trailer load longer than 20'			

# LEAF COLLECTION

- Residential :

<u>Seniors/Handicapped</u>	Current Fees	Proposed Fees
1 <sup>st</sup> Pickup	No cost	No cost
2 <sup>nd</sup> & 3 <sup>rd</sup> Pickup	\$5.25	\$5.00 (.25 cents Decrease)
 <u>Other Residents</u>		
1 <sup>st</sup> Pickup	\$10.25	\$10.00 (.25 cents Decrease)
2 <sup>nd</sup> & 3 <sup>rd</sup> Pickup	\$20.50	\$20.00 (.25 cents Decrease)

- Up to three “pick-ups” a year allowed (November - December)
- Financial Performance:

Total number of pickup was 218

Total revenue last year was only \$802.25

Total estimated cost for last year is \$25,000

Total number of seniors who got the free service was 21

Estimated revenue for new fee structure is \$775.00

# CEMETERY

- Appomattox Cemetery

**No Change Proposed**

## Burial Plot Purchase

<u>City Residents</u>	Current Fees
Adult	\$500.00
Cremaains/Infants	\$250.00
Administrative Fee (per activity)	\$100.00

## Non - Residents

Adult	\$2,000.00
Cremaains/Infants	\$1,000.00
Administrative Fee (per activity)	\$100.00

# STORMWATER

- Single Family (1 ERU): \$4/month
- All Other Users \$4 per 1 ERU

**No Change Proposed**

ERU - Equivalent Residential Unit

# GENERAL COMMENTS

It is recommended that trash collection fees and stormwater fees be billed through the **property tax collection billing** process.

- This change should improve fee collections for **Trash** by 7% (91% to 98%) and **Stormwater** by 19% (79% to 98%)

Increase in revenue for Trash:	\$136,300
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Increase in revenue for Stormwater:	<u>\$152,100</u>
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Total:	\$288,400
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- This change will also eliminate monthly 3<sup>rd</sup> party billing charges

Savings for Trash Collection billings:	\$79,000
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Savings for Stormwater billings:	<u>\$108,300</u>
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Total:	\$187,300
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- Net Gain By Changing to Internal Billing: \$475,700

# ESTABLISHING AN ADMINISTRATIVE FEE FOR TRASH COLLECTION AND RECYCLING

The solid waste enterprise (trash collection) has been contributing an administrative fee to the City's General Fund for many years. This fee has fluctuated over the past few years, and it is requested that Council set this fee at constant **\$500,000 per year**. This fixed rate will enable staff to anticipate this fee in future budgets.

The historical charges have been:

FY 11-12:	\$502,000
FY 12-13	\$502,000
FY 13-14	\$495,000
FY 14-15	\$517,000

# RECREATION & PARKS PROPOSED FEES ADJUSTMENTS



**FACILITY  
&  
ADJUSTMENTS**

# MATHIS FIELD

Facility Name	Current Fee	Proposed Fee	Reason	Price Comp 1	Price Comp 2
Mathis Field Rental	\$50/day	\$100/day	Fields improved	Colonial Heights \$12/hr	Henrico: \$15/hr
Mathis Concession Rental	\$100/day	\$150/day	Facility quality	N/A	N/A
Mathis Concession Security Deposit	New fee	\$100	Protection against misuse	N/A	N/A

# ATWATER SOCCER FIELDS

Facility Name	Current Fee	Proposed Fee	Price Comp 1	Price Comp 2
Atwater Soccer Fields	\$50/day	\$75/day	Colonial Heights \$12/hr	Henrico: \$15/hr
Atwater Soccer Concession	\$100/day	\$150/day	N/A	N/A
Atwater Concession Security Deposit	New fee	\$100	N/A	N/A
Additional Field Maintenance	New fee	\$35/hour	Based on median overtime pay rates	N/A
Tournament Cancellation Fee	New fee	\$50	N/A	N/A

# ATWATER PARK PAVILION

Facility Name	Proposed		Reason	Price Comp 1	Price Comp 2
	Current Fee	Fee			
AW Park Pavilion Half Day Resident	\$20	\$25	Pricing unification	Chesterfield: \$60	Henrico: \$25
AW Park Pavilion Full Day Resident	\$35	\$40	Pricing unification	Chesterfield: \$110	Henrico: \$50
AW Park Pavilion Half Day Non Res	\$35	\$40	Pricing unification	Chesterfield: \$70	Henrico: \$50
AW Park Pavilion Full Day Non Res	\$60	\$65	Pricing unification	Chesterfield: \$120	Henrico: \$100

# ATWATER SOCCER FIELDS PAVILLION

Facility Name	Current Proposed		Reason	Price Comp 1	Price Comp 2
	Fee	Fee			
Atwater SC Pavilion Half Day Resident	\$15.50	\$25	Pricing unification	Chesterfield: \$60	Henrico: \$25
Atwater SC Pavilion Full Day Resident	\$30.75	\$40	Pricing unification	Chesterfield: \$110	Henrico: \$50
Atwater SC Pavilion Half Day Non Res	\$30.75	\$40	Pricing unification	Chesterfield: \$70	Henrico: \$50
Atwater SC Pavilion Full Day Non Res	\$51.00	\$65	Pricing unification	Chesterfield: \$120	Henrico: \$100

# CRYSTAL LAKE PAVILION RENTALS

Facility Name	Current Proposed		Reason	Price Comp 1	Price Comp 2
	Fee	Fee			
Crystal Lake Large Pavilion Half Day Res.	\$35	\$50	Quality of facility	N/A	N/A
Crystal Lake Large Pavilion Full Day Res.	\$60	\$75	Quality of facility	N/A	N/A
Crystal Lake Large Pavilion Half Day Non Res.	\$65	\$80	Quality of facility	N/A	N/A
Crystal Lake Large Pavilion Full Day Non Res.	\$130	\$150	Quality of facility	N/A	N/A
Crystal Lake Large Pavilion Half Day Res.	\$35	\$50	Quality of facility	N/A	N/A
Crystal Lake Large Pavilion Full Day Res.	\$60	\$75	Quality of facility	N/A	N/A

# HERITAGE GARDENS

Facility Name	Current Fee	Proposed Fee	Reason	Price Comp 1	Price Comp 2
Heritage Gardens Half Day Res.	\$150	\$25	Reduced based on facility quality	Chesterfield: \$60	Henrico: \$25
Heritage Gardens Full Day Res.	\$225	\$40	Reduced based on facility quality	Chesterfield: \$110	Henrico: \$50
Heritage Gardens Half Day Non Res.	\$250	\$40	Reduced based on facility quality	Chesterfield: \$70	Henrico: \$50
Heritage Gardens Full Day Non Res.	\$325	\$65	Reduced based on facility quality	Chesterfield: \$120	Henrico: \$100

# HCC GYMNASIUM

Facility Name	Current Fee	Proposed Fee	Price Comp 1	Price Comp 2
HCC Gymnasium Half Gym Res	\$26/hr.	\$40/hr.	N/A	N/A
HCC Gymnasium Full Gym Res	\$51/hr.	\$80/hr.	Henrico: 3 hr block \$250	N/A
HCC Gymnasium Half Gym Non Res	\$36/hr.	\$50/hr.	N/A	N/A
HCC Gymnasium Full Gym Non Res	\$65/hr.	\$100/hr.	Henrico: 3 hr block \$1,000	N/A
HCC Gymnasium Security Deposit	\$20	\$50	Henrico: \$200	N/A
HCC Gymnasium Half Gym Res	\$26/hr.	\$40/hr.	N/A	N/A
HCC Gymnasium Half Gym Res	\$26/hr.	\$40/hr.	N/A	N/A

# HCC GYMNASIUM

Facility Name	Current Fee	Proposed Fee	Reason	Price Comp 1	Price Comp 2
HCC Meeting Room 3 hour block Non Res	\$47	\$75	Adjusted based on price comparison	N/A	N/A
HCC Meeting Room Additional Hours	\$10	\$10	Adjusted based on price comparison	Chesterfield: \$35/hr (Bensley craft)	N/A
HCC Meeting Room Use of Kitchen	\$30	\$50	Adjusted based on price comparison	N/A	N/A
HCC Meeting Room Security Deposit	\$20	\$50	Adjusted based on price comparison	Henrico: \$200	N/A
HCC Meeting Room 3 hour block Res	\$26	\$50	Adjusted based on price comparison	Chesterfield: 3 hour block \$95 (Bensley)	Colonial Heights: \$50 (residents only)
HCC Meeting Room 3 hour block Non Res	\$47	\$75	Adjusted based on price comparison	N/A	N/A
HCC Meeting Room Additional Hours	\$10	\$10	Adjusted based on price comparison	Chesterfield: \$35/hr (Bensley craft)	N/A

# HCC MEETING ROOM

Facility Name	Current Fee	Proposed Fee	Price Comp 1	Price Comp 2
HCC Meeting Room 3 hour block Res	\$26	\$50 (+\$24)	Chesterfield: 3 hour block \$95 (Bensley)	Colonial Heights: \$50 (residents only)
HCC Meeting Room 3 hour block Non Res	\$47	\$75 (+\$28)	N/A	N/A
HCC Meeting Room Additional Hours	\$10	\$10	Chesterfield: \$35/hr. (Bensley craft)	N/A
HCC Meeting Room Use of Kitchen	\$30	\$50 (+\$20)	N/A	N/A
HCC Meeting Room Security Deposit	\$20	\$50 (+\$30)	Henrico: \$200	N/A
HCC Meeting Room 3 hour block Res	\$26	\$50 (+\$26)	Chesterfield: 3 hr. block \$95 (Bensley)	Colonial Heights: \$50 (residents only)
HCC Meeting Room 3 hour block Non Res	\$47	\$75 (+\$28)	N/A	N/A
HCC Meeting Room Additional Hours	\$10	\$10	Chesterfield: \$35/hr. (Bensley craft)	N/A
HCC Meeting Room Use of Kitchen	\$30	\$50 (+\$28)	N/A	N/A

# HCC POOL

Facility Name	Current Fee	Proposed Fee	Price Comp 1	Price Comp 2
HCC Pool 3 Hour Block (1-20 Children) Res	\$65	\$85	SwimRVA: \$220	VA Beach: \$225
HCC Pool 3 hour block (1-20 children) Non res	\$75	\$100	N/A	N/A
HCC Pool 3 Hour block (21-40 children) Res	New fee	\$110	N/A	N/A
HCC Pool 3 hour block (21-40 children) Non res	New fee	\$135	N/A	N/A
Use of inflatable obstacle course	New fee	\$50	N/A	N/A
HCC Pool Security Deposit	New fee	\$50	N/A	
HCC Pool Lane Rental*	\$5/hr/lane	\$12/hr./lane	SwimRVA: \$22/hr/lane (volume discount)	
HCC Pool 3 Hour Block (1-20 Children) Res	\$65	\$85	SwimRVA: \$220	VA Beach: \$225
HCC Pool 3 hour block (1-20 children) Non res	\$75	\$100	N/A	N/A

# DEPARTMENT OF DEVELOPMENT

## BUILDING & PLANNING/ZONING FEES



# BUILDING PERMIT FEES

Type of Permit	Current	Proposed
Admin Minimum Base fee	\$25	\$40 (+\$15)
State Surcharge % of all fees	.2%	State Surcharge % of all fees
Residential Building (NEW)	\$25	\$40 + 0.33/square feet
Residential Building (ADDITION)	\$25/\$0.22 + surcharge	\$40 + 0.33/ square feet + 2% surcharge(+ \$15)
Commercial Building (NEW)	\$75 + 1% estimated labor & materials	\$100 + 1.10% estimated labor and materials (+\$25)
Commercial Building (ADDITION)	\$75 + 1% estimated labor & materials	\$100 + 1.10% estimated labor and materials (+\$25)
Admin Minimum Base fee	\$25	\$40 (+\$15)

# BUILDING PERMIT FEES

	Hopewell	Chesterfield	Petersburg	Colonial Heights	Prince George
Admin Minimum Base fee	\$25	\$57	\$25	\$75	\$200 for commercial and \$95 for residential. (if over \$5000 use ¾ of estimated costs) for residential and 1% for commercial est. costs).
State Surcharge % of all fees	2%	2%	2%	2%	2%
Residential Building (NEW)	\$25 + \$0.22/ft <sup>2</sup>	\$684	(.63 %)* estimated costs	\$75 + \$0.20/ft.	\$0.20/ ft <sup>2</sup> + \$95
Residential Building (ADDITION)	\$25 + \$0.22/ft <sup>2</sup> + surcharge	\$399 + surcharge	(.63%)* estimated costs	\$75 + \$0.20/ft.	\$0.20/ ft <sup>2</sup> + \$95
Commercial Building (NEW)	\$75 + 1% estimated labor & materials	\$7.40/\$1000 value: At least \$297	\$75 + 1% estimated costs	\$75 + 1% contract price	\$200 + (.75)* estimated costs
Commercial Building (ADDITION)	\$75 + 1% estimated labor & materials	\$7.40/\$1000 value: At least \$178	\$75 + 1% estimated costs	\$75 + 1% contract price	\$200 + (.75)* estimated costs

# BUILDING COST COMPARISON

Project Type	Hopewell	Chesterfield	Petersburg	Colonial Heights	Prince George	Dinwiddie
New Single family dwelling 1,800 ft <sup>2</sup> \$180,000 value	\$429.42	\$697.68	\$1147.50	\$443.70	\$464.10	\$443.70
Addition Single family dwelling 600 ft <sup>2</sup> \$60,000 value	\$160.14	\$406.98	\$385.56	\$198.90	\$219.30	\$198.90
New Commercial Building 2,500 ft <sup>2</sup> \$125,000 value	\$1,351.50	\$1,001.64	\$1,351.50	\$1,351.50	\$1,160.25	\$663.00
Addition Commercial Building 500 ft <sup>2</sup> \$25,000 value	\$331.50	\$246.84	\$331.50	\$331.50	\$395.25	\$255.00

# PLANNING/ZONING

Type of Permit	Residential	Commercial
Zoning Business Approval	\$10.00	\$25
Zoning Confirmation/Verification Letters	\$50.00	\$100.00
Street Vacation	\$150 (advertisement fee included)	\$250 (advertisement fee included)
Wetlands Permit	\$250 (advertisement fee included)	\$350 (advertisement fee included)

# WETLAND PERMIT FEES

Locality	Permit Fees	Commercial Fees	After-The-Fact Fees	Advertising Fee	Ad Paid By	In-Lieu Fees	Vegetated	Non-Vegetated
<b>HOPEWELL</b>	0	0	0	0	City	0	0	0
<b>Accomack</b>	\$297.00	Same	Double	\$160.00 Paid Directly to Paper	Applicant	Yes	\$12.00/sf	
<b>Cape Charles</b>	\$100.00	Same	No	Included (w/option to charge more for large projects)	Locality	No		
<b>Charles City</b>	\$1,000.00	Same		Included	Applicant	No	\$50	\$50
<b>Chesapeake</b>								
<b>Colonial Heights</b>	\$400.00	Same	No	Included	Locality	No		
<b>Essex</b>	\$200.00	Same	No	Paid Directly to Paper	Applicant	No		
<b>Fairfax</b>	\$300.00	Same	No	Paid Directly to Paper	Applicant	Yes	\$28.00/sf	\$28.00/sf
<b>Fredericksburg</b>	\$50.00	Same	No	Paid Directly to Paper	Applicant	In Discussion		
<b>Gloucester</b>	\$200.00	\$300.00	No	Included	Locality	Yes	Market Price	None

# WETLAND PERMIT FEES

Locality	Permit Fees	Commercial Fees	After-The-Fact Fees	Advertising Fee	Ad Paid By	In-Lieu Fees	Vegetated	Non-Vegetated
<b>Hampton</b>	\$350.00	Same	No	Included	Locality	Yes	\$16.00/sf	\$16.00/sf
<b>Isle of Wight</b>	\$750.00	Same	No	Included	Locality	Yes	1% above bank rate	1% above bank rate
<b>James City</b>	\$100.00 less than 20,000 sf	\$200.00 (20,000-40,000 sf + \$100.00 each add'l acre)	No	Included	Locality	Yes	Market Price	None
<b>King &amp; Queen</b>	\$300.00	\$400.00	Double	Included	Locality	Yes	\$12.00/sf	\$6.00/sf
<b>King George</b>	\$500.00	Same	No	Included	Locality	No		
<b>King William</b>	\$1,000.00	Same	Fee + \$200.00	Included	Locality	No		
<b>Lancaster</b>	\$300 w/ \$100.00 permit ext.	\$300.00	Double	Included	Locality	No		
<b>Mathews</b>	\$150.00	\$200.00	Double	Included	Locality	Yes	\$13.00/sf	None

# WETLAND PERMIT FEES

Locality	Permit Fees	Commercial Fees	After-The-Fact Fees	Advertising Fee	Ad Paid By	In-Lieu Fees	Vegetated	Non-Vegetated
Middlesex	\$150.00	\$250.00	\$550.00	Included	Locality	Yes	\$9.00/sf	None
New Kent	\$625.00	Same	No	Included	Locality	No		
Newport News	\$200.00	Same	No	Paid Directly to Paper	Applicant	No		
Norfolk	\$255.00	Same	\$505.00	Included	Locality	Yes	\$15.00/sf	\$7.50/sf - case by case determination
Northampton	\$300.00	Same	Double	Paid Directly to Paper	Applicant	Yes	The greater of \$12.50/sf or 1% above bank rate	
Northumberland	\$200.00	Same	\$750.00 (\$150.00 + 3x Fee)	Included	Locality	No		

# WETLAND PERMIT FEES

Locality	Permit Fees	Commercial Fees	After-The-Fact Fees	Advertising Fee	Ad Paid By	In-Lieu Fees	Vegetated	Non-Vegetated
Poquoson	\$250.00	Same	\$500.00	Included	Locality	Yes	\$30.01/sf	\$15.01/sf with special consideration for projects that enhance water quality
Portsmouth	\$55.00	\$165.00	No	Paid Directly to Paper	Applicant	Yes	Either on-site mitigation or use mitigation bank at local tidal bank rate	
Prince William	\$500.00	Same		Included	Locality	Yes	\$18.00/sf	\$9.00/sf
Richmond	\$250.00	Same	No	Included	Locality	No		
Stafford	\$675.00	Same	Triple	Included	Locality	Yes	Cost per sf of undeveloped riparian land x5 for environmentally preferred; x10 for less desirable options	Cost per sf of undeveloped riparian land x5 for environmentally preferred; x10 for less desirable options
Suffolk	\$250.00	Same	\$300.00	Included	Locality	Yes	1% above bank rate	1% above bank rate

# WETLAND PERMIT FEES

Locality	Permit Fees	Commercial Fees	After-The-Fact Fees	Advertising Fee	Ad Paid By	In-Lieu Fees	Vegetated	Non-Vegetated
Surry	\$300.00	Same	No	Included	Locality	No		
Virginia Beach	\$300.00	Same	No	Billed Back	Applicant	Yes	\$25.00/sf	\$12.50/sf
Westmoreland	\$500.00	Same	Double	Included	Locality	Yes	\$15.00/sf	Not to exceed \$4.00/sf for BMP recommended projects; \$15.00/sf for structures not considered BMP
West Point	\$200.00 + \$10.00/acre	\$300.00 + \$10.00/acre	No	\$200.00	Locality	No		
Williamsburg	No Fees	Same				No		
York	\$150.00	Same	\$250.00	Included	Locality	Yes	1% above bank rate	None
VMRC	\$300 when serving as LWB	Same	No	Paid Directly to Paper	Applicant	Yes	Above the local bank rate	Case by case



Q & A  
SESSION

# **REGULAR MEETING**

# **CONSENT AGENDA**

# **PENDING LIST**

**PENDING CITY COUNCILOR REQUEST**

No.	Request	Date Voted/ Requested	Format/Information Requested	Point Person	Status
1.	<p>Beacon Update; RFP; Marketing Plan; Beacon LLC                      City Manager clarified that only the RFP has been completed so far; Shornak requested copy of RFP; Mayor suggested that RFP be dispensed to council at the same time as to the public, to which City Manager agreed; Shornak requested financial information for the Beacon, as well; City Attorney explained Beacon setup and why, and advised that LLC could be dissolved 3 years after last tax payment rec'd; Walton requested specific date re when LLC can be dissolved</p>	<p>2-7-17  2-21-17</p>	<p>Date when LLC can be dissolved  Mayor requested Plan when submitted.</p>	<p>Mark Haley Stefan Calos</p>	<p><b>ONGOING</b>                      2/1/2018, if notice is given on the first possible business day of the year. 2-7-17 Mr. Haley reported, Slap Productions hired, contract on year to year basis.                       1/1/2018 the LLC can proceed to purchase the interest of the State Investor Member (the "Fund"). The purchase would occur between 30 and 90 days after notice that the LLC is exercising its purchase option.</p>

**PENDING CITY COUNCILOR REQUEST**

No.	Request	Date Voted/ Requested	Format/Information Requested	Point Person	Status
2.	Revision of Council Rules and Procedures Breach of Confidentiality Sanctions VML training VML training for Directors, City Council and Admin Gore agreed to combine numbers 5, 10, 21 and 32 of this list into this numbered item. Shornak and Zevgolts have completed draft Code of Ethics, which they passed out at meeting; Pelham said training should come first; Gore agreed to do VML training which would include emphasis on Ethics and Roberts Rules; City Manager to schedule training.	2-9-15 3-15-16 2-7-17  2-21-17  3-13-17	Council to review Code of Ethics & City Attorney to review Code of Ethics  Vice Mayor requested Council Rules to be distributed to members of Council before the March 17-18, 2017 Retreat.  City Attorney emailed to all members of Council 3-13-17 the proposed revisions for Council to review.	Mark Haley Stefan Calos City Clerk	<p><b>PENDING</b></p> 3-13-17 - City Attorney emailed proposed revisions to Council. Ms. St. Claire will return and facilitate the review at a future retreat. <p><b>7-7-17 – Still trying to schedule Retreat</b>  <b>WAITING ON COUNCIL RESPONSE</b></p>

**PENDING CITY COUNCILOR REQUEST**

No.	Request	Date Voted/ Requested	Format/Information Requested	Point Person	Status
3.	Class and Compensation Study	4-11-17	Council requested costs associated with having an employee satisfaction survey/audit and staffing/manpower review for efficiency.	Haley Coles	<p><b>COMPLETED</b> 6-23-17 - the final study has not been received. Upon receipt and review, it will be sent to Council.</p> <p><b>7-7-17 – final report placed in council’s packets for 7-11-17 meeting</b></p>

**PENDING CITY COUNCILOR REQUEST**

No.	Request	Date Voted/ Requested	Format/Information Requested	Point Person	Status
4.	Cost update on City taking control of Mallonee Gym	6-19-17  2-23-17	Vice Mayor Gore is awaiting meeting dates from the Superintendent and will inform Mayor when those dates are received so they can meet. VM stated she had heard that Quotes have been sent to Mr. Ed Watson & requested City Manager to provide those quotes to her and the members of Council.	Mark Haley Ed Watson	<p><b>PENDING</b> Vice Mayor Gore requested meeting w/Hackney, Watson, Haley, etc. for 6-29-17</p> <p>7-7-17 – due to scheduling conflicts, meeting with Gore, Hackney, Watson, etc is being rescheduled.</p>
5.	Hopewell Emergency Crew	4-12-17	Council requests a meeting with the volunteer crew	Hunter	<p><b>PENDING</b> 6-23-17 - The next meeting of the Hopewell Emergency Crew is July 18, 2017. Request will be placed on August 8, 2017 agenda for discussion.</p>

**PENDING CITY COUNCILOR REQUEST**

No.	Request	Date Voted/ Requested	Format/Information Requested	Point Person	Status
6.	Tax Assessment – council requested the number of appeals on the tax assessments and what impact this had on revenues	4-11-17	Can an explanation be given for the number of appeals and how the appeals were addressed?	Waggoner Haley	<p><b>PENDING</b> 6-23-17 – email reminder sent to Waggoner</p> <p><b>7-7-17 – report showing status of appeals has been put in Council’s packet. The BOE has not yet met, so a final report will be given to Council at a later date.</b></p>

**PENDING CITY COUNCILOR REQUEST**

No.	Request	Date Voted/ Requested	Format/Information Requested	Point Person	Status
7.	Liens – Spot Blight and Grass Liens	4-11-17	Luman-Bailey requested information regarding the financial impact of demolition for vacant buildings, including how much money spent on demo and how much recuperated by liens for the past 12 years	Griffin Haley	<b>PENDING</b> <b>6-23-17 follow up email sent to Griffin, Bagshaw, Haley</b>

**PENDING CITY COUNCILOR REQUEST**

No.	Request	Date Voted/ Requested	Format/Information Requested	Point Person	Status
8.	City Vehicles	4-25-17	<p>Council requests info: how many vehicles does the City own?</p> <p>How many City vehicles are driven outside of Hopewell on a daily/weekly basis?</p> <p>Which departments use the vehicles (include how many vehicles each dept uses)</p> <p>How are the vehicles being used</p> <p>How many vehicles does the school own?</p>	Haley Watson Young	<p><b>PENDING</b></p> <p>6-23-17 – reminder email sent to Haley, Watson, Young</p> <p><b>7-7-17 – Watson and Haley working on response. Follow up email sent to all 7-7-17</b></p>

**PENDING CITY COUNCILOR REQUEST**

No.	Request	Date Voted/ Requested	Format/Information Requested	Point Person	Status
9.	Speeding issues -	10-1-16	Councilor Gore states that Residents are requesting speed limit signs at Atwater Rd and Jackson Farm Road to deter speeding. Additionally, residents in Cameron’s Landing are requesting a radar station at Atwater Road to deter speeding.		<b>PENDING</b> <b>6-20-17 – Haley requested that Watson review the streets to ensure there are sufficient signs. He further asked Watson to add signs if there were not enough</b>
10.	Branding & City Logo’s; compile all used logos for approval. Council requested that Haley provide them with a list of the City’s logos and RFP for Branding	5/12/15 3-15-16 2-7-17  2-21-17	Email/Printed logos collected used  City Manager to provide RFP for Branding during the Retreat In March 2017.	Haley	<b>PENDING</b> <b>6-23-17 email reminder sent to Haley</b>  City Manager to email council the list of City logos  Haley will issue RFP re branding - Hopewell logo  No RFP needed.

**PENDING CITY COUNCILOR REQUEST**

No.	Request	Date Voted/ Requested	Format/Information Requested	Point Person	Status
11.	Boards and Commission City Council Letter for Reports, Joint Meetings and Information (past/current/future projects; bylaws)	2013-Present 2-7-17  2-21-17	Letter/Email Request and CC City Council  Clerk to meet with Mayor for review of completed DRAFT letter.	City Clerk	<b>ONGOING</b> Clerk prepare Letter for Mayor to send to the Boards & Commissions who are not sending minutes as required.
12.	Council wants to review and revise its travel policy	4-25-17	Current travel policy is outdated	Council Haley	<b>PENDING</b> <b>7-7-17 - Council to review it policy, along with its revised rules with Tyler St. Claire when Retreat is scheduled</b>

**PENDING CITY COUNCILOR REQUEST**

No.	Request	Date Voted/ Requested	Format/Information Requested	Point Person	Status
13.	Council requested RFP/design for Riverwalk	4-25-17	Council to be provided with a copy of the RFP that was issued or will be issued re the Riverwalk project	Haley	<p><b>PENDING</b>  <b>7-7-17 - A copy of the RFP has been placed in your packets. Administration will appear before Council at the Aug. 8 2017 meeting to discuss the Riverwalk project</b></p>

**PENDING CITY COUNCILOR REQUEST**

No.	Request	Date Voted/ Requested	Format/Information Requested	Point Person	Status
14.	Gore requested that department heads review the strategic plan and advise as to the status of specific tasks (requested to be submitted in a week)	2-23-16 2-29-16 2-7-17 2-21-17 3-17-17	Update of comprehensive plan and staff tasks.  Provided @ Retreat	Mark Haley Department Heads	<b>ONGOING</b> <b>Provided @ Retreat 3-17-17.</b>
15.	Council requested a list of how many already authorized positions remain unfilled (requested to be submitted in a week)	2-23-16 2-29-16 2-7-17 2-21-17	To ascertain how staff shortages are impacting staff ability to manage tasks	Mark Haley Department Heads	<b>ONGOING</b> <b>Asst. City MGR reported a DRAFT would be presented during the Budget Session</b>

**PENDING CITY COUNCILOR REQUEST**

No.	Request	Date Voted/ Requested	Format/Information Requested	Point Person	Status
16	Fees for Planning Commission	Work Session 2/17/15 2/7/17		Tevya Griffin	<p><b>ONGOING</b> Look at during Budget Meetings 16-17.</p> <p><b>7-7-17 – information relating to fees will be presented to Council at the 7-11-17 meeting.</b></p>
17	ARB & Streetscaping	2-7-17	Schedule joint WS w/City Council	Tevya Griffin Horace Wade	<p><b>6-23-17 – reminder email sent to Griffin and Wade</b></p>



**PENDING CITY COUNCILOR REQUEST**

No.	Request	Date Voted/ Requested	Format/Information Requested	Point Person	Status
19	Cultural Resource Management Plan	2-21-17	Councilor Luman-Bailey	<b>City Manager Tevya Griffin</b> ARB DDRC Planning Commission	<b>ONGOING</b> City Manager and Mrs. Griffin to supply the Cultural Resource Management Plan to the ARB; DDRC & Planning Commission for Financial Grants available to them and the City.
20	City Wide Tree Ordinance	2-21-17	City Wide Tree Ordinance	Tevya Griffin Mark Haley	<b>PENDING</b> Mrs. Griffin is working on an overall City Tree Ordinance and is collecting information to present to Council.

**PERSONNEL  
CHANGE  
REPORT**

**DATE:** July 1, 2017  
**TO:** The Honorable City Council  
**FROM:** Michelle Ingram / HR Specialist  
**SUBJECT:** Personnel Change Report – June 2017

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**ADDITIONS (Regular FT and PT positions only)**

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<b>NAME</b>	<b>DEPARTMENT</b>	<b>POSITION</b>	<b>DATE</b>
SANCHEZ LEPE, JOSE	RENEWAL	WWTO TRAINEE	6/7/17
JARRELL, DANNY	FIRE	FIRE CAPT – TRAINING	6/14/17
WARD, SHANTA	RECREATION	PT CUST SERV AGNT	6/14/17
BROWN, KRISTIAN	RECREATION	GYM ATTEND	6/14/17
HUMPHREY, BRENDA	RECREATION	GYM ATTEND	6/14/17
JONES, ABIGAIL	RECREATION	LIFEGUARD	6/14/17
STEVENSON, TAYLOR	RECREATION	LIFEGUARD	6/14/17
MARTINEZ, TABITHA	RECREATION	REC PROG SUPV	6/15/17

**PROMOTIONS**

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<b>NAME</b>	<b>DEPARTMENT</b>	<b>POSITION</b>	<b>DATE</b>
CARROLL, RAMONDA	FINANCE	BUDGET ANALYST	6/7/17

**SEPARATIONS**

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<b>NAME</b>	<b>DEPARTMENT</b>	<b>POSITION</b>	<b>DATE</b>
LEECH, CLAUDIA	FIRE	EXEC ASST	6/1/17
ASHMORE, JULIE	SOCIAL SERVICES	BEN PROG SPC II	6/1/17
EAKIN, JULIE	SOCIAL SERVICES	BEN PROG SPC IV	6/1/17
PISAREK, CHRISTOPHER	POLICE	POL OFF	6/8/17
UNDERWOOD, BILLY	DEVELOPMENT	BUILDING OFFICIAL	6/8/17
WALLS, MICHAEL	SHERIFF	SHERIFF DEP	6/20/17
ISLEY, JAMIE	POLICE	RECORDS SPEC	6/23/17
HOLMES, TINA	REAL ESTATE	RE APPRAISER	6/27/17

CC: Mark Haley, City Manager  
Charles Dane, Assistant City Manager  
Renia Coles, Human Resources Director  
Debbie Pershing, Senior Executive Assistant  
Lance Wolff, Interim Finance Director  
Dipo Muritala, Accounting Manager  
Kim Hunter, Payroll

Jay Rezin, IT  
Dave Harless, Risk/Safety Coordinator  
Carol Scarbrough, Parks & Recreation  
Terry Burd, IT Manager

**INFORMATION  
FOR COUNCIL  
REVIEW**

# Hopewell City School Board Calendar

July 2017-June 2018

<i>July 13, 2017 (Thursday)</i>	5:30 p.m./7:30 p.m.	Early Meeting/Regular Monthly Board Meeting
<i>July 17, 2017 (Monday)</i>		VSBA New Chairman/Board Member/Superintendent Orientation @ Richmond Marriott
<i>July 18, 2017 (Tuesday)</i>	9:00 a.m. – 2:30 p.m.	VSBA Conference on Education @ Richmond Marriott
<b>August 10, 2017 (Thursday)</b>	5:30 p.m./7:30 p.m.	Early Meeting/Regular Monthly Board Meeting
<i>September 4, 2017 (Monday)</i>		Labor Day Holiday (All Buildings Closed)
<i>September 5, 2017 (Tuesday)</i>		First Day of School
<b>September 14, 2017 (Thursday)</b>	5:30 p.m./7:30 p.m.	Early Meeting/Regular Monthly Board Meeting
<i>September 28, 2017 (Thursday)</i>		VSBA Legislative Advocacy Conference @ Charlottesville DoubleTree
<b>October 12, 2017(Thursday)</b>	5:30 p.m./7:30 p.m.	Early Meeting/Regular Monthly Board Meeting
<b>November 9, 2017 (Thursday)</b>	5:30 p.m./7:30 p.m.	Early Meeting/Public Hearing/Regular Monthly Board Meeting
<i>November 15-17, 2017 (Wed-Fri.)</i>		VSBA Annual Convention @ the Williamsburg Lodge in Williamsburg
<i>November 22-24, 2017 (Wed.-Fri.)</i>		Thanksgiving Holiday (All Buildings Closed)
<b>December 14, 2017 (Thursday)</b>	5:30 p.m./7:30 p.m.	Early Meeting/Regular Monthly Board Meeting
<i>December 20, 2017-January 2, 2018 (Wednesday-Tuesday)</i>		Christmas/New Year's Holiday (All Buildings Closed)
<b>January 11, 2018 (Thursday)</b>	5:30 p.m./7:30 p.m.	Early Meeting/Budget Work Session/Regular Monthly Board Meeting
<i>January 15, 2018 (Monday)</i>		Martin Luther King Holiday (All Buildings Closed)
<i>January 22, 2018 (Monday)</i>		VSBA Capital Conference @ Richmond Marriott
<b>February 8, 2018 (Thursday)</b>	5:30 p.m./7:30 p.m.	Early Meeting/Budget Work Session/Regular Monthly Board Meeting
<i>February 15, 2018 (Thursday)</i>	6:00 p.m.	Joint City Council/School Board Budget Work Session @ HHS (If Needed)
<i>February 19, 2018 (Monday)</i>		President's Day Holiday (Buildings Closed)
<b>March 8, 2018 (Thursday)</b>	5:30 p.m./7:30 p.m.	Early Meeting/Regular Monthly Board Meeting/Public Hearing on Budget
<i>March 15, 2018 (Thursday)</i>		VSBA Hot Topic Conference in Wytheville
<b>March 15, 2018 (Thursday)</b>	5:30 p.m.	School Board Meeting (Approval of Budget)
<i>March 27, 2018 (Tuesday)</i>	6:30 p.m.	Joint City Council/School Board Budget Work Session (If Needed) @ City
<b>April 2-6, 2018 (Mon.-Friday)</b>		Easter Break (All Buildings Closed)
<i>April 17, 2018 (Tuesday)</i>		VSBA Hot Topic Conference – Chesterfield
<b>April 19, 2018 (Thursday)</b>	5:30 p.m./7:30 p.m.	Early Meeting/Regular Monthly Board Meeting (3 <sup>rd</sup> Thursday Due to Spring Break)
<b>May 10, 2018 (Thursday)</b>	5:30 p.m./7:30 p.m.	Early Meeting/Regular Monthly Board Meeting (Budget Approval/Revision)
<i>May 28, 2018 (Monday)</i>		Memorial Day Holiday (Buildings Closed)
<i>June 1, 2018 (Friday)</i>		VSBA School Law Conference (Location TBD)
<i>June 9, 2018 (Saturday)</i>	9:30 a.m.	Graduation @ Merner Field
<b>June 14, 2018 (Thursday)</b>	5:30 p.m./7:30 p.m.	Early Meeting/Regular Monthly Board Meeting
<i>June 15, 2018 (Friday)</i>		Last Day of School (Early Release)

# SCHOOL BOARD OF THE CITY OF HOPEWELL

## School Board Meeting

*July 13, 2017*

*School Board Office @ 103 N. 12<sup>th</sup> Avenue*

1. Call to Order for Early Session (5:30 p.m.) (Cover Letter)
2. Roll Call
3. Prayer
4. Adopt Agenda for Early Session
5. Discussion Items:
  - A. Strategic Plan Approval
  - B. School Board Retreat
  - C. School Start Times/Transportation Proposal
    - Proposal
6. Closed Meeting (Resolution)
  - Discussion/consideration of the employment, assignment, appointment, promotion, performance, demotion, salaries, disciplining or resignation of Division and potential employees
7. Recess to Regular Meeting
8. Call to Order for Regular Meeting (7:30 p.m.)
9. Roll Call
10. Prayer
11. Pledge of Allegiance
12. Certification of Closed Session
13. Adopt Agenda for Regular Session
14. Special Recognition
  - Introduction of New Administrators

15. Reports (Cover Sheet)
  - A. HCPS Summer Projects by Department
  - B. Finance, Maintenance and Clerk's Reports – Mrs. Monique Barnes
    - Totals
    - Expenditures/Revenues Summary
    - Expenditures/Revenues Details
    - Check Register 6/15/17
    - Check Register 6/29/17
    - Head Start Monthly Reports
    - Petty Cash Report
    - Membership Reports
    - Attendance Report
    - Maintenance Report
16. Public Comments
17. Consent Agenda
  - A. Approval of Minutes
    - June 22, 2017
  - B. Approval of Licensed Resolutions
    - Resolutions
  - C. Approval of Classified Resolutions
    - Resolutions
  - D. Approval of General Resolutions
    - Resolutions
      - ◊17-07-G10 –Warrants
      - ◊17-07-G11 –Donations
      - ◊17-07-G12– Printing Contract
      - ◊17-07-G13– Strategic Plan
      - ◊17-07-G14– Amended and Restated MOU with City
        - MOU
      - ◊17-07-G15– School Start Times/Transportation Proposal
18. Action Items
19. Superintendent's Report
  - A. Administrative Retreat
20. Information Items

A. Review of Policies

- Policy BBFA – Conflict of Interests and Disclosure of Economic Interests
- Policy CBCA – Disclosure Statement Required of Superintendent
- Policy EEAh – Student Transportation Services
- Policy EFB – Free and Reduced Price Food Services
- Policy GA – Personnel Policies Goals
- Policy GAH – School Employee Conflict of Interests
- Policy GBM – Professional Staff Grievances
- Policy GCPF – Suspension of Staff Members
- Policy IJh – Guidance and Counseling Program
- Policy JFCC – Student Conduct on School Buses
- Policy JHC – Student Health Services
- Policy JHCH – School Meals and Snacks
- Policy JO – Student Records
- Policy JOA – Student Transcripts
- Policy KGh – Community Use of School Facilities
- Policy LEB – Advanced/Alternative Courses for Credit

B. Review of Regulation

- Regulation LC-E – Hopewell City Public Schools Charter School Application Addendum

21. General Information
22. Board Member Comments
23. Adjournment

**UPON REQUEST OF THE CLERK, THE SCHOOL DIVISION SHALL MAKE REASONABLE ACCOMMODATIONS FOR A DISABLED PERSON TO BE ABLE TO PARTICIPATE IN SCHOOL BOARD MEETINGS**

**PH-1**



# CITY OF HOPEWELL CITY COUNCIL ACTION FORM

**Strategic Operating Plan Vision Theme:**

- Civic Engagement
- Culture & Recreation
- Economic Development
- Education
- Housing
- Safe & Healthy Environment
- None (Does not apply)

**Order of Business:**

- Consent Agenda
- Public Hearing
- Presentation-Boards/Commissions
- Unfinished Business
- Citizen/Councilor Request
- Regular Business
- Reports of Council Committees

**Action:**

- Approve and File
- Take Appropriate Action
- Receive & File (no motion required)
- Approve Ordinance 1<sup>st</sup> Reading
- Approve Ordinance 2<sup>nd</sup> Reading
- Set a Public Hearing
- Approve on Emergency Measure

**COUNCIL AGENDA ITEM TITLE:** Appropriate the Department of Housing and Urban Development (HUD) funding allocation in the amount of \$162,676 from the Community Development Block Grant (CDBG) program and \$7,368 from projects that were cancelled in previous years and are being reallocated in Fiscal Year 2017-2018. The total appropriation is \$170,044 and to authorize the City Manager to submit the approved Third Year Annual Action Plan to HUD.

**ISSUE:** The City of Hopewell received its FY 2017-2018 allocation of funding in the amount of \$162,676. The City Administration has reviewed all FY 2017-2018 applications for funding submitted by agencies and has developed a proposed CDBG spending plan for City Council's consideration. The plan continues to follow the guidelines established and approved by Council in the FY 2015-2020 Consolidated and Strategic Plan (5-Year Plan) on July 21, 2015. The Third Year Annual Action Plan describes the projects that will be funded in the third year of the Consolidated Plan. Additionally, one non-profit organization failed to spend their money in an appropriate amount of time and the projects were cancelled. Therefore, City Administration is asking Council to re-appropriate those funds in the amount of \$7,368 for appropriate uses within the Third Year Plan.

**RECOMMENDATION:** City Administration recommends that City Council appropriate \$170,044 which includes the \$162,676 allocated by HUD for FY 2017-2018 from the CDBG Program and the re-appropriation of \$7,368 from cancelled projects from previous years. City Administration also recommends that City Council authorize the City Manager to submit the Third Year Annual Action Plan as a condition by HUD to receive the entitlement funds.

**TIMING:** City Council is requested to act on this matter on July 11, 2017.

**BACKGROUND:** The City of Hopewell is a HUD entitlement (formula) funded community. Each year, the City receives an allocation by HUD using a prescribed formula. Allocation to the agencies that applied for grant funds is based upon their applications, previous year's performance and the priorities established by City Council when they approved the Five-Year Consolidated Plan. A public hearing has been advertised and will be held on July 12, 2017 relative to this funding allocation. The City Council was briefed on the funding allocation on June 25, 2017 and the City Council hearing will be held on July

**SUMMARY:**

- | Y                        | N                        |                                              | Y                        | N                        |                                  |
|--------------------------|--------------------------|----------------------------------------------|--------------------------|--------------------------|----------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | Councilor Christina J. Luman-Bailey, Ward #1 | <input type="checkbox"/> | <input type="checkbox"/> | Councilor Janice Denton, Ward #5 |
| <input type="checkbox"/> | <input type="checkbox"/> | Councilor Arlene Holloway, Ward #2           | <input type="checkbox"/> | <input type="checkbox"/> | Councilor Brenda Pelham, Ward #6 |
| <input type="checkbox"/> | <input type="checkbox"/> | Councilor Anthony J. Zevgolis, Ward #3       | <input type="checkbox"/> | <input type="checkbox"/> | Mayor Jackie M. Shornak, Ward #7 |
| <input type="checkbox"/> | <input type="checkbox"/> | Vice Mayor Jasmine E. Gore, Ward #4          |                          |                          |                                  |

11, 2017. There are special circumstances that require fast-tracking this request. Congress did not pass legislation to appropriate these funds until mid-May. HUD released their allocations on June 21, 2017. Federal statute requires that all Annual Plans be received by HUD not later than August 16, 2017 (45 days prior to the end of the federal fiscal year). Because Council is not meeting again until after this August 16<sup>th</sup> deadline, it is essential that the appropriation be approved during the July 11, 2017 meeting. HUD has made certain waivers because the truncated process time but failure to submit a Plan prior to August 16<sup>th</sup> is not one of the conditions that can be waived.

**FISCAL IMPACT:** Receive \$162,676 new CDBG funds and re-purpose unused funds of \$7,368 to support and leverage additional funds from other agencies for low-to-moderate income households in the areas of at-risk and homeless households, improving agencies to impact at-risk households with reading literacy, rehabilitate owner-occupied housing within the City of Hopewell and effectively manage the CDBG program funds within compliance standards established by HUD.

**ENCLOSED DOCUMENTS:** Attachment 1: GM Funding Recommendations 7-6-2017

**STAFF:** Tevya W. Griffin, Director of Development  
Bill Doré, Grants Manager

**SUMMARY:**

Y	N	
<input type="checkbox"/>	<input type="checkbox"/>	Councilor Christina J. Luman-Bailey, Ward #1
<input type="checkbox"/>	<input type="checkbox"/>	Councilor Arlene Holloway, Ward #2
<input type="checkbox"/>	<input type="checkbox"/>	Councilor Anthony J. Zevgolis, Ward #3
<input type="checkbox"/>	<input type="checkbox"/>	Vice Mayor Jasmine E. Gore, Ward #4

Y	N	
<input type="checkbox"/>	<input type="checkbox"/>	Councilor Janice Denton, Ward #5
<input type="checkbox"/>	<input type="checkbox"/>	Councilor Brenda Pelham, Ward #6
<input type="checkbox"/>	<input type="checkbox"/>	Mayor Jackie M. Shornak, Ward #7

City of Hopewell – Third Year Annual Action Plan Recommendations for CDBG Program Appropriation

<b>Project</b>	<b>Organization</b>	<b>Description</b>	<b>Recommended Allocation</b>
Yellow Card Program	Hopewell Food Pantry	Provides food on a monthly basis to seniors and disabled persons in Hopewell	\$4,500
Respite Care Program – Elderly	Recs and Parks, City of Hopewell	Provides funds for recreation, day care, education and cultural activities to the elderly and disabled.	\$2,700
Child Abuse Prevention	Hopewell-Prince Georges County Healthy Families	Provides funds for early intervention to reduce incidences of child abuse in “at-risk” households.	\$4,500
Women & Children’s Shelters	CARES, Inc.	Provides funds to provide emergency shelter to homeless women and children.	\$2,801
Domestic Violence Intervention	The James House	Provides housing assistance and case management support for victims and families of violence.	\$2,700
Family Resource Center	STORY (formerly HRHA but now a separate organization under HRHA)	Assists public housing residents in obtaining job skills as they work toward housing self-sufficiency.	\$3,600
Permanent Supportive Housing (PSH)	Commonwealth Catholic Charities	Provide funds to assist eligible households in obtaining housing and to end their homelessness.	\$3,600
Reading is Fun	Community Action Organization	Provides funds to enhance organizational capacity and to provide organizations with books and mentoring to eligible “at-risk” students in Hopewell schools and day care facilities.	\$12,000
Early Childhood Education	Smart Beginnings Southeast	Provides funds to support capacity building among participating agencies to enhance early childhood education opportunities for “at-risk” children in Hopewell.	\$15,000
Housing Rehabilitation	Rebuilding Together Richmond	Provides funds to rehabilitate owner-occupied housing for income eligible households.	\$43,054
Housing Rehabilitation	Project: Homes	Provides funds to rehabilitate owner-occupied housing for income eligible households.	\$43,054
Grant Administration	Department of Development, City of Hopewell	Provides funds to manage all aspects of grants management for HUD funds including budgeting, written agreements, reporting, compliance management and monitoring, advertising and fair housing.	\$32,535

**COMMUNICATIONS  
FROM CITIZENS**

# **REGULAR BUSINESS**

**R-1**



# CITY OF HOPEWELL CITY COUNCIL ACTION FORM

**Strategic Operating Plan Vision Theme:**

- Civic Engagement
- Culture & Recreation
- Economic Development
- Education
- Housing
- Safe & Healthy Environment
- None (Does not apply )

**Order of Business:**

- Consent Agenda
- Public Hearing
- Presentation-Boards/Commissions
- Unfinished Business
- Citizen/Councilor Request
- X Regular Business
- Reports of Council Committees

**Action:**

- Approve and File
- X Take Appropriate Action
- Receive & File (no motion required)
- Approve Ordinance 1<sup>st</sup> Reading
- Approve Ordinance 2<sup>nd</sup> Reading
- Set a Public Hearing
- Approve on Emergency Measure

**COUNCIL AGENDA ITEM TITLE: John Randolph Foundation Grant**

**ISSUE: Seek approval to accept the grant**

**RECOMMENDATION: Accept the \$22,500.00 Grant**

**TIMING: Notify John Randolph Foundation of acceptance by July 14<sup>th</sup>, 2017**

**BACKGROUND: Hopewell Fire requested assistance in funding 2 LUCAS chest compression devices (CPR) at a total cost of \$30,000.00**

**FISCAL IMPACT: Fire Department will be responsible for funding the matching amount of \$7,500.00, which will come from the Fire Department Budget**

**ENCLOSED DOCUMENTS: N/A**

**STAFF: Donald Hunter Fire Chief**

**SUMMARY:**

- | Y                        | N                        |                                           |
|--------------------------|--------------------------|-------------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | Mayor, Jackie M. Shornak Ward #7          |
| <input type="checkbox"/> | <input type="checkbox"/> | Vice Mayor Jasmine Gore, Ward #4          |
| <input type="checkbox"/> | <input type="checkbox"/> | Councilor Christina Luman-Bailey, Ward #1 |

- | Y                        | N                        |                                     |
|--------------------------|--------------------------|-------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | Councilor Arlene Holloway, Ward #2  |
| <input type="checkbox"/> | <input type="checkbox"/> | Councilor Anthony Zevgolis, Ward #3 |
| <input type="checkbox"/> | <input type="checkbox"/> | Councilor Janice Denton, Ward #5    |
| <input type="checkbox"/> | <input type="checkbox"/> | Councilor Brenda Pelham, Ward #6    |

**R-2**



# CITY OF HOPEWELL CITY COUNCIL ACTION FORM

**Strategic Operating Plan Vision Theme:**

- Civic Engagement
- Culture & Recreation
- Economic Development
- Education
- Housing
- Safe & Healthy Environment
- None (Does not apply)

**Order of Business:**

- Consent Agenda
- Public Hearing
- Presentation-Boards/Commissions
- Unfinished Business
- Citizen/Councilor Request
- Regular Business
- Reports of Council Committees

**Action:**

- Approve and File
- Take Appropriate Action
- Receive & File (no motion required)
- Approve Ordinance 1<sup>st</sup> Reading
- Approve Ordinance 2<sup>nd</sup> Reading
- Set a Public Hearing
- Approve on Emergency Measure

**COUNCIL AGENDA ITEM TITLE:** Springsted presentation regarding the Classification and Compensation Study results.

**ISSUE:** Springsted- Classification and Compensation study contractor to present on their findings of the classification and compensation study.

**RECOMMENDATION:** Receive report and adopt the new Classification & Compensation Plan.

**TIMING:** Council approval sought so the new pay plan can be implemented retroactive to July 1, 2017.

**BACKGROUND:** The City contracted with Springsted to conduct a classification and compensation study of city employee salaries and overall compensation. Ann Antonsen with Springsted is now prepared to present council with their findings.

**FISCAL IMPACT:** The implementation of Option 1 is recommended and included in the approved FY 17-18 Budget for \$283,464.80.

**ENCLOSED DOCUMENTS:** Study & Presentation from Springsted (To be provided)

**STAFF:** Mark Haley, City Manager/Renia Coles, Human Resources Director

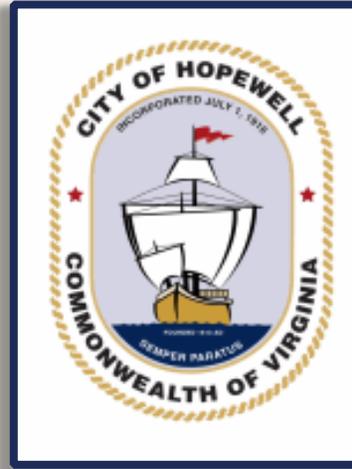
**SUMMARY:** Ann Antonsen to provide an overview of the contractor's summary of their study of the City of Hopewell employee's salary and compensation structure.

<b>Y</b>	<b>N</b>	
<input type="checkbox"/>	<input type="checkbox"/>	Mayor, Jackie M. Shornak Ward #7
<input type="checkbox"/>	<input type="checkbox"/>	Vice Mayor Jasmine Gore, Ward #4
<input type="checkbox"/>	<input type="checkbox"/>	Councilor Christina Luman-Bailey, Ward #1

<b>Y</b>	<b>N</b>	
<input type="checkbox"/>	<input type="checkbox"/>	Councilor Arlene Holloway, Ward #2
<input type="checkbox"/>	<input type="checkbox"/>	Councilor Anthony Zevgolis, Ward #3
<input type="checkbox"/>	<input type="checkbox"/>	Councilor Janice Denton, Ward #5
<input type="checkbox"/>	<input type="checkbox"/>	Councilor Brenda Pelham, Ward #6

# Public Sector Advisors





# City of Hopewell, Virginia Classification and Compensation Study

John Anzivino, Senior Vice President

July 11, 2017

# Objectives

- Review and evaluate the City's current classification and compensation program
- Review and revise job descriptions
- Determine current relationship relative to the labor market
- Evaluate the internal ranking of all positions
- Develop a compensation system
- Review and develop administrative guidelines for implementation and maintenance

# Methodology

- Discussions with the City Manager and Department Heads
- Employee informational meetings
- Collection of data – Position Analysis Questionnaires
- Review and revision of descriptions
- Evaluate positions based on job requirements
- Obtain market salary and benefits information
- Development of compensation plan
- Assignment of positions to pay grades
- Development of implementation options

# Salary Survey

## Benchmark Communities - Municipalities

- City of Colonial Heights\*
- City of Danville\*
- City of Emporia\*
- City of Lynchburg
- City of Newport News
- City of Norfolk\*
- City of Petersburg\*
- City of Richmond\*
- City of Suffolk\*
- Chesterfield County
- Dinwiddie County\*
- New Kent County
- Prince George County\*
- Surry County\*

*\*Reflects communities who responded to the survey*

# Salary Survey

- 69 positions included in survey
- Comparison of current salaries to market salary ranges (information revised based on additional analysis from discussions with City Management, Human Resources and Department Heads)
  - 9.79% below average minimum salaries
  - 9.32% below average midpoint salaries
  - 17.76% below average maximum salaries
- Complete survey data can be found in Appendix B
- Internal pay relationship inequities exist within the City

# Job Evaluation

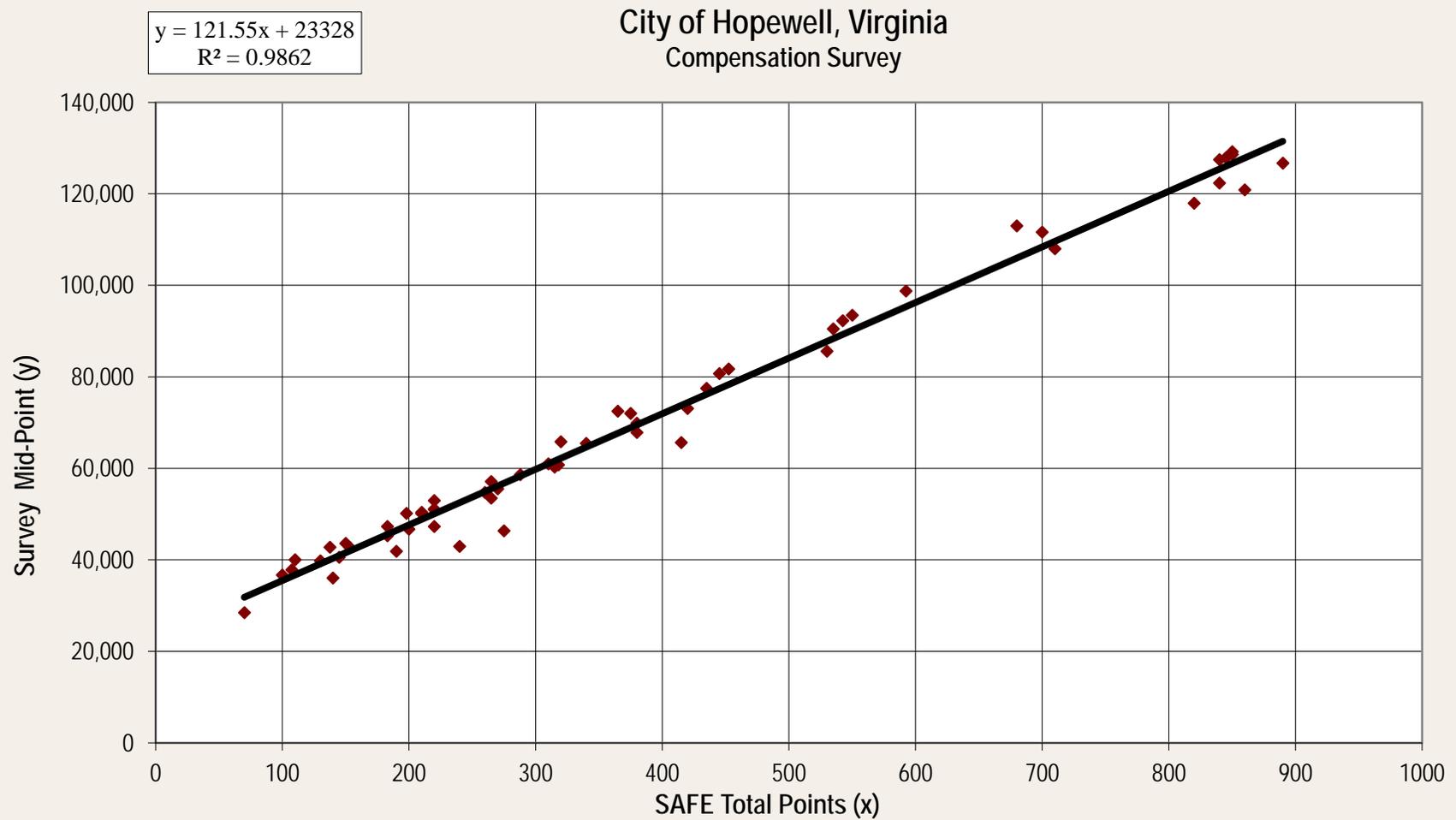
## Systematic Analysis and Factor Evaluation (SAFE<sup>®</sup>) System Job Evaluation Factors

Training and Ability	Experience Required
Level of Work	Human Relations Skills
Physical Demands	Working Conditions
Independence of Actions	Impact on End Results
Supervision Exercised	

# Pay Philosophy

- Provide fair and equitable compensation to employees
- Balance external market and internal equity
- Maintain competitive pay structure with consideration of City's fiscal resources
- Performance based component for individual employee compensation
- Develop an understandable compensation program

# Salary Curve



# Development of Compensation Plan

## The Proposed Pay Scale:

- Developed utilizing the respondents' survey data and is consistent with the other jurisdictions
- Is an open range system that provides a minimum, midpoint and maximum salary consistent with the survey responses
- Contains thirty-four (34) pay grades with a 6% separation between grades and a minimum to maximum spread of 65%
- Includes Department of Social Services positions
- Implementation options updated based on management and department head feedback

# Proposed Pay Scale

% Between Grades:	6%	
Range:	65.0%	
Starting midpoint:	27,500	

	Salary Range		
Grade	Min	Mid	Max
12	20,754.72	27,500.00	34,245.28
13	22,000.00	29,150.00	36,300.00
14	23,320.00	30,899.00	38,478.00
15	24,719.20	32,752.94	40,786.68
16	26,202.35	34,718.12	43,233.88
17	27,774.49	36,801.20	45,827.91
18	29,440.96	39,009.28	48,577.59
19	31,207.42	41,349.83	51,492.24
20	33,079.87	43,830.82	54,581.78
21	35,064.66	46,460.67	57,856.69
22	37,168.54	49,248.31	61,328.09
23	39,398.65	52,203.21	65,007.77
24	41,762.57	55,335.40	68,908.24
25	44,268.32	58,655.53	73,042.73
26	46,924.42	62,174.86	77,425.30
27	49,739.89	65,905.35	82,070.81
28	52,724.28	69,859.67	86,995.06

	Salary Range		
Grade	Min	Mid	Max
29	55,887.74	74,051.25	92,214.77
30	59,241.00	78,494.33	97,747.65
31	62,795.46	83,203.99	103,612.51
32	66,563.19	88,196.23	109,829.26
33	70,556.98	93,488.00	116,419.02
34	74,790.40	99,097.28	123,404.16
35	79,277.82	105,043.12	130,808.41
36	84,034.49	111,345.70	138,656.91
37	89,076.56	118,026.44	146,976.33
38	94,421.16	125,108.03	155,794.91
39	100,086.43	132,614.51	165,142.60
40	106,091.61	140,571.38	175,051.16
41	112,457.11	149,005.67	185,554.23
42	119,204.53	157,946.01	196,687.48
43	126,356.81	167,422.77	208,488.73
44	133,938.21	177,468.13	220,998.05
45	141,974.51	188,116.22	234,257.94

# Implementation Options

## Option 1 – Move to Minimum of the Recommended Pay Grade

- 26% of the City's employees are paid below the minimum of the proposed salary ranges
- Annual cost is \$282,425 which is equivalent to 1.53% of the City's approximate \$18.4 million annual payroll
- Increases market comparability

# Implementation Options *(cont.)*

## Option 2 – Move to Minimum or 2% Increase Whichever is Greater

- Provides minimum level of funding to address compression issues
- 100% of employees are impacted
- Annual cost is \$553,901, which is equivalent to 3.0% of the City's approximate \$18.4 million annual payroll
- Includes Adjustments to Minimum
- Increases market comparability

# Implementation Options *(cont.)*

## Option 3 – Years of service Adjustment

- Addresses salary compression issues
- 100% of employees are impacted
- Annual cost is \$1,122,130 which is equivalent to 6.08% of the City's approximate \$18.4 million annual payroll
- Includes Adjustments to Minimum
- Provides 0.5% increase per year of service; placing employees within grade

# Recommendations

- Approve the proposed “Open Range” salary schedule
- Approve the position placement, which allows for establishment of internal equity among all City positions
- Approve Implementation Option 3 to establish more equitable compensation levels for all employees
  - addresses compression issues and brings those employees that are below the market up to market minimums

## Recommendations *(cont.)*

- If implementation is not possible in one (1) year, we would recommend considering phasing in Option 3 over a two (2) to three (3) year period
- Provide support for ongoing administration of the program via a system of market adjustments and performance based merit increases awarded on the anniversary date of the employees hire or promotion

# On-going Administration

## Annual Adjustments

- Establish guidelines for base adjustments
  - e.g., Comparable organizations, other economic indicators
- Adjust pay ranges and wages of employees
- Adjustments that recognize individual employee performance

# The City's Fringe Benefits

<i>Holiday Leave</i>	Consistent with the survey average
<i>Annual and Sick Leave</i>	Consistent with the survey averages as compared to the respondents who offer PTO for most years of service; Below the survey average for 6 months and 14 - 20 or more years of service
<i>Pension and Retirement</i>	Consistent with survey average including the provision of a death benefit
<i>Life Insurance</i>	Consistent with the survey respondents in providing this benefit and above the survey average for the amount contributed
<i>Health Insurance</i>	Consistent with survey respondents in offering insurance to eligible employees and offering different types of coverage; Inconsistent with respondents by not requiring 100% full time employee participation and for compensating employees who choose not to participate
<i>Deferred Compensation</i>	Consistent with survey respondents in providing employees access to a plan and not contributing to the plan

# Conclusions

Adoption of the report's recommendations will result in:

- Fair and equitable compensation to employees in a competitive and changing labor market
- Improved opportunities to reduce turnover among current employees and to recruit quality replacements, when needed
- Compensation that addresses internal equity and external market competitiveness
- Establishing a market position that is fiscally responsible with public resources
- Consistent administration of pay policies and procedures among all City staff

**R-3**



# CITY OF HOPEWELL CITY COUNCIL ACTION FORM

**Strategic Operating Plan Vision Theme:**

- Civic Engagement
- Culture & Recreation
- Economic Development
- Education
- Housing
- Safe & Healthy Environment
- None (Does not apply)

**Order of Business:**

- Consent Agenda
- Public Hearing
- Presentation-Boards/Commissions
- Unfinished Business
- Citizen/Councilor Request
- Regular Business
- Reports of Council Committees

**Action:**

- Approve and File
- Take Appropriate Action
- Receive & File (no motion required)
- Approve Ordinance 1<sup>st</sup> Reading
- Approve Ordinance 2<sup>nd</sup> Reading
- Set a Public Hearing
- Approve on Emergency Measure

**COUNCIL AGENDA ITEM TITLE:** Approval of 2017 Sewer Service Rate Adjustment

**ISSUE:** Adjust the current residential and commercial sewer rates by 5% to ensure that the operational reserve fund and the rate stabilization fund for bonds remain at required levels, as well as provide for the increased operation expenses resulting from completion of the Phase 2 Nitrogen Reduction project.

**RECOMMENDATION:** The City Administration recommends City Council’s approval of rates that will increase current sewer rates by five percent, change metered consumption from cubic feet to gallons, and delete Section 31-11.1 from the Sewer Use Ordinance Number 2012-08 which includes sewer rates from 2012, which are higher than current rates.

**TIMING:** New sewer rates become effective August 1, 2017.

**BACKGROUND:** Last year, Hopewell Water Renewal hired Raftelis Financial Consultants, Inc. to review HWR financial needs and conduct a revenue sufficiency assessment of the Sanitary Sewer Fund for the purpose of ensuring that HWR had sufficient funding for the City to:

- Meet its allocated share of the increase operational costs at HWR due to the start-up of the nitrogen reduction processes,
- Meet and maintain the bond covenant requirements for the operational reserve and rate stabilization funds, and
- Continue its funding of repair and rehabilitation of the sewer collection system.

Jimmie Sanderson with Davenport will further explain the need for the increase in sewer rates and the effect that it has on the City’s bond ratings.

Based on this study, Raftelis recommended the following:

- Increase residential minimum charge rates by \$0.63 per month in FY 2018

Council Action Form 2017

**SUMMARY:**

- | Y                        | N                        |                                              |
|--------------------------|--------------------------|----------------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | Councilor Christina J. Luman-Bailey, Ward #1 |
| <input type="checkbox"/> | <input type="checkbox"/> | Councilor Arlene Holloway, Ward #2           |
| <input type="checkbox"/> | <input type="checkbox"/> | Councilor Tony Zevgolts, Ward #3             |
| <input type="checkbox"/> | <input type="checkbox"/> | Vice Mayor Jasmine Gore, Ward #4             |

- | Y                        | N                        |                                     |
|--------------------------|--------------------------|-------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | Councilor Janice Denton, Ward #5    |
| <input type="checkbox"/> | <input type="checkbox"/> | Councilor Brenda S. Pelham, Ward #6 |
| <input type="checkbox"/> | <input type="checkbox"/> | Mayor Jackie M. Shornak, Ward #7    |

July 11, 2017

- Increase residential volumetric rates by 5% in FY 2018
- Implement a 5% increase in Commercial, Small Industrial, and Large user minimum charges and volumetric rates in FY 2018
- Monitor future years revenue and expenses on an ongoing basis
- Maintain a general reserve above 180 days in O&M expenses for working capital (minimum target)

The factors driving the need for a sewer rate increase include:

- Increased operations and maintenance costs due to start-up of the new nitrogen reduction processes,
- Inflationary impacts; last sewer rate increase was in July 2013,
- Funds needed for continuation of annual capital expenditures for repair and replacement of sewage collection system,
- Consumption gradually decreasing due to declining usage and growth is flat, and
- Large amount of delinquent sewer bill payments

Below is a chart which provides a comparison of Hopewell’s current charges with surrounding localities.

Locality	4,000 gallons	5,000 gallons
Hopewell	\$19.02	\$22.76
Dinwiddie	\$25.84	\$31.35
Chesterfield	\$26.69	\$29.50
Colonial Heights	\$38.09	\$40.70
Henrico	\$31.72	\$35.01
Hanover	\$35.51	\$42.52
Prince George	\$36.98	\$43.82
Petersburg	\$25.83	\$31.79
New Kent	\$42.17	\$51.89
Richmond	\$50.37	\$58.95

The 2016 Virginia Water and Wastewater Report conducted by Draper Aden Associates stated that the average wastewater rate in Virginia was \$41.47 based on a consumption of 5,000 gallons/month. With the proposed increase, Hopewell’s rate will increase to \$20.16 for 4,000 gallons/month and \$24.06 for 5,000 gallons/month. Even with the proposed increase, Hopewell’s rates will remain the lowest in the area.

Ordinance number 2012-08 inadvertently included sewer rates under section 31-11.1. The rates included in this section are very high and to staff’s knowledge have never been proposed or used for billing purposes. Therefore, as part of this action, staff is recommending that the City Council delete Section 31-11.1 from the City Code.

Council Action Form 2017

**SUMMARY:**

**Y N**

- Councilor Christina J. Luman-Bailey, Ward #1
- Councilor Arlene Holloway, Ward #2
- Councilor Tony Zevgolis, Ward #3
- Vice Mayor Jasmine Gore, Ward #4

**Y N**

- Councilor Janice Denton, Ward #5
- Councilor Brenda S. Pelham, Ward #6
- Mayor Jackie M. Shornak, Ward #7

<b>July 11, 2017</b>
----------------------

**FISCAL IMPACT:** The proposed rate increase will increase the average residential sewer bill by approximately \$1.14 per month.

**ENCLOSED DOCUMENTS:** Proposed Sewer Rates – Based on Metered Water Consumption Table

**STAFF:** Jeanie Grandstaff, Director, Hopewell Water Renewal

Council Action Form 2017

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**SUMMARY:**

<b>Y</b>	<b>N</b>	
<input type="checkbox"/>	<input type="checkbox"/>	Councilor Christina J. Luman-Bailey, Ward #1
<input type="checkbox"/>	<input type="checkbox"/>	Councilor Arlene Holloway, Ward #2
<input type="checkbox"/>	<input type="checkbox"/>	Councilor Tony Zevgolis, Ward #3
<input type="checkbox"/>	<input type="checkbox"/>	Vice Mayor Jasmine Gore, Ward #4

<b>Y</b>	<b>N</b>	
<input type="checkbox"/>	<input type="checkbox"/>	Councilor Janice Denton, Ward #5
<input type="checkbox"/>	<input type="checkbox"/>	Councilor Brenda S. Pelham, Ward #6
<input type="checkbox"/>	<input type="checkbox"/>	Mayor Jackie M. Shornak, Ward #7

<b>July 11, 2017</b>
----------------------

2017 Sewer Rates Based on Metered Water Consumption		
CUSTOMER	CONSUMPTION (PER 100 GALLONS)	PROPOSED RATE (PER 100 GALLONS)
<b>Residential Rates</b>		
• For the first	22	\$13.14
• For the next	128	\$0.39
• For all over	150	\$0.33
<b>Residential Summer Rates</b>		
• For the first	22	\$13.14
• For the next	128	\$0.38
• For all over	150	\$0.32
<b>Municipal Rates</b>		
• For the first	22	\$13.14
• For the next	128	\$0.39
• For all over	150	\$0.33
<b>Commercial Rates</b>		
• For the first	22	\$13.14
• For the next	128	\$0.43
• For all over	150	\$0.36
<b>Small Industrial Rates</b>		
• For the first	150	\$367.66
• For all over	150	\$0.46
<b>Prince George County Rates</b>		
	<b>Bi-monthly</b>	
• For the first	300	\$2,734.94
• For all over	300	\$0.61
<b>Federal Correction Center Rates</b>		
• For the first	150	\$3501.75
• For all over	150	\$1.02
<b>Fort Lee Rates</b>		
• Minimum Charge/Month		\$14,205.45
• Charge per 748 Gallons		\$0.27

Council Action Form 2017

**SUMMARY:**

- |                          |                          |                                              |
|--------------------------|--------------------------|----------------------------------------------|
| <b>Y</b>                 | <b>N</b>                 |                                              |
| <input type="checkbox"/> | <input type="checkbox"/> | Councilor Christina J. Luman-Bailey, Ward #1 |
| <input type="checkbox"/> | <input type="checkbox"/> | Councilor Arlene Holloway, Ward #2           |
| <input type="checkbox"/> | <input type="checkbox"/> | Councilor Tony Zevgolis, Ward #3             |
| <input type="checkbox"/> | <input type="checkbox"/> | Vice Mayor Jasmine Gore, Ward #4             |

- |                          |                          |                                     |
|--------------------------|--------------------------|-------------------------------------|
| <b>Y</b>                 | <b>N</b>                 |                                     |
| <input type="checkbox"/> | <input type="checkbox"/> | Councilor Janice Denton, Ward #5    |
| <input type="checkbox"/> | <input type="checkbox"/> | Councilor Brenda S. Pelham, Ward #6 |
| <input type="checkbox"/> | <input type="checkbox"/> | Mayor Jackie M. Shornak, Ward #7    |

<b>July 11, 2017</b>
----------------------

**ORDINANCE NO. 2017-**

**An Ordinance amending Article I. Chapter 31 of the Code of the City of Hopewell to repeal Sec. 31-11.1**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF HOPEWELL that Chapter 31, Article 1, Sec. 31-11.1 of the Code of the City of Hopewell is amended as follows:

**Sec. 31-11.1 Sewer Rates-Based on metered water consumption. Repealed.**

CUSTOMER	CUBIC FEET		100 CUBIC FEET
	MONTH	QUARTER	
<b>Residential Rates</b>			
–For the first	300	900	\$30.44
–For the next	1,700	5,100	\$ 2.25
–For all over	2,000	6,000	\$1.91
<b>Residential-Summer Rates</b>			
–For the first	300	900	\$30.44
–For the next	1,700	5,100	\$ 2.20
–For all over	2,000	6,000	\$1.86
<b>Municipal Sewer Rates</b>			
–For the first	300	900	\$30.44
–For the next	1,700	5,100	\$ 2.25
–For all over	2,000	6,000	\$1.91
<b>Commercial Sewer Rates</b>			
–For the first	300	900	\$30.44
–For the next	1,700	5,100	\$ 2.49
–For all over	2,000	6,000	\$2.10
<b>Small Industrial Sewer Rates</b>			
–For the first	2,000	6,000	\$284.10
–For all over	2,000	6,000	\$ 2.64
<b>Prince George County Sewer Rates</b>			
–For the first	2,000	6,000	\$3,721.00
–For all over	2,000	6,000	\$ 9.94
<b>Federal Correction Center Sewer Rates</b>			
–For the first	2,000	6,000	\$2,709.00
–For all over	2,000	6,000	\$ 5.92
<b>Fort Lee Sewer Rates</b>			
–Minimum Charge per Month			\$13,529.00

<del>Charge per 100 Cubic Feet</del>			<del>\$ 1.93</del>
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~~**SURCHARGE-** A surcharge will be added to the charges when averaging BOD and/or suspended solids exceed the 250mg/l limit. The surcharge shall be five (5) cents per 1,000 gallons of measured flow for each mg/l of either average BOD or solids over the 250 mg/l limit.~~



The undersigned Clerk of the City Council for the City of Hopewell, Virginia certifies the foregoing ordinance was adopted by City Council on July 11, 2017.

**WITNESS** my signature and the seal of the City of Hopewell, Virginia, this \_\_\_\_ day of \_\_\_\_\_, 2017

SEAL

\_\_\_\_\_  
Ronnieye L. Arrington, City Clerk

**R-4**



# CITY OF HOPEWELL CITY COUNCIL ACTION FORM

**Strategic Operating Plan Vision Theme:**

- Civic Engagement
- Culture & Recreation
- Economic Development
- Education
- Housing
- Safe & Healthy Environment
- None (Does not apply)

**Order of Business:**

- Consent Agenda
- Public Hearing
- Presentation-Boards/Commissions
- Unfinished Business
- Citizen/Councilor Request
- Regular Business**
- Reports of Council Committees

**Action:**

- Approve and File
- Take Appropriate Action
- Receive & File (no motion required)
- Approve Ordinance 1<sup>st</sup> Reading
- Approve Ordinance 2<sup>nd</sup> Reading
- Set a Public Hearing
- Approve on Emergency Measure

**COUNCIL AGENDA ITEM TITLE: Regular Business – Item R-**

Resolution repealing and replacing Chapter 2A - Procurement of the City Code, incorporating by reference the Virginia Public Procurement Act (VPPA), which requires that the City's ordinances implementing the VPPA be consistent with it.

**ISSUE:**

Current Procurement Policy and Ordinance became effective in 2005. The VPPA is updated annually, but changes have not been made to the City Code to incorporate changes to the VPPA. Having the Ordinance reference the VPPA and all its modifications, past and future, will alleviate the need for constant changes to the Procurement chapter of the City Code. Since the ordinance has been outdated, the Purchasing Department has been following the VPPA.

**RECOMMENDATION:**

Administration recommends that Council adopt the new ordinance.

**TIMING:** Council Action is necessary on July 11, 2017 in order for FY17-18 to have an updated Procurement Ordinance and procedures.

**BACKGROUND:** As previously stated

**FISCAL IMPACT:** None

**ENCLOSED DOCUMENTS:** Ordinance 2005-09, VPPA, Comparative redline document of Ordinance and VPPA

**STAFF:** April Cone, Purchasing Officer

Council action form 07-11-2017

**SUMMARY:**

Y	N		Y	N	
<input type="checkbox"/>	<input type="checkbox"/>	Councilor Christina J. Luman-Bailey, Ward #1	<input type="checkbox"/>	<input type="checkbox"/>	Councilor Janice Denton, Ward #5
<input type="checkbox"/>	<input type="checkbox"/>	Councilor Arlene Holloway, Ward #2	<input type="checkbox"/>	<input type="checkbox"/>	Councilor Brenda S. Pelham, Ward #6
<input type="checkbox"/>	<input type="checkbox"/>	Councilor Anthony Zevgolis, Ward #3	<input type="checkbox"/>	<input type="checkbox"/>	Councilor Jackie M. Shornak, Ward #7
<input type="checkbox"/>	<input type="checkbox"/>	Councilor Jasmine Gore, Ward #4			

<b>07-11- 2017</b>
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**ORDINANCE NO. 2017-062717-1**

**AN ORDINANCE REPEALING AND REPLACING  
CHAPTER 2A - PROCUREMENT**

WHEREAS ordinances implementing the Virginia Public Procurement Act must be consistent with the Virginia Public Procurement Act;

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF HOPEWELL, VIRGINIA, THAT CHAPTER 2A - PROCUREMENT OF THE CITY CODE IS HEREBY REPEALED, AND REPLACED WITH THE FOLLOWING:**

**Chapter 2A - PROCUREMENT**

The Virginia Public Procurement Act (Virginia Code § 2.2-4300 et seq.) and all future amendments thereto are hereby incorporated by reference pursuant to Virginia Code §§ 2.2-4302 (Implementation) and 1-220 (Local ordinances incorporating state law by reference). The city's procurement officer and his or her designees are hereby authorized to act hereunder.

**ORDINANCE NO. 2005-09**

An Ordinance repealing the current Hopewell City Code Chapter governing procurement transactions, Hopewell City Code Chapter 29A, and enacting a new procurement chapter of the Hopewell City Code, Hopewell City Code Chapter 2A, to be effective July 1, 2005.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF HOPEWELL, that, effective July 1, 2005, Hopewell City Code Chapter 29A is hereby repealed, and the following provisions, to be codified as Hopewell City Code Chapter 2A, shall be enacted and become effective:

## ARTICLE I - GENERAL PROVISIONS

### **2A-1 PURPOSE.**

The purpose of this ordinance is to encourage competition in public purchasing among vendors or contractors, to administer fairly and equitably purchasing policies among bidders and to obtain high quality goods and services at the lowest possible price.

### **2A-2 APPLICATION.**

This ordinance applies to contracts for the procurement of goods, services, insurance and construction entered into by this city involving every expenditure for public purchasing irrespective of its source which is in excess of Fifty Thousand Dollars (\$50,000.00), except as where otherwise specified herein.

When the procurement involves the expenditure of Federal assistance or contract funds, the procurement shall be conducted in accordance with any applicable mandatory federal law and regulation. Nothing in this ordinance shall prevent any public agency from complying with the terms and conditions of any grant, gift, or bequest which is otherwise consistent with the law.

### **2A-3 EFFECTIVE DATE OF ORDINANCE.**

This ordinance shall become effective, and shall govern and apply to city procurement transactions, on and after July 1, 2005.

### **2A-4 SEVERABILITY.**

If any provision of this ordinance or any application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are declared to be severable.

### **2A-5 DEFINITIONS.**

1. **Brand Name Specification** - A specification limited to one or more items by manufacturers' names or catalogue numbers.
2. **Brand Name or Equal Specification** - A specification limited to one or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics needed to meet city requirements and which provides for the submission of equivalent products.
3. **Business** - Any corporation, partnership, limited liability company, association, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.

4. **Change Order (unilateral)** - A written order signed and unilaterally issued by the Purchasing Agent directing the contractor to make changes which the “changes” clauses of the contract authorizes the Purchasing Agent to order without the consent of the contractor.
5. **City Council** - The Council of the City of Hopewell, Virginia.
6. **City Manager** - City Manager of the City of Hopewell, Virginia.
7. **City Purchasing Agent or Agent** - The Purchasing Agent of the City of Hopewell, Virginia.
8. **Confidential Information** - Any information which is available to an employee only because of the employee’s status as an employee of this city and is not a matter of public knowledge or available to the public on request.
9. **Construction** - Building, altering, repairing, improving, or demolishing any structure, building, or highway, and any draining, dredging, excavation, grading or similar work upon real property.
10. **Construction Management Contract** - A contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.
11. **Contract** - All types of city agreements, regardless of what they may be called, for the procurement of goods, services, insurance or construction.
12. **Contract Modification** - Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provision of any contract accomplished by mutual action of the parties of the contract.
13. **Contractor** - Any person having a contract with the city or a using agency thereof.
14. **Cost Analysis** - The evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.
15. **Cost Data** - Factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.
16. **Cost-reimbursement Contract** - A contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this ordinance, and a fee or profit, if any.
17. **Direct or indirect participation** – Any involvement in the approval, disapproval, recommendation, or preparation of any part of a purchase request; influencing the content of any specification or procurement standard; and advising, investigating or auditing in connection with a procurement process.
18. **Disadvantaged business** - A small business which is owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the

opportunity to develop and maintain a competitive position in the economy because of social disadvantages.

19. **Employee** - An individual drawing a salary or wages from the city whether elected or not and any non-compensated individual performing personal services for the city or any department, agency, commission, council, or board of the city.
20. **Goods** - All material, equipment, supplies, printing and automated data processing hardware and software.
21. **Informality** - A minor defect or variation of a bid or proposal from the exact requirements of the invitation to bid, or the request for proposal, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.
22. **Insurance** - A contract whereby, for a stipulated consideration, one party undertakes to compensate the other for loss on a specified subject by specified perils.
23. **Invitation for Bids** - All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.
24. **Nominal Value** – A worth or cost so small, slight, or the like, in comparison to what might properly be expected, but in no case to be more than five dollars.
25. **Non-professional Services** - Any services not specifically identified as professional services in the following definition.
26. **Professional Services** - Work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, dentistry, land surveying, landscape architecture, law, medicine, optometry, pharmacy or professional engineering.
27. **Person** - Any business, individual, union, committee, club, other organization, or group of individuals.
28. **Price Analysis** - The evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.
29. **Pricing Data** - Factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offer or proposed selling prices, historical selling prices and current selling prices. The definition refers to data relevant to both prime and subcontract prices.
30. **Public Body** – City Council of the City of Hopewell.
31. **Qualified Products List** - An approved list of goods, services, or construction items described by model or catalogue number, which prior to competitive solicitation, the city has determined will meet the applicable specification requirements.
32. **Request for Proposals** - All documents, whether attached or incorporated by reference, utilized for soliciting proposals.
33. **Responsible Bidder or Offeror** - A person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and

reliability which will assure good faith performance, and who has been prequalified, if required.

34. **Responsive Bidder** - A person who has submitted a bid which conforms in all material respects to the invitation to bid.
35. **Services** - Any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.
36. **Small Business** - A United States business which is independently owned and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation.
37. **Specification** - Any description of the physical or functional characteristics, or of the nature of a good, service or construction item. It may include a description of any requirement for inspecting, testing, or preparing a good, service or construction item for delivery.
38. **Using Agency** - Any department, agency, commission, bureau, or other unit in the city government requiring goods, services, insurance or construction as provided for in this ordinance.

## **ARTICLE II - OFFICE OF THE PURCHASING AGENT**

### **2A-6 ESTABLISHMENT, APPOINTMENT, AND BOND.**

1. There is hereby created a purchasing system to operate under the direction and supervision of the City Manager. The City Manager is authorized to perform all duties of the Purchasing Agent contained herein; and nothing contained in this ordinance shall prevent the City Manager from designating a responsible person to perform the duties of Purchasing Agent, subject to his direction.
2. Appointment of Purchasing Agent. There is hereby created the position of Purchasing Agent, who shall be this city's principal public purchasing official, and who shall be appointed in accordance with the city's personnel regulations.
3. Purchasing Agent Bond. The Purchasing Agent shall give an official bond, the form and amount of which shall be approved by the City Attorney.

### **2A-7 AUTHORITY AND DUTIES.**

1. The Purchasing Agent shall serve as the principal public purchasing official for this city and shall be responsible for the procurement of goods, services, insurance and construction in accordance with this ordinance, as well as the management and disposal of supplies.
2. Subject to the supervision of the City Manager, the Purchasing Agent shall:

- A. Purchase or supervise the purchasing of all goods, services, insurance and construction needed by this city;
  - B. Sell, trade or otherwise dispose of surplus goods belonging to the city; and
  - C. Establish and maintain programs for specifications development, contract administration and inspection and acceptance, in cooperation with the public agencies using the goods, services, and construction.
3. With the approval of the City Manager, the Purchasing Agent may establish operational procedures consistent with this ordinance.

**2A-8 DELEGATION.**

With the approval of the City Manager, the Purchasing Agent may delegate authority to purchase certain supplies, services, or construction items to other city officials, if such delegation is deemed necessary for the effective procurement of those items.

**2A-9 UNAUTHORIZED PURCHASES.**

Except as herein provided, no official elected or appointed, or any employee shall purchase or contract for any goods, services, insurance, or construction within the purview of this ordinance other than by and through the purchasing department, and any purchase order or contract made contrary to the provisions hereof is not approved and the city shall not be bound thereby.

**ARTICLE III - COOPERATIVE PROCUREMENT**

**2A-10 CONDITIONS FOR USE.**

The city may participate in, sponsor, conduct or administer a cooperative procurement agreement with one or more other public bodies for the purpose of combining requirements to increase efficiency or reduce administrative expenses. Except for contracts for professional services, the city may purchase from another public body's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies. Any public body which enters into a cooperative procurement agreement with the city shall comply with the policies and procedures adopted by this ordinance.

**ARTICLE IV - CONTRACT FORMATION AND METHODS**  
**OF SOURCE SELECTION**

**2A-11 COMPETITIVE BIDDING ON STATE AID PROJECTS.**

No contract for the construction of any building or for an addition to or improvement of an existing building for which state funds of not more than Thirty Thousand Dollars (\$30,000.00) in

the aggregate or for the sum of all phases of a contract or project either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive bidding or competitive negotiation. The procedure for the advertising for bids and letting of the contract shall conform, mutatis mutandis, to this ordinance.

## **2A-12 COMPETITIVE SEALED BIDDING.**

1. **Conditions for Use.** All public contracts with non-governmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction shall be awarded after competitive sealed bidding, or competitive negotiation as provided in this section, unless otherwise authorized by law.
2. **Public Access to Procurement Information.** Except as provided herein, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm, or corporation, in accordance with the Virginia Freedom of Information Act. Cost estimates relating to a proposed transaction prepared by or for the city shall not be open to public inspection. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the city decides not to accept any of the bids. Otherwise, bid and proposal records shall be open to public inspection only after award of the contract. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the bidder, offeror or contractor must invoke the protections of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary.
3. **Employment Discrimination/Drug-Free Workplace by Contractor.** Every contract over Ten Thousand Dollars (\$10,000) shall include the provisions in A and B below:
  - A. During the performance of this contract, the contractor agrees as follows:
    - (1) The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or other basis prohibited by state law related discrimination employment , except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
    - (2) The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.

- (3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- (4) To provide a drug-free workplace for the contractor's employees.
- (5) To post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- (6) To state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace.

B. The contractor will include the provisions of the foregoing paragraphs 1, 2, 3, 4, 5 and 6 in every subcontract or purchase order of over Ten Thousand Dollars (\$10,000) so that the provisions will be binding upon each subcontractor or vendor.

4. **Prequalification of Bidders.** The Purchasing Agent is authorized to prequalify bidders prior to any solicitation of bids, whether for goods, services, insurance or construction, by requiring prospective bidders to submit such information as the Purchasing Agent shall deem appropriate, including samples, financial reports, and references; provided, however, that opportunity to prequalify shall be given to any prospective bidder who has not been suspended or debarred under this ordinance.

In considering any request for pre-qualification, the Purchasing Agent shall determine whether there is reason to believe that the bidder possesses the management, financial soundness, and history of performance which indicate apparent ability to successfully complete the plans and specifications of the invitations for bid. The Purchasing Agent may employ standard forms designed to elicit necessary information, or may design other forms for that purpose.

Prequalification of prospective contractors for construction shall be consistent with Va. Code § 2.2-4317 (1950), and all amendments thereto.

Prequalification of a bidder shall not constitute a conclusive determination that the bidder is responsible, and such bidder may be rejected as non-responsible on the basis of subsequently discovered information.

Failure of a bidder to prequalify with respect to a given procurement shall not bar the bidder from seeking prequalification as to future procurements, or from bidding on procurements which do not require prequalification.

5. **Notice of Invitation to Bid.** Notice inviting bids shall be published at least once in a newspaper of general circulation in the city at least ten (10) days preceding the last day set for the receipt of proposals.

The newspaper notice required herein shall include a general description of the articles to be purchased or sold, shall state where bid blanks and specifications may be secured, and the time and place for opening bids.

The Purchasing Agent shall also solicit sealed bids from all responsible prospective suppliers who have requested their names to be added to a "Bidders' List" which the Purchasing Agent shall maintain, by sending other notice as will acquaint them with the proposed purchase or sale. In any case, invitations sent to the vendors on the bidders' list shall be limited to commodities that are similar in character and ordinarily handled by the trade group to which the invitations are sent.

The Purchasing Agent shall post all bids or requests for proposals on the official bid board located in the Municipal Building, 2<sup>nd</sup> Floor.

6. **Use of Brand Names.** Unless otherwise provided in the invitation to bid, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer name; it conveys the general style, type, character, and quality of the article desired, and any article which the public body in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.
7. **Comments on Specifications.** For complex equipment, supplies or repair, pre-bid conferences with prospective bidders are desirable after draft specifications have been prepared. Such conferences help to detect unclear provisions and tend to widen competition by removing unnecessarily restrictive language. Conferences on purchasing bids may be called by the Purchasing Agent and attended by a department representative and, if necessary, the City Attorney.
8. **Bid Bonds on Construction Contracts.**
  - A. Except in cases of emergency, all bids or proposals for construction contracts in excess of One Hundred Thousand (\$100,000) shall be accompanied by a bid bond from a surety company selected by the bidder which is legally authorized to do business in Virginia, as a guarantee that if the contract is awarded to such bidder, that bidder will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not be less than five percent (5%) of the amount bid.
  - B. No forfeiture under a bid bond shall exceed the lesser of the (1) the difference between the bid for which the bond was written and the next low bid, or (2) the face amount of the bid bond.
9. **Bonds for Other Than Construction Contracts.** At the discretion of the Purchasing Agent, bidders may be required to submit with their bid a bid bond, or a certified check in an amount to be determined by the Purchasing Agent and specified in the invitation to bid, which shall be forfeited to the city as liquidated damages upon the bidder's failure to execute a contract awarded to him or upon the bidder's failure to furnish any required performance or payment bonds in connection with a contract awarded to him.

The Purchasing Agent may require successful bidders to furnish a performance bond and/or a payment bond at the expense of the successful bidder, in amounts to be determined by the Purchasing Agent and specified in the invitation to bid, to ensure the satisfactory completion of the work for which a contract or purchase order is awarded.

10. **Rejection of Bids.**

- A. An invitation to bid, a request for proposal, any other solicitation, or any and all bids or proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of the contract file.
- B. The City may waive informalities in bids.

11. **Bid Opening.** Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid, and such other relevant information as the Purchasing Agent deems appropriate, together with the name of each bidder shall be recorded. The bid record shall be open to public inspection.

12. **Withdrawal of Bid Due to Error.**

- A. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

The procedure for bid withdrawal must be stated in the advertisement for bids, and must be stated as one of the following:

- (1) The bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice; or
- (2) The bidder shall submit to the Purchasing Agent his original work papers, documents and materials used in the preparation of the bid within one day after the date fixed for submission of bids. The work papers shall be delivered by the bidder in person or by registered mail at or prior to the time fixed for the opening of bids. The bids shall be opened one day following the time fixed by the city for the submission of bids. Thereafter, the bidder shall have two (2) hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the city until the two-hour period has elapsed. Such mistake shall be proved only from the original work papers, documents and materials delivered as required herein.

- B. Procedures for the withdrawal of bids for other than construction contracts may be established by the Purchasing Agent.
  - C. No bid may be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent (5%).
  - D. If a bid is withdrawn under the authority of this section, the lowest remaining bid shall be deemed to be the low bid.
  - E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.
  - F. If Purchasing Agent denies the withdrawal of a bid under the provisions of this section, he shall notify the bidder in writing stating the reasons for his decision.
13. **Bid Evaluation.** Evaluation of bids shall be based upon the requirements set forth in the invitation, which may include special qualifications of potential contractors, life cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability. In determining the 'lowest responsible bidder', in addition to price, the Purchasing Agent shall consider:
- A. The ability, capacity and skill of the bidder to perform the contract or provide the service required;
  - B. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
  - C. The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
  - D. The quality of performance of previous contracts or services;
  - E. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;
  - F. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
  - G. The quality, availability and adaptability of the goods, or services to the particular use required;
  - H. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract; and
  - I. The number and scope of conditions attached to the bid.
14. **Bid Award.** Bids shall be awarded to the lowest responsive and responsible bidder. When the terms and conditions of multiple bids are so provided in the invitation to bid, awards may be made to more than one bidder.

Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the city may negotiate with the apparent low bidder to obtain a contract price within available funds.

15. **Tie Bids.**

A. In the case of a tie bid, preference shall be given to goods, services and construction produced in Virginia or provided by Virginia persons, firms or corporations, if such a choice is available; otherwise the tie shall be decided by lot.

B. Whenever any bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a preference, a like preference may be allowed to the lowest responsible bidder who is a resident of Virginia.

If all bids received are for the same total amount or unit price, quality and service being equal, the contract shall be awarded to a local bidder.

In the event that there is a tie bid, the tie bidders may be invited to resubmit written bids below the original bid, and award shall be made to the bidder with the lowest bid price. Any price quote made verbally shall be confirmed in writing.

In the event that none of the foregoing provisions of this section resolve the tie, the Purchasing Agent may cancel the solicitation and re-bid. Records shall be kept of any proceeding connected with tie bids.

C. Notwithstanding the provisions of subsection A and B, in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.

16. **Multi-Step Sealed Bidding.** When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.

17. **Contract Pricing Arrangements.** Except as prohibited herein, public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other basis that is not prohibited.

Subject to the limitations of this section, any type of contract which is appropriate to the procurement and which will promote the best interests of the city may be used. A cost reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the city than any other type or that it is impracticable to obtain the supply, service or construction item required except under such a contract. Except in the case of emergency affecting the public health, safety or welfare, no contract shall be awarded on the basis of cost plus a percentage of cost.

18. **Multi-Term Contracts.**

A. Unless otherwise provided by law, a contract for goods, services or insurance may be entered into for any period of time deemed to be in the best interest of the city

provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.

B. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled.

19. **Contract Modification.** A public contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than twenty-five percent (25%) of the amount of the contract or Fifty Thousand Dollars (\$50,000.00), whichever is greater, without the advance written approval of the City Council.

20. **Retainage on Construction Contracts.**

A. In any public contract for construction which provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least ninety-five percent (95 %) of the earned sum when payment is due, with not more than five percent (5%) being retained to assure faithful performance of the contract. All amounts withheld may be included in the final payment.

B. Any subcontract for a public project which provides for similar progress payments shall be subject to the same limitations.

21. **Performance and Payment Bonds.**

A. Upon the award of any public construction contract exceeding Fifty Thousand Dollars (\$50,000.00) awarded to any prime contractor, such contractor shall furnish to the city the following bonds:

(1) A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract.

(2) A payment bond in the sum of the contract amount. Such bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in the prosecution of the work provided for in such contract, and shall be conditioned upon the prompt payment for all such materials furnished or labor supplied or performed in the prosecution of the work. "Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

B. Each of such bonds shall be executed by one or more surety companies selected by the contractor which are legally authorized to do business in Virginia.

C. Bonds shall be made payable to the city.

- D. Each of the bonds shall be filed with the city, or a designated office or official thereof.
  - E. Nothing in this section shall preclude the Purchasing Agent from requiring payment or performance bonds for construction contracts below Fifty Thousand Dollars (\$50,000.00).
  - F. Nothing in this section shall preclude the Contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts which are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.
22. **Action on Performance Bond.** Any action against the surety on a performance bond shall be brought within one year after (1) completion of the contract, including the expiration of all warranties and guarantees, or (2) discovery of the defect or breach of warranty, if the action be for such, whichever is later.
23. **Actions on Payment Bonds.**
- A. Subject to the provisions of subsection B hereof, any claimant who has performed labor or furnished materials in accordance with the contract for which a payment bond has been given, and who has not been paid in full before the expiration of ninety (90) days after the such claimant performed the last labor or furnished the last materials for which he claims payment, may bring an action on such payment bond to recover any amount due him for such labor or materials, and may prosecute such action to final judgment and have execution on the judgment. The obligee named in the bond need not be named a party to such action.
  - B. Any claimant who has a direct contractual relationship with any subcontractor from whom the contractor has not required a subcontractor payment bond under 2A-12 (21) but who has no contractual relationship, express or implied, with such contractor, may bring an action on the contractor's payment bond only if he has given written notice to such contractor within 180 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Any claimant who has a direct contractual relationship with a subcontractor from whom the contractor has required a subcontractor payment bond under 2A-12 (21) but who has no contractual relationship, express or implied, with such contractor, may bring an action on the subcontractor's payment bond. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished shall not be subject to the time limitations stated in this subsection.

- C. Any action on a payment bond must be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.

24. **Alternative Forms of Security.**

- A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash escrow in the face amount required for the bond.
- B. If approved by the City Attorney, a bidder may furnish a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the City of Hopewell equivalent to the corporate surety's bond.

**2A-13 COMPETITIVE NEGOTIATION.**

1. **Definition of Competitive Negotiation.** Competitive negotiation is a method of source selection which involves individual discussions between the City of Hopewell and the offeror on the basis of responses to the City of Hopewell's request for proposals. The source selection method of competitive negotiation incorporates 2A-12 (2), (3), (4), (6), (7), (9), (16), (18), in addition to the provisions outlined in 2A-13 and 2A-14.
2. **Conditions for Use.** Upon a determination in writing the competitive sealed bidding is either not practicable or not advantageous to the public, goods, services, insurance or construction may be procured by competitive negotiation. The writing shall document the basis for this determination.
3. **Request for Proposals.** A request for proposals shall be in writing and indicate in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the contractor.
4. **Public Notice.** At least ten (10) days prior to the date set for receipt of proposals, public notice shall be given by posting in a public area normally used for posting of public notices and by publication in a newspaper of general circulation in the area in which the contract is to be performed, or both. In addition, proposals may be solicited directly from potential contractors.
5. **Evaluation Factors and Award.** Selection shall be made of two or more offerers deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the request for proposals, including price if so stated in the request for proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the Purchasing Agent shall select the offeror which, in his/her opinion, has made the best proposal, and shall award the contract to that offeror. Should the Purchasing Agent determine in writing and in his or her sole discretion that only one offeror is the qualified, or that one offeror is

clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

## **2A-14 CONTRACTING FOR PROFESSIONAL SERVICES BY COMPETITIVE**

### **NEGOTIATION.**

Professional services shall be procured by competitive negotiation. The process includes 2A-12 (2), (3), (4), (6), (7), (9), (16), (18) and 2A-13 (3) and (4).

**Discussion and Award.** The Purchasing Agent shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable, on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. Such offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. These discussions may encompass non-binding estimates of total project costs, including where appropriate life cycle costs and price for services. Methods to be utilized in arriving at price for services may also be discussed. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined herein, on the basis of evaluation factors published in the request for proposal and all information developed in the selection process to this point, the Purchasing Agent shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the City of Hopewell can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should the Purchasing Agent determine in writing and in his sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

### **2A-15 SOLE SOURCE PROCUREMENT.**

Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination.

### **2A-16 EMERGENCY PURCHASES.**

In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The Purchasing Agent shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which

the contract was or will be awarded. This notice shall be posted on the Bid Board located in the Municipal Building, 2<sup>nd</sup> Floor or published in a newspaper of general circulation on the day the City awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable.

An emergency shall be deemed to exist when a breakdown in machinery or equipment and/or a threatened termination of essential services or dangerous condition develops, or when any unforeseen circumstances arise causing curtailment or diminution of an essential service or where materials or services are needed to prevent loss of life or property.

#### **2A-17 SMALL PURCHASES.**

Any contract not exceeding Fifty Thousand Dollars (\$50,000.00) may be made in accordance with small purchase procedures; provided, however, that contract requirements shall not be artificially divided so as to constitute a small purchase under this section. Insofar as it is practical, no less than three (3) businesses shall be solicited to submit quotations. Purchases under this subsection that are expected to exceed Thirty Thousand (\$30,000) shall require the written informal solicitation of a minimum of four (4) bidders or offerors. Award shall be made to the business offering the lowest acceptable quotation. The name of the business submitting a quotation, and the date and amount of each quotation, shall be recorded and maintained as a public record.

#### **2A-18 AUCTION PURCHASES.**

Upon a determination made in advance by the City and set forth in writing that the purchase of goods, products or commodities from a public auction sale is in the best interests of the public, such items may be purchased at the auction, including online public auctions. The writing shall document the basis for this determination. However, bulk purchases of commodities used in road and highway construction and maintenance, and aggregates shall not be made by online public auctions.

#### **2A-19 MISCELLANEOUS SOURCES.**

The following transactions are hereby exempt from the provisions of this ordinance:

Purchases from the State Penitentiary or state contracts from the State Purchasing Department.

Legal Services associated with actual or potential litigation.

Purchases for special police work when the Chief of Police certifies to the Purchasing Agent that items are needed for undercover police operations.

## **ARTICLE V - DISPOSAL OF SURPLUS PROPERTY**

### **2A-20 PROCEDURE.**

All using agencies shall submit to the Purchasing Agent at such time and in such form as he shall prescribe, reports showing stocks of all supplies which are no longer used or which have become obsolete, worn out or scrapped.

The Purchasing Agent shall have the authority to transfer surplus stock to other using agencies.

The Purchasing Agent shall have the authority to sell all supplies which are unsuitable for public use, or to exchange the same for, or trade in the same on, new supplies.

Sales under this section shall be made to the highest responsible bidder.

## **ARTICLE VI - DEBARMENT**

### **2A-21 AUTHORITY TO DEBAR OR SUSPEND.**

After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Purchasing Agent after consulting with the City Attorney is authorized to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three (3) years. After consultation with the City of Attorney, the Purchasing Agent is authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall not be for a period exceeding three (3) months. The causes for debarment include:

1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
2. Conviction under state and federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as city contractor;
3. Conviction under state or federal anti-trust statutes arising out of the submission of bids or proposals;
4. Violation of contract provisions, as set forth below, of a character which is regarded by the public body or its designee to be so serious as to justify debarment action:
  - A. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in a contract; or
  - B. A recent record of failure to perform or unsatisfactory performance in one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment; or

5. Any other cause the Purchasing Agent determines to be so serious and compelling as to affect responsibility as a city contractor, including debarment by another governmental entity for any cause in this ordinance; and for violation of the ethical standards set forth in this ordinance.

#### **2A-22 DECISION TO DEBAR OR SUSPEND**

The Purchasing Agent shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended person involved of his rights concerning judicial review.

#### **2A-23 NOTICE OF DECISION.**

A copy of the decision required by 2A-22 decision to debar or suspend shall be mailed or otherwise furnished immediately to the debarred or suspended person.

#### **2A-24 FINALITY OF DECISION.**

A decision under 2A-22 decision to debar or suspend shall be final and conclusive, unless the debarred or suspended person within ten (10) days after receipt of the decision commences a timely action in court in accordance with applicable law.

### **ARTICLE VII - APPEALS AND REMEDIES FOR BID PROTESTS**

#### **2A-25 INELIGIBILITY OF BIDDER, OFFEROR OR CONTRACTOR.**

1. Any bidder, offeror, or contractor refused permission to participate, or disqualified from participation, in public contracts shall be notified in writing. Such notice shall state the reasons for the action taken. This decision shall be final unless the bidder, offeror, or contractor appeals within ten (10) days of receipt by instituting legal action as provided in 2A-32 of this ordinance.
2. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the constitution of Virginia, statutes or regulations, the sole relief shall be restoration of eligibility.

#### **2A-26 APPEAL OF DENIAL OF WITHDRAWAL OF BID.**

1. A decision denying withdrawal of bid under the provisions of 2A-12 (12) shall be final and conclusive unless the bidder appeals the decision within ten (10) days after receipt of the decision by instituting legal action as provided in 2A-32 of this ordinance.
2. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of 2A-12 (12), prior to appealing, shall deliver to the Purchasing Agent a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and

the next lowest bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.

3. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was arbitrary or capricious, the sole relief shall be withdrawal of the bid.

#### **2A-27 DETERMINATION OF NON-RESPONSIBILITY.**

1. Any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder for a particular contract shall be notified in writing. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten (10) days by instituting legal action as provided in 2A-32 (1) of this ordinance.
2. If, upon appeal, it is determined that the decision of the Purchasing Agent was arbitrary or capricious, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question. If it is determined that the decision of the Purchasing Agent was arbitrary or capricious, the relief shall be as set forth in 2A-28 (2).
3. A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under 2A-28 of this ordinance.
4. Nothing contained in this section shall be construed to require the city, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

#### **2A-28 PROTEST OF AWARD OR DECISION TO AWARD.**

1. Any bidder or offeror may protest the award or decision to award a contract by submitting such protest in writing to the City Attorney, no later than ten (10) days after the award or the announcement of the decision of intent to award, whichever occurs first. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The City Manager shall issue a decision in writing within ten (10) days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten (10) days of the written decision by instituting legal action as provided in 2A-32 of this ordinance.
2. If, prior to an award, it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Purchasing Agent shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the Purchasing Agent may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to

the time of such declaration. In no event shall the performing contractor be entitled to lost profits or damages.

3. Where the City Manager, after a hearing held following reasonable notice to all bidders, finds that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of the ethics in public contracting article, the City Manager may enjoin the award of the contract to a particular bidder.

#### **2A-29 EFFECT OF APPEAL UPON CONTRACT.**

Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this chapter shall not be affected by the fact that a protest or appeal has been filed.

#### **2A-30 STAY OF AWARD DURING PROTEST.**

An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest or appeal, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

#### **2A-31 CONTRACTUAL DISPUTES.**

1. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty (60) days after final payment; however, written notice of the contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.
2. A procedure for consideration of contractual claims shall be included in each contract. Such procedure, which may be incorporated into the contract by reference, shall establish a time limit for a final decision in writing by the city.
3. A contractor may not institute legal action as provided in 2A-32 of this chapter prior to receipt of the decision on the claim, unless the city fails to render such decision within the time specified in the contract.
4. The decision shall be final and conclusive unless the contractor appeals within six (6) months of the date of the final decision on the claim by the city by instituting legal action as provided in 2A-32 of this ordinance.

#### **2A-32 LEGAL ACTIONS.**

1. A bidder or offeror, actual or prospective, who is refused permission to participate, or disqualified from participating, in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring

an action in the Hopewell Circuit Court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was arbitrary or capricious.

2. A bidder denied withdrawal of a bid under this ordinance may bring an action in the Hopewell Circuit Court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the City of Hopewell was arbitrary and capricious.
3. A bidder, offeror or contractor may bring an action in the Hopewell Circuit Court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not an honest exercise of discretion, but rather is arbitrary or capricious or not in accordance with the Constitution of Virginia, statutes, regulations or the terms and conditions of the invitation to bid or request for proposal.
4. If injunctive relief is granted, the court, upon request of the city, shall require the posting of reasonable security to protect the city.
5. A contractor may bring an action involving a contract dispute with the city in the Hopewell Circuit Court.
6. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of this ordinance, but if those procedures are invoked by the bidder, offeror or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the public body agrees otherwise.
7. Nothing herein shall be construed to prevent the city from instituting legal action against a contractor.

## **ARTICLE VIII - ASSISTANCE TO SMALL AND DISADVANTAGED BUSINESSES**

### **2A-33 ESTABLISHMENT OF PROGRAMS TO EXPAND PARTICIPATION.**

The Purchasing Agent may establish programs consistent with all provisions of this ordinance to facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions. Such programs shall be in writing, and may include cooperation with the State Office of Minority Business Enterprise, the United States Small Business Administration and other public or private agencies.

### **2A-34 DISCRIMINATION PROHIBITED.**

In the solicitation or awarding of contracts, the City of Hopewell shall not discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability or any other basis prohibited by state law relating to discrimination in employment.

## **ARTICLE IX - ETHICS IN PUBLIC CONTRACTING**

### **2A-35 PURPOSE.**

The provisions of this Article IX supplement, but do not supersede, other provisions of law including, but not limited to, the Virginia Conflict of Interests Act, Section 2.2-3100 *et seq.*; the Virginia Governmental Frauds Act, Section 18.2-4981 *et seq.*; and Articles 2 and 3 of Chapter 10 of Title 18.2. The provisions of this Article apply notwithstanding the fact that the conduct described may not constitute a violation of the Virginia Conflict of Interests Act.

### **2A-36 DEFINITIONS.**

The words defined in this section shall have the meaning set forth below throughout Article IX.

1. Immediate Family - spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee.
2. Official Responsibility - administrative or operating authority, whether immediate or final, to initiate, approve, disapprove or otherwise affect a procurement transaction, or any claim resulting therefrom.
3. Pecuniary interest arising from the Procurement - personal interest in a contract as defined in the Virginia Conflict of Interests Act.
4. Procurement Transaction - all functions that pertain to the obtaining of any goods, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
5. Public Employee - any person employed by a public body, including elected officials or appointed members of public bodies.

### **2A-37 PROSCRIBED PARTICIPATION BY PUBLIC EMPLOYEES IN PROCUREMENT TRANSACTIONS.**

Except as may be specifically allowed by subdivisions A (2), (3) and (4) of Va. Code Sec. 2.2-3112, and all amendments thereto, no public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the city when the employee knows that:

1. The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction; or
2. The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent (5 %); or
3. The employee, the employee's partner, or any member of the employee's immediate family has pecuniary interest arising from the procurement transaction; or

4. The employee, the employee's partner, or any member of the employee's immediate family is negotiating, or has an arrangement concerning prospective employment with a bidder, offeror or contractor.

#### **2A-38 SOLICITATION OR ACCEPTANCE OF GIFTS.**

No public employee or any member of the employee's immediate family shall solicit, demand, accept, or agree to accept from a bidder, offeror, contractor or subcontractor any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged. The City of Hopewell may recover the value of anything conveyed in violation of this section.

#### **2A-39 DISCLOSURE OF SUBSEQUENT EMPLOYMENT.**

No public employee or former public employee having official responsibility for procurement transactions shall accept employment with any bidder, offeror or contractor with whom the employee or former employee dealt in an official capacity concerning procurement transactions for a period of one year from the cessation of employment by the city unless the employee, or former employee, provides written notification to the City Manager prior to commencement of employment by that bidder, offeror or contractor.

#### **2A-40 GIFTS BY BIDDERS, OFFERORS, CONTRACTORS OR SUBCONTRACTORS.**

No bidder, offeror, contractor or subcontractor shall confer upon any public employee any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

#### **2A-41 KICKBACKS.**

1. No contractor or subcontractor shall demand or receive from any of his suppliers or his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.
2. No subcontractor or supplier shall make, or offer to make, kickbacks as described in this section.
3. No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a public contract.
4. If a subcontractor or supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the city and will be

recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

**2A-42 PURCHASE OF BUILDING MATERIALS, ETC. FROM ARCHITECT OR ENGINEER PROHIBITED.**

Except in cases of emergency, no building materials, supplies or equipment for any building or structure constructed by or for the city shall be sold by or purchased from any person employed as an independent contractor by the city to furnish architectural or engineering services, but not construction, for such building or structure, or from any partnership, association, or corporation in which such architect or engineer has pecuniary interest.

**2A-43 PARTICIPATION IN BID PROCESS.**

No person who, for compensation, prepares an invitation to bid or request for proposal for or on behalf of the city shall:

- (1) submit a bid or proposal for that procurement or any portion thereof; or
- (2) disclose to any bidder or offeror information concerning the procurement that is not available to the public.

However, the Purchasing Agent may permit such person to submit a bid or proposal for that procurement or any portion thereof if the Purchasing Agent determines that the exclusion of the person would limit the number of potential qualified bidders or offerors in a manner contrary to the best interest of the City.

**2A-44 PENALTY FOR VIOLATION.**

Willful violation of any provision of this article shall constitute a Class I misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, shall forfeit his employment.



I, Ann M. Romano, City Clerk of the City of Hopewell, Virginia, do certify that the foregoing is a true and correct copy of an ordinance adopted by the City Council at their meeting dated June 28, 2005.

Given under my hand and the Corporate Seal of the City of Hopewell, Virginia, this 8<sup>th</sup> day of July 2005.

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City Clerk

S E A L

**Title 2.2**  
**Administration of Government**  
**-- Subtitle**  
**II.**  
**Administration of State Government**  
**-- Part**  
**B**  
**Transaction of Public Business**  
**-- CHAPTER**  
**43**  
**Virginia Public Procurement Act**

**Article 1. General**  
**Provisions**

**§ 2.2-4300. Short title; purpose; declaration of intent.**

A. This chapter may be cited as the Virginia Public Procurement Act.

B. The purpose of this chapter is to enunciate the public policies pertaining to governmental procurement from nongovernmental sources, to include governmental procurement that may or may not result in monetary consideration for either party. This chapter shall apply whether the consideration is monetary or nonmonetary and regardless of whether the public body, the contractor, or some third party is providing the consideration.

C. To the end that public bodies in the Commonwealth obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to public business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the General Assembly that competition be sought to the maximum feasible degree, that procurement procedures involve openness and administrative efficiency, that individual public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered. Public bodies may consider best value concepts when procuring goods and nonprofessional services, but not construction or professional services. The criteria, factors, and basis for consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation.

**§ 2.2-4301. Definitions.**

As used in this chapter:

“*Affiliate*” means an individual or business that controls, is controlled by, or is under common control with another individual or business. A person controls an entity if the person owns, directly or indirectly, more than 10 percent of the voting securities of the entity. For the purposes of this definition “voting security” means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive,

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upon its exercise, a security that confers such a right to vote. A general partnership interest shall be deemed to be a voting security.

“*Best value*” as predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to a public body’s needs.

“*Business*” means any type of corporation, partnership, limited liability company, association, or sole proprietorship operated for profit.

“*Competitive negotiation*” is the method of contractor selection set forth in § 2.2-4302.2.

“*Competitive sealed bidding*” is the method of contractor selection set forth in § 2.2-4302.1.

“*Construction*” means building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.

→ “*Construction management contract*” means the same as that term is defined in § 2.2-4379.

→ “*Design-build contract*” means the same as that term is defined in § 2.2-4379.

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

“*Goods*” means all material, equipment, supplies, printing, and automated data processing hardware and software.

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

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

“*Multiphase professional services contract*” means a contract for the providing of professional services where the total scope of work of the second or subsequent phase of the contract cannot be specified without the results of the first or prior phase of the contract.

“*Nonprofessional services*” means any services not specifically identified as professional services in the definition of professional services.

“*Potential bidder or offeror*,” for the purposes of §§ 2.2-4360 and 2.2-4364, means a person who, at the time a public body negotiates and awards or proposes to award a contract, is engaged in the sale or lease of

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goods, or the sale of services, insurance or construction, of the type to be procured under the contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.

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

“*Public body*” means any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in this chapter. “Public body” shall include (i) any independent agency of the Commonwealth, and (ii) any metropolitan planning organization or planning district commission which operates exclusively within the Commonwealth of Virginia.

“*Public contract*” means an agreement between a public body and a nongovernmental source that is enforceable in a court of law.

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

“*Responsive bidder*” means a person who has submitted a bid that conforms in all material respects to the Invitation to Bid.

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

“*Services*” means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

**§ 2.2-4302. Implementation.**

This chapter may be implemented by ordinances, resolutions or regulations consistent with this chapter and with the provisions of other applicable law promulgated by any public body empowered by law to undertake the activities described in this chapter. Any such public body may act by and through its duly designated or authorized officers or employees.

**§ 2.2-4302.1. Process for competitive sealed bidding.**

The process for competitive sealed bidding shall include the following:

1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the public body has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. No Invitation to Bid for construction services shall condition a successful bidder's eligibility on having a specified experience modification factor. When it is impractical to prepare initially a purchase description to support an award based on prices, an Invitation to Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation;

2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by posting on the Department of General Services' central electronic procurement website or other appropriate websites. In addition, public bodies may publish in a newspaper of general circulation. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities. In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall include certified businesses selected from a list made available by the Department of Small Business and Supplier Diversity;

3. Public opening and announcement of all bids received;

4. Evaluation of bids based upon the requirements set forth in the Invitation to Bid, which may include special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability; and

5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.

For the purposes of subdivision 1, "experience modification factor" means a value assigned to an employer as determined by a rate service organization in accordance with its uniform experience rating plan required to be filed pursuant to subsection D of § 38.2-1913.

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

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

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposal, indicating whether a numerical scoring system will be used in evaluation of the proposal, and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities, specifications or qualifications that will be required. In the event that a numerical scoring system will be used in the evaluation

of proposals, the point values assigned to each of the evaluation criteria shall be included in the Request for Proposal or posted at the location designated for public posting of procurement notices prior to the due date and time for receiving proposals. No Request for Proposal for construction authorized by this chapter shall condition a successful offeror's eligibility on having a specified experience modification factor;

2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of proposals by posting on the Department of General Services' central electronic procurement website or other appropriate websites. Additionally, public bodies shall publish in a newspaper of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities. In addition, proposals may be solicited directly from potential contractors. Any additional solicitations shall include certified businesses selected from a list made available by the Department of Small Business and Supplier Diversity; and

3. For goods, nonprofessional services, and insurance, selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. In the case of a proposal for information technology, as defined in § 2.2-2006, a public body shall not require an offeror to state in a proposal any exception to any liability provisions contained in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. The offeror shall state any exception to any liability provisions contained in the Request for Proposal in writing at the beginning of negotiations, and such exceptions shall be considered during negotiation. Price shall be considered, but need not be the sole or primary determining factor. After negotiations have been conducted with each offeror so selected, the public body shall select the offeror which, in its opinion, has made the best proposal and provides the best value, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror; or

4. For professional services, the public body shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In addition, offerors shall be informed of any ranking criteria that will be used by the public body in addition to the review of the professional competence of the offeror. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the public body may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. In accordance with § 2.2-4342, proprietary information from competing offerors shall not be disclosed to the public or to competitors. For architectural or engineering services, the public body shall not request or require offerors to list any exceptions to proposed contractual terms and conditions, unless such terms and conditions are required by statute, regulation, ordinance, or standards developed pursuant to § 2.2-1132, until after the qualified offerors are ranked for negotiations. At the conclusion of discussion, outlined in this

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

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

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

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

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

For the purposes of subdivision A 1, “experience modification factor” means a value assigned to an employer as determined by a rate service organization in accordance with its uniform experience rating plan required to be filed pursuant to subsection D of § 38.2-1913.

## **Article 2.**

### **Contract Formation and Administration**

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

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

B. Professional services shall be procured by competitive negotiation.

C. Goods, services other than professional services, and insurance may be procured by competitive sealed bidding or competitive negotiation.

Upon a written determination made in advance by (i) the Governor or his designee in the case of a procurement by the Commonwealth or by a department, agency or institution thereof or (ii) the local governing body in the case of a procurement by a political subdivision of the Commonwealth, that competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured through a licensed

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agent or broker selected in the manner provided for the procurement of things other than professional services set forth in § 2.2-4302.2. The basis for this determination shall be documented in writing.

D. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances:

1. By any public body on a fixed price design-build basis or construction management basis as provided in Chapter 43.1 (§ 2.2-4378 et seq.); or

2. By any public body for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination.

E. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The public body shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the Department of General Services' central electronic procurement website or other appropriate websites, and in addition, public bodies may publish in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

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

G. A public body may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts for:

1. Goods and services other than professional services and non-transportation-related construction, if the aggregate or the sum of all phases is not expected to exceed \$100,000; and

2. Transportation-related construction, if the aggregate or sum of all phases is not expected to exceed \$25,000.

However, such small purchase procedures shall provide for competition wherever practicable.

Such purchase procedures may allow for single or term contracts for professional services without requiring competitive negotiation, provided the aggregate or the sum of all phases is not expected to exceed \$60,000. Where small purchase procedures are adopted for construction, the procedures shall not waive compliance with the Uniform State Building Code.

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

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

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

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

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

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

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

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

2. Any locality with a population in excess of 78,000 or school division within such locality, or any authority, sanitation district, metropolitan planning organization, transportation district commission, or planning district commission, or any city within Planning District 8, the sum of all projects performed in a one-year contract term shall not exceed \$6 million and those awarded for any airport as defined in § 5.1-1 and aviation transportation projects, the sum of all such projects shall not exceed \$1.5 million;

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

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

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

D. The fee for any single project shall not exceed \$150,000; however, for architectural or engineering services for airports as defined in § 5.1-1 and aviation transportation projects, the project fee of any single project shall not exceed \$500,000, except that for:

1. A state agency as defined in § 2.2-4347, the project fee shall not exceed \$200,000, as may be determined by the Director of the Department of General Services or as otherwise provided by the Restructured Higher Education Financial and Administrative Operations Act (§ 23.1-1000 et seq.); and

2. Any locality with a population in excess of 78,000 or school division within such locality, or any authority, transportation district commission, or sanitation district, or any city within Planning District 8, the project fee shall not exceed \$2.5 million.

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

E. For the purposes of subsection B, any unused amounts from one contract term shall not be carried forward to any additional term, except as otherwise provided by the Restructured Higher Education Financial and Administrative Operations Act (§ 23.1-1000 et seq.).

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

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

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

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

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

E. No public body shall issue or use a job order, under a job order contract, solely for the purpose of receiving professional architectural or engineering services that constitute the practice of architecture or the practice of engineering as those terms are defined in § 54.1-400. However, professional architectural or engineering services may be included on a job order where such professional services (i) are incidental and directly related to the job, (ii) do not exceed \$25,000 per job order, and (iii) do not exceed \$75,000 per contract term. F. Job order contracting shall not be used for construction, maintenance, or asset management services for a highway, bridge, tunnel, or overpass.

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

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

B. In addition, a public body may purchase from another public body's contract or from the contract of the Metropolitan Washington Council of Governments or the Virginia Sheriffs' Association even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was a cooperative procurement being conducted on behalf of other public bodies, except for:

1. Contracts for architectural or engineering services; or

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2. Construction, except for the installation of artificial turf and track surfaces, including all associated and necessary construction, which shall not be subject to the limitations prescribed in this subdivision. Nothing in this subdivision shall be construed to prohibit sole source or emergency procurements awarded pursuant to subsections E and F of § 2.2-4303.

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

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

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

Pursuant to § 2.2-2012, such approval is not required if the procurement arrangement is for telecommunications and information technology goods and services of every description. In instances where the procurement arrangement is for telecommunications and information technology goods and services, such arrangement shall be permitted if approved by the Chief Information Officer of the Commonwealth. However, such acquisitions shall be procured competitively.

Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement. D. As authorized by the United States Congress and consistent with applicable federal regulations, and provided the terms of the contract permit such purchases:

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

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

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

**§ 2.2-4305. Competitive procurement by localities on state-aid projects.**

No contract for the construction of any building or for an addition to or improvement of an existing building by any local governing body or subdivision thereof for which state funds of not more than \$50,000 in the aggregate or for the sum of all phases of a contract or project either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed bidding or after competitive negotiation as provided under subsection D of § 2.2-4303 or Chapter 43.1 (§ 2.2-4378 et seq.). The procedure for the advertising for bids or for proposals and for letting of the contract shall conform, mutatis mutandis, to this chapter.

**§§ 2.2-4306 through 2.2-4308. Repealed**

**§ 2.2-4308.1. Purchase of owner-controlled insurance in construction projects.**

A. Notwithstanding any other provision of law to the contrary, a public body may purchase at its expense an owner-controlled insurance program in connection with any public construction contract where the amount of the contract or combination of contracts is more than \$100 million, provided that no single contract valued at less than \$50 million shall be combined pursuant to this section. The public body shall provide notice if it intends to use an owner-controlled insurance program, including the specific coverages of such program, in any request for proposal, invitation to bid, or other applicable procurement documents.

B. A public body shall not require a provider of architecture or professional engineering services to participate in the owner-controlled insurance program, except to the extent that the public body may elect to secure excess coverage. No contractor or subcontractor shall be required to provide insurance coverage for a construction project if that specified coverage is included in an owner-controlled insurance program in which the contractor or subcontractor is enrolled.

C. For the purposes of this section, “owner-controlled insurance program” means a consolidated insurance program or series of insurance policies issued to a public body that may provide for some or all of the following types of insurance coverage for any contractor or subcontractor working on or at a public construction contract or combination of such contracts: general liability, property damage, workers’ compensation, employer’s liability, pollution or environmental liability, excess or umbrella liability, builder’s risk, and excess or contingent professional liability.

**§ 2.2-4308.2. Registration and use of federal employment eligibility verification program required; debarment.**

A. For purposes of this section, “E-Verify program” means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208), Division C, Title IV, § 403(a), as amended, operated by the U.S. Department of Homeland Security, or a successor work authorization program designated by the U.S. Department of Homeland Security or other

federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99-603).

B. Any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with any agency of the Commonwealth to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract.

C. Any such employer who fails to comply with the provisions of subsection B shall be debarred from contracting with any agency of the Commonwealth for a period up to one year. Such debarment shall cease upon the employer's registration and participation in the E-Verify program.

**§ 2.2-4309. Modification of the contract.**

A. A public contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than twenty-five percent of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the Governor or his designee, in the case of state agencies, or the governing body, in the case of political subdivisions. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.

B. Any public body may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.

C. Nothing in this section shall prevent any public body from placing greater restrictions on contract modifications.

D. The provisions of this section shall not limit the amount a party to a public contract may claim or recover against a public body pursuant to § 2.2-4363 or any other applicable statute or regulation. Modifications made by a political subdivision that fail to comply with this section are voidable at the discretion of the governing body, and the unauthorized approval of a modification cannot be the basis of a contractual claim as set forth in § 2.2-4363.

**§ 2.2-4310. Discrimination prohibited; participation of small, women- owned, minority-owned, and service disabled veteran- owned business and employment services organization.**

A. In the solicitation or awarding of contracts, no public body shall discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by state law relating to discrimination in employment. Whenever solicitations are made, each public body shall include businesses selected from a list made available by the Department of Small Business and Supplier Diversity, which list shall include all companies and organizations certified by the Department.

B. All public bodies shall establish programs consistent with this chapter to facilitate the participation of small businesses, businesses owned by women, minorities, and service disabled veterans, and employment services organizations in procurement transactions. The programs established shall be in writing and shall

comply with the provisions of any enhancement or remedial measures authorized by the Governor pursuant to subsection C or, where applicable, by the chief executive of a local governing body pursuant to § 15.2-965.1, and shall include specific plans to achieve any goals established therein. State agencies shall submit annual progress reports on (i) small, women-owned, and minority-owned business procurement, (ii) service disabled veteran-owned business procurement, and (iii) employment services organization procurement to the Department of Small Business and Supplier Diversity in a form specified by the Department of Small Business and Supplier Diversity. Contracts and subcontracts awarded to employment services organizations shall be credited toward the small business, women-owned, and minority-owned business contracting and subcontracting goals of state agencies and contractors. The Department of Small Business and Supplier Diversity shall make information on service disabled veteran-owned procurement available to the Department of Veterans Services upon request.

C. Whenever there exists (i) a rational basis for small business or employment services organization enhancement or (ii) a persuasive analysis that documents a statistically significant disparity between the availability and utilization of women-owned and minority-owned businesses, the Governor is authorized and encouraged to require state agencies to implement appropriate enhancement or remedial measures consistent with prevailing law. Any enhancement or remedial measure authorized by the Governor pursuant to this subsection for state public bodies may allow for small businesses certified by the Department of Small Business and Supplier Diversity or a subcategory of small businesses established as a part of the enhancement program to have a price preference over noncertified businesses competing for the same contract award on designated procurements, provided that the bid of the certified small business or the business in such subcategory of small businesses established as a part of an enhancement program does not exceed the low bid by more than five percent.

D. In awarding a contract for services to a small, women-owned, or minority-owned business that is certified in accordance with § 2.2-1606, or to a business identified by a public body as a service disabled veteran-owned business where the award is being made pursuant to an enhancement or remedial program as provided in subsection C, the public body shall include in every such contract of more than \$10,000 the following:

“If the contractor intends to subcontract work as part of its performance under this contract, the contractor shall include in the proposal a plan to subcontract to small, women-owned, minority-owned, and service disabled veteran-owned businesses.”

E. In the solicitation or awarding of contracts, no state agency, department or institution shall discriminate against a bidder or offeror because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest.

F. As used in this section:

“Employment services organization” means an organization that provides community-based employment services to individuals with disabilities that is an approved Commission on Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Department for Aging and Rehabilitative Services.

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“Minority individual” means an individual who is a citizen of the United States or a legal resident alien and who satisfies one or more of the following definitions:

“African American” means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.

“Asian American” means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana Islands, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh, or Sri Lanka and who is regarded as such by the community of which this person claims to be a part.

“Hispanic American” means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.

“Native American” means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.

“Minority-owned business” means a business that is at least 51 percent owned by one or more minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more minority individuals, or any historically black college or university as defined in § 2.2-1604, regardless of the percentage ownership by minority individuals or, in the case of a corporation, partnership, or limited liability company or other entity, the equity ownership interest in the corporation, partnership, or limited liability company or other entity.

“Service disabled veteran” means a veteran who (i) served on active duty in the United States military ground, naval, or air service, (ii) was discharged or released under conditions other than dishonorable, and (iii) has a service-connected disability rating fixed by the United States Department of Veterans Affairs.

“Service disabled veteran business” means a business that is at least 51 percent owned by one or more service disabled veterans or, in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more individuals who are service disabled veterans and both the management and daily business operations are controlled by one or more individuals who are service disabled veterans.

“Small business” means a business, independently owned and controlled by one or more individuals who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees, or annual gross receipts of \$10 million or less averaged over the previous three years. One or more of

the individual owners shall control both the management and daily business operations of the small business.

“State agency” means any authority, board, department, instrumentality, institution, agency, or other unit of state government. “State agency” shall not include any county, city, or town.

“Women-owned business” means a business that is at least 51 percent owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest is owned by one or more women who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women.

**§ 2.2-4310.1. Awards as a result of any authorized enhancement or remedial measure; requirements.**

A. Any enhancement or remedial measure authorized by the Governor pursuant to subsection C of § 2.2-4310 for state public bodies shall include a provision that the procurement shall be conducted in accordance with such enhancement or remedial measure for businesses certified by the Department of Small Business and Supplier Diversity. If such enhancement or remedial measure provides for an award priority for such businesses, then the contract shall be awarded in accordance with such priority if such priority business participated in the solicitation and requirements are met. If an award is not made based on the foregoing, then the contract shall be awarded in accordance with the next award priority and so on until a contract is awarded based on the established award priority.

B. If an award is not made pursuant to subsection A, the procurement award may be made without regard to such enhancement or remedial measure.

**§ 2.2-4310.2. State agency’s goals for participation by small businesses; requirements.**

Any state agency’s goals under § 2.2-4310 for participation by small businesses shall include within the goals a minimum of three percent participation by service disabled veteran businesses as defined in §§ 2.2-2001 and 2.2-4310 when contracting for information technology goods and services.

As used in this section, “information technology” and “state agency” mean the same as those terms are defined in § 2.2-2006.

**§ 2.2-4310.3. Fiscal data pertaining to certain enhancement or remedial measures.**

The Department of General Services shall make available a dashboard of purchase order reports from the Commonwealth’s statewide electronic procurement system known as eVA. The dashboard shall include aggregated data showing (i) current fiscal year purchase orders, (ii) purchase orders from the previous fiscal year, and (iii) other relevant data derived from any enhancement or remedial measure implemented by the Governor pursuant to subsection C of § 2.2-4310.

**§ 2.2-4311. Employment discrimination by contractor prohibited; required contract provisions.**

All public bodies shall include in every contract of more than \$10,000 the following provisions:

1. During the performance of this contract, the contractor agrees as follows:

a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.

c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

**§ 2.2-4311.1. Compliance with federal, state, and local laws and federal immigration law; required contract provisions.**

All public bodies shall provide in every written contract that the contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

**§ 2.2-4311.2. Compliance with state law; foreign and domestic businesses authorized to transact business in the Commonwealth.**

A. All public bodies shall include in every written contract a provision that a contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.

B. Pursuant to competitive sealed bidding or competitive negotiation, all public bodies shall include in the solicitation a provision that requires a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 to include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized.

C. Any bidder or offeror described in subsection B that fails to provide the required information shall not receive an award unless a waiver of this requirement and the administrative policies and procedures established to implement this section is granted by the Director of the Department of General Services or his designee or by the chief executive of a local governing body.

D. Any business entity described in subsection A that enters into a contract with a public body pursuant to this chapter shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract.

E. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

**§ 2.2-4312. Drug-free workplace to be maintained by contractor; required contract provisions.**

All public bodies shall include in every contract over \$10,000 the following provisions:

During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

**§ 2.2-4313. Petition for recycled goods and products; periodic review of procurement standards.**

A. Any person who believes that particular goods or products with recycled content are functionally equivalent to the same goods or products produced from virgin materials may petition the Department of General Services or other appropriate agency of the Commonwealth to include the recycled goods or products in its procurement process. The petitioner shall submit, prior to or during the procurement process, documentation that establishes that the goods or products (i) contain recycled content and (ii) can meet the performance standards set forth in the applicable specifications. If the Department of General Services or other agency of the Commonwealth that receives the petition determines that the documentation demonstrates that the goods or products with recycled content will meet the performance standards set forth in the applicable specifications, it shall incorporate the goods or products into its procurement process.

B. The Department of General Services and all agencies of the Commonwealth shall review and revise their procurement procedures and specifications on a continuing basis to encourage the use of goods and

products with recycled content and shall, in developing new procedures and specifications, encourage the use of goods and products with recycled content.

**§ 2.2-4314. Petition for procurement of less toxic goods and products; periodic review of procurement standards.**

A. As used in this section:

“*Goods and products*” means goods and products that are used or consumed by an agency of the Commonwealth in the performance of its statutory functions. The term shall include, but not be limited to (i) cleaning materials, (ii) paints and coatings, (iii) solvents, (iv) adhesives, (v) inks, and (vi) pesticides and herbicides. The term shall not include: (i) fuels, (ii) food and beverages, (iii) furniture and fixtures, (iv) tobacco products, and (v) packaging and containers.

“*Less toxic goods and products*” means goods and products that (i) are functionally equivalent to and (ii) contain, emit, produce, or generate, less toxic or hazardous substances, or other toxic or hazardous substances that pose less of a hazard to public health and safety, or both, than goods and products procured by the Department of General Services or other agency of the Commonwealth.

“*Toxic or hazardous substance*” means (i) a chemical identified on the Toxic Chemical List established pursuant to § 313 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq. (P.L. 99-499) or (ii) a chemical listed pursuant to §§ 101 (14) or 102 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. (P.L. 92-500).

B. Any person who manufactures, sells, or supplies goods or products may petition the Department of General Services or other appropriate agency of the Commonwealth for the inclusion of the less toxic goods and products in its procurement process. The petitioner shall submit, prior to or during the procurement process, documentation that establishes that the goods or products meet the performance standards set forth in the applicable specifications. If the Department of General Services or other agency of the Commonwealth that receives the petition determines that the documentation establishes that the less toxic goods or products meet the performance standards set forth in the applicable specifications, it shall incorporate such goods or products into its procurement process.

C. The Department of General Services and all agencies of the Commonwealth shall review and revise their procurement procedures and specifications on a continuing basis to encourage the use of less toxic goods and products. However, nothing in this section shall require the Department or other agencies to purchase, test or evaluate any particular goods or products. Nor shall this section require the Department to purchase goods or products other than those that would be purchased under regular procurement procedures.

**§ 2.2-4315. Use of brand names.**

Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or manufacturer shall not restrict bidders to the specific brand, make or manufacturer named and shall be deemed to convey the general style, type, character, and quality of the article desired. Any article that the public body in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

**§ 2.2-4316. Comments concerning specifications.**

Every public body awarding public contracts shall establish procedures whereby comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal can be received and considered prior to the time set for receipt of bids or proposals or award of the contract.

**§ 2.2-4317. Prequalification generally; prequalification for construction.**

A. Prospective contractors may be prequalified for particular types of supplies, services, insurance or construction, and consideration of bids or proposals limited to prequalified contractors. Any prequalification procedure shall be established in writing and sufficiently in advance of its implementation to allow potential contractors a fair opportunity to complete the process.

B. Any prequalification of prospective contractors for construction by a public body shall be pursuant to a prequalification process for construction projects adopted by the public body. The process shall be consistent with the provisions of this section. The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information subject to the provisions of subsection D of § 2.2-4342.

In all instances in which the public body requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.

At least 30 days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the public body shall advise in writing each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to the contractor shall state the reasons for the denial of prequalification and the factual basis of such reasons.

A decision by a public body denying prequalification under the provisions of this subsection shall be final and conclusive unless the contractor appeals the decision as provided in § 2.2-4357.

C. A public body may deny prequalification to any contractor only if the public body finds one of the following:

1. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the public body shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement;

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2. The contractor does not have appropriate experience to perform the construction project in question;

3. The contractor or any officer, director or owner thereof has had judgments entered against him within the past ten years for the breach of contracts for governmental or nongovernmental construction, including, but not limited to, design-build or construction management;

4. The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with a public body without good cause. If the public body has not contracted with a contractor in any prior construction contracts, the public body may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. A public body may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto given to the contractor at that time, with the opportunity to respond;

5. The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past ten years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6 (§ 2.2-4367 et seq.) of this chapter, (ii) the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.), (iii) Chapter 4.2 (§ 59.1-68.6 et seq.) of Title 59.1, or (iv) any substantially similar law of the United States or another state;

6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government; and

7. The contractor failed to provide to the public body in a timely manner any information requested by the public body relevant to subdivisions 1 through 6 of this subsection.

D. If a public body has a prequalification ordinance that provides for minority participation in municipal construction contracts, that public body may also deny prequalification based on minority participation criteria. However, nothing herein shall authorize the adoption or enforcement of minority participation criteria except to the extent that such criteria, and the adoption and enforcement thereof, are in accordance with the Constitution and laws of the United States and the Commonwealth.

E. A state public body shall deny prequalification to any contractor who fails to register and participate in the E-Verify program as required by § 2.2-4308.2.

F. The provisions of subsections B, C, and D shall not apply to prequalification for contracts let under § 33.2-209, 33.2-214, or 33.2-221.

**§ 2.2-4318. Negotiation with lowest responsible bidder.**

Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the public body may negotiate with the apparent low bidder to obtain a contract price within available funds. However, the

negotiation may be undertaken only under conditions and procedures described in writing and approved by the public body prior to issuance of the Invitation to Bid and summarized therein.

**§ 2.2-4319. Cancellation, rejection of bids; waiver of informalities.**

A. An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of the contract file. A public body shall not cancel or reject an Invitation to Bid, a Request for Proposal, any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror.

B. A public body may waive informalities in bids.

**§ 2.2-4320. Exclusion of insurance bids prohibited.**

Notwithstanding any other provision of law, no insurer licensed to transact the business of insurance in the Commonwealth or approved to issue surplus lines insurance in the Commonwealth shall be excluded from presenting an insurance bid proposal to a public body in response to a request for proposal or an invitation to bid. Nothing in this section shall preclude a public body from debaring a prospective insurer pursuant to § 2.2-4321.

**§ 2.2-4321. Debarment.**

Prospective contractors may be debarred from contracting for particular types of supplies, services, insurance or construction, for specified periods of time. Any debarment procedure shall be established in writing for state agencies and institutions by the agency designated by the Governor and for political subdivisions by their governing bodies. Any debarment procedure may provide for debarment on the basis of a contractor's unsatisfactory performance for a public body.

**§ 2.2-4321.1. Prohibited contracts; exceptions; determination by Department of Taxation; appeal; remedies.**

A. No state agency shall contract for goods or services with a nongovernmental source if the source, or any affiliate of the source, is subject to the provisions of (i) § 58.1-612 and fails or refuses to collect and remit the tax on its sales delivered by any means to locations within the Commonwealth or (ii) Article 2 (§ 58.1-320 et seq.) or Article 10 (§ 58.1-400 et seq.) of Chapter 3 of Title 58.1 and fails or refuses to remit any tax due thereunder. The provisions of clause (ii) shall not apply to any person that has (a) entered into a payment agreement with the Department of Taxation to pay the tax and is not delinquent under the terms of the agreement or (b) appealed the assessment of the tax in accordance with law and such appeal is pending.

B. A state agency may contract for goods or services with a source prohibited under subsection A in the event of an emergency or where the nongovernmental source is the sole source of such goods or services.

C. The determination of whether a source is a prohibited source shall be made by the Department of Taxation after providing the prohibited source with notice and an opportunity to respond to the proposed

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determination. The Department of Taxation shall notify the Department of General Services of its determination.

D. The Department of General Services shall post public notice of all prohibited sources on its public internet procurement website and on other appropriate websites.

E. The remedies provided in Article 5 (§ 2.2-4357 et seq.) of this chapter shall not apply to any determination made pursuant to this section and the sole remedy for any adverse determination shall be as provided in subsection F.

F. Any source aggrieved by a determination of the Department of Taxation made under this section may apply to the Tax Commissioner for correction of the determination. The Tax Commissioner shall respond within 30 days of receipt of the application for corrective action. Within 10 days after receipt of the Tax Commissioner's response, the aggrieved source may appeal to the Circuit Court for the City of Richmond. If it is determined that the determination of the Department of Taxation was arbitrary, capricious, or not in accordance with law, the sole relief shall be restoration of the source's eligibility to contract with state agencies. No claim for damages or attorney's fees shall be awarded.

G. Any action of the Department of Taxation, the Department of General Services, or of any state agency under this section shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

H. For the purposes of this section, "state agency" means any authority, board, department, instrumentality, institution, agency or other unit of state government. State agency shall not include any public institution of higher education or any county, city or town or any local or regional governmental authority.

**§ 2.2-4321.2. Public works contract requirements.**

A. As used in this section:

"Public works" means the operation, erection, construction, alteration, improvement, maintenance, or repair of any public facility or immovable property owned, used, or leased by a state agency.

"State agency" means any authority, board, department, instrumentality, institution, agency, or other unit of state government. "State agency" shall not include any county, city, or town.

B. Except as provided in subsection F or as required by federal law, each state agency, when engaged in procuring products or services or letting contracts for construction, manufacture, maintenance, or operation of public works paid for in whole or in part by state funds, or when overseeing or administering such procurement, construction, manufacture, maintenance, or operation, shall ensure that neither the state agency nor any construction manager acting on behalf of the state agency shall, in its bid specifications, project agreements, or other controlling documents:

1. Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or related public works projects; or

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2. Otherwise discriminate against bidders, offerors, contractors, subcontractors, or operators for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related public works projects. Nothing in this subsection shall prohibit contractors or subcontractors from voluntarily entering into agreements described in subdivision 1.

C. A state agency issuing grants, providing financial assistance, or entering into cooperative agreements for the construction, manufacture, maintenance, or operation of public works shall ensure that neither the bid specifications, project agreements, nor other controlling documents therefor awarded by recipients of grants or financial assistance or by parties to cooperative agreements, nor those of any construction manager acting on behalf of such recipients, shall:

1. Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or related projects; or

2. Otherwise discriminate against bidders, offerors, contractors, subcontractors, or operators for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related projects.

D. If an awarding authority, a recipient of grants or financial assistance, a party to a cooperative agreement, or a construction manager acting on behalf of any of them performs in a manner contrary to the provisions of subsection B or C, the state agency awarding the contract, grant, or assistance shall be entitled to injunctive relief to prevent any violation of this section.

E. Any interested party, which shall include a bidder, offeror, contractor, subcontractor, or operator, shall have standing to challenge any bid specification, project agreement, neutrality agreement, controlling document, grant, or cooperative agreement that violates the provisions of this section. Furthermore, such interested party shall be entitled to injunctive relief to prevent any violation of this section.

F. The provisions of this section shall not:

1. Apply to any public-private agreement for any construction or infrastructure project in which the private body, as a condition of its investment or partnership with the state agency, requires that the private body have the right to control its labor relations policy and perform all work associated with such investment or partnership in compliance with all collective bargaining agreements to which the private party is a signatory and is thus legally bound with its own employees and the employees of its contractors and subcontractors in any manner permitted by the National Labor Relations Act, 29 U.S.C. § 151 et seq., or the Railway Labor Act, 45 U.S.C. § 151 et seq.;

2. Prohibit an employer or any other person covered by the National Labor Relations Act or the Railway Labor Act from entering into agreements or engaging in any other activity protected by law; or

3. Be interpreted to interfere with the labor relations of persons covered by the National Labor Relations Act or the Railway Labor Act.

**§ 2.2-4322. Acceptance of bids submitted to the Department of Transportation.**

In a procurement by the Department of Transportation by competitive sealed bidding for highway construction and maintenance contracts, the Department may accept bids in response to an Invitation to Bid at the Department's central office or at district offices or other satellite locations designated in the Invitation to Bid, in accordance with specifications adopted by the Department. An Invitation to Bid may authorize agents of the Department to accept from bidders on a voluntary basis a supplemental submission referencing the total bid amount on a form prescribed by the Department. Information contained in any supplemental submission may be made available to the public by the Department after the time for receiving bids has expired and before the public opening and announcement of all sealed bids.

**§ 2.2-4323. Purchase programs for recycled goods; agency responsibilities.**

A. All state agencies shall implement a purchase program for recycled goods and shall coordinate their efforts so as to achieve the goals and objectives established in subsection C as well as those set forth in §§ 10.1-1425.6, 10.1-1425.7, 10.1-1425.8, 2.2-4313, 2.2-4324, and 2.2-4326.

B. The Department of Environmental Quality shall advise the Department of General Services concerning the designation of recycled goods. In cooperation with the Department of General Services, the Department of Environmental Quality shall increase the awareness of state agencies as to the benefits of using such products.

C. The Department of General Services shall:

1. Ensure that the Commonwealth's procurement guidelines for state agencies promote the use of recycled goods.
2. Promote the Commonwealth's interest in the use of recycled products to vendors.
3. Make agencies aware of the availability of recycled goods, including those that use post-consumer and other recovered materials processed by Virginia- based companies.

D. All state agencies shall, to the greatest extent possible, adhere to the procurement program guidelines for recycled products to be established by the Department of General Services.

**§ 2.2-4323.1. Purchase of flags of the United States and the Commonwealth by public bodies.**

Notwithstanding any provision of law to the contrary, whenever a state or local public body or school division purchases a flag of the United States or a flag of the Commonwealth for public use, such flag shall be made in the United States from articles, materials, or supplies that are grown, produced, and manufactured in the United States, if available.

**§ 2.2-4324. Preference for Virginia products with recycled content and for Virginia firms.**

A. In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be decided by lot.

B. Whenever the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a percentage preference, a like preference shall be allowed to the lowest responsive and responsible bidder who is a resident of Virginia and is the next lowest bidder. If the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a price-matching preference, a like preference shall be allowed to responsive and responsible bidders who are residents of Virginia. If the lowest bidder is a resident contractor of a state with an absolute preference, the bid shall not be considered. The Department of General Services shall post and maintain an updated list on its website of all states with an absolute preference for their resident contractors and those states that allow their resident contractors a percentage preference, including the respective percentage amounts. For purposes of compliance with this section, all public bodies may rely upon the accuracy of the information posted on this website.

C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.

D. For the purposes of this section, a Virginia person, firm or corporation shall be deemed to be a resident of Virginia if such person, firm or corporation has been organized pursuant to Virginia law or maintains a principal place of business within Virginia.

**§ 2.2-4325. Preference for Virginia coal used in state facilities.**

In determining the award of any contract for coal to be purchased for use in state facilities with state funds, the Department of General Services shall procure using competitive sealed bidding and shall award to the lowest responsive and responsible bidder offering coal mined in Virginia so long as its bid price is not more than four percent greater than the bid price of the low responsive and responsible bidder offering coal mined elsewhere.

**§ 2.2-4326. Preference for recycled paper and paper products used by state agencies.**

A. In determining the award of any contract for paper and paper products to be purchased for use by agencies of the Commonwealth, the Department of General Services shall procure using competitive sealed bidding and shall award to the lowest responsive bidder offering recycled paper and paper products of a quality suitable for the purpose intended, so long as the bid price is not more than ten percent greater than the bid price of the low responsive and responsible bidder offering a product that does not qualify under subsection B.

B. For purposes of this section, recycled paper and paper products means any paper or paper products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 247.

**§ 2.2-4327. Preference for community reinvestment activities in contracts for investment of funds.**

Notwithstanding any other provision of law, any county, town, or city that is authorized to and has established affordable housing programs may provide by resolution that in determining the award of any contract for time deposits or investment of its funds, the treasurer or director of finance of such county, town, or city may consider, in addition to the typical criteria, the investment activities of qualifying institutions that enhance the supply of, or accessibility to, affordable housing within the jurisdiction, including the accessibility of such housing to employees of the county, town, or city or employees of the local school board. No more than 50 percent of the funds of the county, town, or city, calculated on the basis of the average daily balance of the general fund during the previous fiscal year, may be deposited or invested by considering such investment activities as a factor in the award of a contract. A qualifying institution shall meet the provisions of the Virginia Security for Public Deposits Act (§ 2.2-4400 et seq.) and all local terms and conditions for security, liquidity and rate of return. For the purposes of this section, affordable housing means the same as that term is defined in § 15.2-2201.

**§ 2.2-4328. Preference for local products and firms; applicability.**

A. The governing body of a county, city or town may, in the case of a tie bid, give preference to goods, services and construction produced in such locality or provided by persons, firms or corporations having principal places of business in the locality, if such a choice is available; otherwise the tie shall be decided by lot, unless § 2.2-4324 applies.

B. The provisions of this section shall apply only to bids submitted pursuant to a written Invitation to Bid.

**§ 2.2-4329. Expired.**

**§ 2.2-4329.1. Energy forward pricing mechanisms.**

A. As used in this section, unless the context requires a different meaning:

“Energy” means natural gas, heating oil, propane, diesel fuel, unleaded fuel, and any other energy source except electricity.

“Forward pricing mechanism” means either: (i) a contract or financial instrument that obligates a public body to buy or sell a specified quantity of energy at a future date at a set price or (ii) an option to buy or sell the contract or financial instrument.

B. Notwithstanding any other law to the contrary but subject to available appropriation, a public body may use forward pricing mechanisms for budget risk reduction.

C. Forward pricing mechanism transactions shall be made only under the following conditions:

1. The quantity of energy affected by the forward pricing mechanism shall not exceed the estimated energy use for the public body for the same period, which shall not exceed 48 months from the trade date of the transaction; and

2. A separate account shall be established for operational energy for each public body using a forward pricing mechanism.

D. Before exercising the authority under this section, the public body shall develop written policies and procedures governing the use of forward pricing mechanisms and disclosure of the same to the public.

E. Before exercising authority under subsection B, the public body shall establish an oversight process that provides for review of the public body's use of forward pricing mechanisms. The oversight process shall include internal or external audit reviews; annual reports to, and review by, an internal investment committee; and internal management control.

**§ 2.2-4330. Withdrawal of bid due to error.**

A. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

B. One of the following procedures for withdrawal of a bid shall be selected by the public body and stated in the advertisement for bids:

1. The bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice; or

2. Where the public body opens the bids one day following the time fixed for the submission of bids, the bidder shall submit to the public body or designated official his original work papers, documents and materials used in the preparation of the bid at or prior to the time fixed for the opening of bids. The work papers shall be delivered by the bidder in person or by registered mail. The bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the public body until the two-hour period has elapsed. Under these procedures, the mistake shall be proved only from the original work papers, documents and materials delivered as required herein. The work papers, documents and materials submitted by the bidder shall, at the bidder's request, be considered trade secrets or proprietary information subject to the conditions of subsection F of § 2.2-4342.

C. A public body may establish procedures for the withdrawal of bids for other than construction contracts.

D. No bid shall be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.

E. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed to be the low bid.

F. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

G. The public body shall notify the bidder in writing within five business days of its decision regarding the bidder's request to withdraw its bid. If the public body denies the withdrawal of a bid under the provisions of this section, it shall state in such notice the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder. At the same time that the notice is provided, the public body shall return all work papers and copies thereof that have been submitted by the bidder.

**§ 2.2-4331. Contract pricing arrangements.**

A. Except as prohibited in this section, public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other basis that is not prohibited.

B. Except in case of emergency affecting the public health, safety, or welfare, no public contract shall be awarded on the basis of cost plus a percentage of cost.

C. The following contract pricing arrangements shall not be prohibited by this section:

1. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or part as a percentage of such claims; or

2. A cost plus a percentage of the private investment made by a private entity as a basis for the procurement of commercial or financial consulting services related to a qualifying transportation facility under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or a qualifying project under the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) where the commercial or financial consulting services are sought to solicit or to solicit and evaluate proposals for the qualifying transportation facility or the qualifying project. As used in this section, "private entity" and "qualifying transportation facility" mean the same as those terms are defined in § 33.2-1800 and "qualifying project" means the same as that term is defined in § 56-575.1.

**§ 2.2-4332. Workers' compensation requirements for construction contractors and subcontractors.**

A. No contractor shall perform any work on a construction project of a department, agency or institution of the Commonwealth or any of its political subdivisions unless he (i) has obtained, and continues to maintain for the duration of the work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 and (ii) provides prior to the award of contract, on a form furnished by the department, agency, or institution of the Commonwealth or political subdivision thereof, evidence of such coverage.

B. The Department of General Services shall provide the form to such departments, agencies, institutions, and political subdivisions. Failure of a department, agency, institution or political subdivision to provide the form prior to the award of contract shall waive the requirements of clause (ii) of subsection A.

C. No subcontractor shall perform any work on a construction project of a department, agency or institution of the Commonwealth unless he has obtained, and continues to maintain for the duration of such work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2.

**§ 2.2-4333. Retainage on construction contracts.**

A. In any public contract for construction that provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least ninety-five percent of the earned sum when payment is due, with no more than five percent being retained to ensure faithful performance of the contract. All amounts withheld may be included in the final payment.

B. Any subcontract for a public project that provides for similar progress payments shall be subject to the provisions of this section.

**§ 2.2-4334. Deposit of certain retained funds on certain contracts with local governments; penalty for failure to timely complete.**

A. Any county, city, town or agency thereof or other political subdivision of the Commonwealth when contracting directly with contractors for public contracts of \$200,000 or more for construction of highways, roads, streets, bridges, parking lots, demolition, clearing, grading, excavating, paving, pile driving, miscellaneous drainage structures, and the installation of water, gas, sewer lines and pumping stations where portions of the contract price are to be retained, shall include in the Bid Proposal an option for the contractor to use an escrow account procedure for utilization of the political subdivision's retainage funds by so indicating in the space provided in the proposal documents. In the event the contractor elects to use the escrow account procedure, the escrow agreement form included in the Bid Proposal and Contract shall be executed and submitted to the political subdivision within fifteen calendar days after notification. If the escrow agreement form is not submitted within the fifteen-day period, the contractor shall forfeit his rights to the use of the escrow account procedure.

B. In order to have retained funds paid to an escrow agent, the contractor, the escrow agent, and the surety shall execute an escrow agreement form. The contractor's escrow agent shall be a trust company, bank

or savings institution with its principal office located in the Commonwealth. The escrow agreement and all regulations adopted by the political subdivision entering into the contract shall be substantially the same as that used by the Virginia Department of Transportation.

C. This section shall not apply to public contracts for construction for railroads, public transit systems, runways, dams, foundations, installation or maintenance of power systems for the generation and primary and secondary distribution of electric current ahead of the customer's meter, the installation or maintenance of telephone, telegraph or signal systems for public utilities and the construction or maintenance of solid waste or recycling facilities and treatment plants.

D. Any such public contract for construction with a county, city, town or agency thereof or other political subdivision of the Commonwealth, which includes payment of interest on retained funds, may require a provision whereby the contractor, exclusive of reasonable circumstances beyond the control of the contractor stated in the contract, shall pay a specified penalty for each day exceeding the completion date stated in the contract.

E. Any subcontract for such public project that provides for similar progress payments shall be subject to the provisions of this section.

**§ 2.2-4335. Public construction contract provisions barring damages for unreasonable delays declared void.**

A. Any provision contained in any public construction contract that purports to waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the extent the delay is caused by acts or omissions of the public body, its agents or employees and due to causes within their control shall be void and unenforceable as against public policy.

B. Subsection A shall not be construed to render void any provision of a public construction contract that:

1. Allows a public body to recover that portion of delay costs caused by the acts or omissions of the contractor, or its subcontractors, agents or employees;
2. Requires notice of any delay by the party claiming the delay;
3. Provides for liquidated damages for delay; or
4. Provides for arbitration or any other procedure designed to settle contract disputes.

C. A contractor making a claim against a public body for costs or damages due to the alleged delaying of the contractor in the performance of its work under any public construction contract shall be liable to the public body and shall pay it for a percentage of all costs incurred by the public body in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage shall be equal to the percentage of the contractor's total delay claim that is determined through litigation or arbitration to be false or to have no basis in law or in fact.

D. A public body denying a contractor's claim for costs or damages due to the alleged delaying of the contractor in the performance of work under any public construction contract shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the public body shall be equal to the percentage of the contractor's total delay claim for which the public body's denial is determined through litigation or arbitration to have been made in bad faith.

**§ 2.2-4336. Bid bonds.**

A. Except in cases of emergency, all bids or proposals for nontransportation- related construction contracts in excess of \$500,000 or transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 that are in excess of \$250,000 and partially or wholly funded by the Commonwealth shall be accompanied by a bid bond from a surety company selected by the bidder that is authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent of the amount bid.

B. For nontransportation-related construction contracts in excess of \$100,000 but less than \$500,000, where the bid bond requirements are waived, prospective contractors shall be prequalified for each individual project in accordance with § 2.2-4317. However, a locality may waive the requirement for prequalification of a bidder with a current Class A contractor license for contracts in excess of \$100,000 but less than \$300,000 upon a written determination made in advance by the local governing body that waiving the requirement is in the best interests of the locality. A locality shall not enter into more than 10 such contracts per year.

C. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

D. Nothing in this section shall preclude a public body from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$500,000 for nontransportation-related projects or \$250,000 for transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 and partially or wholly funded by the Commonwealth.

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

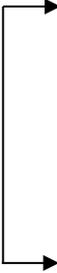
A. Except as provided in subsection H, upon the award of any (i) public construction contract exceeding \$500,000 awarded to any prime contractor; (ii) construction contract exceeding \$500,000 awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings,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

1. A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract. For transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2, such bond shall be in a form and amount satisfactory to the public body.

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2. A payment bond in the sum of the contract amount. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or performed in the furtherance of the work. For transportation- related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 and partially or wholly funded by the Commonwealth, such bond shall be in a form and amount satisfactory to the public body.

As used in this subdivision, “labor or materials” includes public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.



B. For nontransportation-related construction contracts in excess of \$100,000 but less than \$500,000, where the performance and payment bond requirements are waived, prospective contractors shall be prequalified for each individual project in accordance with § 2.2-4317. However, a locality may waive the requirement for prequalification of a contractor with a current Class A contractor license for contracts in excess of \$100,000 but less than \$300,000 upon a written determination made in advance by the local governing body that waiving the requirement is in the best interests of the locality. A locality shall not enter into more than 10 such contracts per year.

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

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

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

F. Nothing in this section shall preclude a public body from requiring payment or performance bonds for construction contracts below \$500,000 for nontransportation-related projects or \$350,000 for transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 and partially or wholly funded by the Commonwealth.

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

H. The performance and payment bond requirements of subsection A for transportation-related projects that are valued in excess of \$250,000 but less than \$350,000 may only be waived by a public body if the bidder provides evidence, satisfactory to the public body, that a surety company has declined an application from the contractor for a performance or payment bond.

**§ 2.2-4338. Alternative forms of security.**

A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check, cashier's check, or cash escrow in the face amount required for the bond.

B. If approved by the Attorney General in the case of state agencies, or the attorney for the political subdivision in the case of political subdivisions, a bidder may furnish a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment, or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the public body equivalent to a corporate surety's bond.

C. The provisions of this section shall not apply to the Department of Transportation.

**§ 2.2-4339. Bonds on other than construction contracts.**

A public body may require bid, payment, or performance bonds for contracts for goods or services if provided in the Invitation to Bid or Request for Proposal.

**§ 2.2-4340. Action on performance bond.**

No action against the surety on a performance bond shall be brought unless within five years after completion of the work on the project to the satisfaction of the Department of Transportation, in cases where the public body is the Department of Transportation, or, in all other cases, within one year after (i) completion of the contract, including the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty that gave rise to the action.

**§ 2.2-4341. Actions on payment bonds; waiver of right to sue.**

A. Any claimant who has a direct contractual relationship with the contractor and who has performed labor or furnished material in accordance with the contract documents in furtherance of the work provided in any contract for which a payment bond has been given, and who has not been paid in full before the expiration of 90 days after the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, may bring an action on the payment bond to recover any amount due him for the labor or material. The obligee named in the bond need not be named a party to the action.

B. Any claimant who has a direct contractual relationship with any subcontractor but who has no contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond only if he has given written notice to the contractor within 90 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.

C. Any action on a payment bond shall be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.

D. Any waiver of the right to sue on the payment bond required by this section shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has performed labor or furnished material in accordance with the contract documents.

**§ 2.2-4342. Public inspection of certain records.**

A. Except as provided in this section, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

B. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.

C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the public body decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.

D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award, except in the event that the public body decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only after award of the contract.

E. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection B of § 2.2-4317 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.

**Article 3. Exemptions and  
Limitations**

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

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

1. The Virginia Port Authority in the exercise of any of its powers in accordance with Chapter 10 (§ 62.1-128 et seq.) of Title 62.1, provided the Authority implements, by policy or regulation adopted by the Board of Commissioners, procedures to ensure fairness and competitiveness in the procurement of goods and

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services and in the administration of its capital outlay program. This exemption shall be applicable only so long as such policies and procedures meeting the requirements remain in effect.

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

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

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

5. The College of William and Mary in Virginia, Virginia Commonwealth University, the University of Virginia, and Virginia Polytechnic Institute and State University in the selection of services related to the management and investment of their endowment funds, endowment income, gifts, all other nongeneral fund reserves and balances, or local funds of or held by the respective public institution of higher education pursuant to § 23.1-2210, 23.1-2306, 23.1-2604, or 23.1-2803. However, selection of these services shall be governed by the Uniform Prudent Management of Institutional Funds Act (§ 64.2-1100 et seq.) as required by §§ 23.1-2210, 23.1-2306, 23.1-2604, and 23.1-2803.

6. The Board of the Virginia College Savings Plan for the selection of services related to the operation and administration of the Plan, including, but not limited to, contracts or agreements for the management, purchase, or sale of authorized investments or actuarial, record keeping, or consulting services. However, such selection shall be governed by the standard set forth in § 23.1-706.

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

8. The purchase of goods and services by agencies of the legislative branch that may be specifically exempted therefrom by the Chairman of the Committee on Rules of either the House of Delegates or the Senate. Nor shall the contract review provisions of § 2.2-2012 apply to such procurements. The exemption shall be in writing and kept on file with the agency's disbursement records.

9. Any town with a population of less than 3,500, except as stipulated in the provisions of §§ 2.2-4305, 2.2-4311, 2.2-4315, 2.2-4330, 2.2-4333 through 2.2-4338, 2.2-4343.1, and 2.2-4367 through 2.2-4377 and Chapter 43.1 (§ 2.2- 4378 et seq.).

10. Any county, city or town whose governing body has adopted, by ordinance or resolution, alternative policies and procedures which are (i) based on competitive principles and (ii) generally applicable to procurement of goods and services by such governing body and its agencies, except as stipulated in subdivision 12. This exemption shall be applicable only so long as such policies and procedures, or other policies and procedures meeting the requirements of § 2.2-4300, remain in effect in such county, city or town. Such policies

and standards may provide for incentive contracting that offers a contractor whose bid is accepted the opportunity to share in any cost savings realized by the locality when project costs are reduced by such contractor, without affecting project quality, during construction of the project. The fee, if any, charged by the project engineer or architect for determining such cost savings shall be paid as a separate cost and shall not be calculated as part of any cost savings.

11. Any school division whose school board has adopted, by policy or regulation, alternative policies and procedures that are (i) based on competitive principles and (ii) generally applicable to procurement of goods and services by the school board, except as stipulated in subdivision 12. This exemption shall be applicable only so long as such policies and procedures, or other policies or procedures meeting the requirements of § 2.2-4300, remain in effect in such school division. This provision shall not exempt any school division from any centralized purchasing ordinance duly adopted by a local governing body.

12. Notwithstanding the exemptions set forth in subdivisions 9 through 11, the provisions of subsections C and D of § 2.2-4303, §§ 2.2-4305, 2.2-4311, 2.2-4315, 2.2-4317, 2.2-4330, 2.2-4333 through 2.2-4338, 2.2-4343.1, and 2.2-4367 through 2.2-4377, and Chapter 43.1 (§ 2.2-4378 et seq.) shall apply to all counties, cities and school divisions, and to all towns having a population greater than 3,500 in the Commonwealth.

The method for procurement of professional services through competitive negotiation set forth in §§ 2.2-4303.1 and 2.2-4303.2 shall also apply to all counties, cities and school divisions, and to all towns having a population greater than 3,500, where the cost of the professional service is expected to exceed \$60,000 in the aggregate or for the sum of all phases of a contract or project. A school board that makes purchases through its public school foundation or purchases educational technology through its educational technology foundation, either as may be established pursuant to § 22.1-212.2:2 shall be exempt from the provisions of this chapter, except, relative to such purchases, the school board shall comply with the provisions of §§ 2.2-4311 and 2.2-4367 through 2.2-4377.

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

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

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

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

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

18. The University of Virginia Medical Center to the extent provided by subdivision A 3 of § 23.1-2213.

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

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

21. [Expired].

22. The purchase of Virginia-grown food products for use by a public body where the annual cost of the product is not expected to exceed \$100,000.

23. The Virginia Industries for the Blind when procuring components, materials, supplies, or services for use in commodities and services furnished to the federal government in connection with its operation as an AbilityOne Program-qualified nonprofit agency for the blind under the Javits-Wagner- O'Day Act, 41 U.S.C. §§ 8501-8506, provided that the procurement is accomplished using procedures that ensure that funds are used as efficiently as practicable. Such procedures shall require documentation of the basis for awarding contracts. Notwithstanding the provisions of § 2.2-1117, no public body shall be required to purchase such components, materials, supplies, services, or commodities.

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

**§ 2.2-4343.1. Permitted contracts with certain religious organizations; purpose; limitations.**

A. It is the intent of the General Assembly, in accordance with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, to authorize public bodies to enter into contracts with faith-based organizations for the purposes described in this section on the same basis as any other

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nongovernmental source without impairing the religious character of such organization, and without diminishing the religious freedom of the beneficiaries of assistance provided under this section.

B. For the purposes of this section, “faith-based organization” means a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.

C. Public bodies, in procuring goods or services, or in making disbursements pursuant to this section, shall not (i) discriminate against a faith-based organization on the basis of the organization’s religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.

D. Public bodies shall ensure that all invitations to bid, requests for proposals, contracts, and purchase orders prominently display a nondiscrimination statement indicating that the public body does not discriminate against faith-based organizations.

E. A faith-based organization contracting with a public body (i) shall not discriminate against any recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on the basis of the recipient’s religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. Nothing in clause (ii) shall be construed to supersede or otherwise override any other applicable state law.

F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent for religious worship, instruction, or proselytizing; however, this prohibition shall not apply to expenditures pursuant to contracts, if any, for the services of chaplains.

G. Nothing in this section shall be construed as barring or prohibiting a faith-based organization from any opportunity to make a bid or proposal or contract on the grounds that the faith-based organization has exercised the right, as expressed in 42 U.S.C. (§ 2000 e-1 et seq.), to employ persons of a particular religion.

H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant to a contract between a public body and a faith-based organization, objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

The public body shall provide to each individual who applies for or receives goods, services, or disbursements provided pursuant to a contract between a public body and a faith-based organization a notice in bold face type that states: “Neither the public body’s selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider’s charitable or religious character, practices, or expression. No provider of services may discriminate against you on the basis

of religion, a religious belief, or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please discuss the complaint with your provider or notify the appropriate person as indicated in this form.”

**§ 2.2-4344. Exemptions from competition for certain transactions.**

A. Any public body may enter into contracts without competition for:

1. The purchase of goods or services that are produced or performed by:

a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired; or

b. Employment services organizations that offer transitional or supported employment services serving individuals with disabilities.

2. The purchase of legal services, provided that the pertinent provisions of Chapter 5 (§ 2.2-500 et seq.) remain applicable, or expert witnesses or other services associated with litigation or regulatory proceedings.

B. An industrial development authority or regional industrial facility authority may enter into contracts without competition with respect to any item of cost of “authority facilities” or “facilities” as defined in § 15.2-4902 or “facility” as defined in § 15.2-6400.

C. A community development authority formed pursuant to Article 6 (§ 15.2-5152 et seq.) of Chapter 51 of Title 15.2, with members selected pursuant to such article, may enter into contracts without competition with respect to the exercise of any of its powers permitted by § 15.2-5158. However, this exception shall not apply in cases where any public funds other than special assessments and incremental real property taxes levied pursuant to § 15.2-5158 are used as payment for such contract.

D. The State Inspector General may enter into contracts without competition to obtain the services of licensed health care professionals or other experts to assist in carrying out the duties of the Office of the State Inspector General.

**§ 2.2-4345. Exemptions from competitive sealed bidding and competitive negotiation for certain transactions; limitations.**

A. The following public bodies may enter into contracts without competitive sealed bidding or competitive negotiation:

1. The Director of the Department of Medical Assistance Services for special services provided for eligible recipients pursuant to subsection H of § 32.1-325, provided that the Director has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public, or would constitute an imminent threat to the health or welfare of such recipients. The writing shall document the basis for this determination.

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2. The State Health Commissioner for the compilation, storage, analysis, evaluation, and publication of certain data submitted by health care providers and for the development of a methodology to measure the efficiency and productivity of health care providers pursuant to Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1, if the Commissioner has made a determination in advance, after reasonable notice to the public and set forth in writing, that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public. The writing shall document the basis for this determination. Such agreements and contracts shall be based on competitive principles.

3. The Virginia Code Commission when procuring the services of a publisher, pursuant to §§ 30-146 and 30-148, to publish the Code of Virginia or the Virginia Administrative Code.

4. (Effective until January 15, 2018) The Department of Alcoholic Beverage Control for the purchase of alcoholic beverages.

4. (Effective January 15, 2018) The Virginia Alcoholic Beverage Control Authority for the purchase of alcoholic beverages.

5. The Department for Aging and Rehabilitative Services, for the administration of elder rights programs, with (i) nonprofit Virginia corporations granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code with statewide experience in Virginia in conducting a state long-term care ombudsman program or (ii) designated area agencies on aging.

6. The Department of Health for (a) child restraint devices, pursuant to § 46.2-1097; (b) health care services with Virginia corporations granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code and operating as clinics for the indigent and uninsured that are organized for the delivery of primary health care services in a community (i) as federally qualified health centers designated by the Health Care Financing Administration or (ii) at a reduced or sliding fee scale or without charge; or (c) contracts with laboratories providing cytology and related services if competitive sealed bidding and competitive negotiations are not fiscally advantageous to the public to provide quality control as prescribed in writing by the Commissioner of Health.

7. Virginia Correctional Enterprises, when procuring materials, supplies, or services for use in and support of its production facilities, provided the procurement is accomplished using procedures that ensure as efficient use of funds as practicable and, at a minimum, includes obtaining telephone quotations. Such procedures shall require documentation of the basis for awarding contracts under this section.

8. The Virginia Baseball Stadium Authority for the operation of any facilities developed under the provisions of Chapter 58 (§ 15.2-5800 et seq.) of Title 15.2, including contracts or agreements with respect to the sale of food, beverages and souvenirs at such facilities.

9. With the consent of the Governor, the Jamestown-Yorktown Foundation for the promotion of tourism through marketing with private entities provided a demonstrable cost savings, as reviewed by the Secretary of Education, can be realized by the Foundation and such agreements or contracts are based on competitive principles.

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10. The Chesapeake Hospital Authority in the exercise of any power conferred under Chapter 271, as amended, of the Acts of Assembly of 1966, provided that it does not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability in the procurement of goods and services.

11. Richmond Eye and Ear Hospital Authority, any authorities created under Chapter 53 (§ 15.2-5300 et seq.) of Title 15.2 and any hospital or health center commission created under Chapter 52 (§ 15.2-5200 et seq.) of Title 15.2 in the exercise of any power conferred under their respective authorizing legislation, provided that these entities shall not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability in the procurement of goods and services.

12. The Patrick Hospital Authority sealed in the exercise of any power conferred under the Acts of Assembly of 2000, provided that it does not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability in the procurement of goods and services.

13. Public bodies for insurance or electric utility services if purchased through an association of which it is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance or electric utility services by use of competitive principles and provided that the public body has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.

14. Public bodies administering public assistance and social services programs as defined in § 63.2-100, community services boards as defined in § 37.2-100, or any public body purchasing services under the Children's Services Act (§ 2.2-5200 et seq.) or the Virginia Juvenile Community Crime Control Act (§ 16.1-309.2 et seq.) for goods or personal services for direct use by the recipients of such programs if the procurement is made for an individual recipient. Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted from the requirements of § 2.2-4303.

15. The Eastern Virginia Medical School in the exercise of any power conferred pursuant to Chapter 471, as amended, of the Acts of Assembly of 1964.

B. No contract for the construction of any building or for an addition to or improvement of an existing building by any local government or subdivision of local government for which state funds of not more than \$50,000 in the aggregate or for the sum of all phases of a contract or project either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed bidding or after competitive negotiation as provided under subsection D of § 2.2-4303 or Chapter 43.1 (§ 2.2-4378 et seq.). The procedure for the advertising for bids or for proposals and for letting of the contract shall conform, *mutatis mutandis*, to this chapter.

**§ 2.2-4346. Other exemptions for certain transactions.**

The following public bodies may enter into contracts as provided in this section.

A. Contracts for certain essential election materials and services are exempted from the requirements of Articles 1 (§ 2.2-4300 et seq.), 2 (§ 2.2-4303 et seq.), and 5 (§ 2.2-4357 et seq.) of this chapter pursuant to § 24.2-602.

B. Any local school board may authorize any of its public schools or its school division to enter into contracts providing that caps and gowns, photographs, class rings, yearbooks and graduation announcements will be available for purchase or rental by students, parents, faculty or other persons using nonpublic money through the use of competitive negotiation as provided in this chapter; competitive sealed bidding is not necessarily required for such contracts. The Superintendent of Public Instruction may provide assistance to public school systems regarding this chapter and other related laws.

C. The Virginia Racing Commission may designate an entity to administer and promote the Virginia Breeders Fund created pursuant to § 59.1-372 without competitive procurement.

**Article 4.**  
**Prompt Payment**

**§ 2.2-4347. Definitions.**

As used in this article, unless the context requires a different meaning:

“*Contractor*” means the entity that has a direct contract with any “state agency” as defined herein, or any agency of local government as discussed in § 2.2-4352.

“*Debtor*” means any individual, business, or group having a delinquent debt or account with any state agency that obligation has not been satisfied or set aside by court order or discharged in bankruptcy.

“*Payment date*” means either (i) the date on which payment is due under the terms of a contract for provision of goods or services; or (ii) if such date has not been established by contract, (a) thirty days after receipt of a proper invoice by the state agency or its agent or forty-five days after receipt by the local government or its agent responsible under the contract for approval of such invoices for the amount of payment due, or (b) thirty days after receipt of the goods or services by the state agency or forty-five days after receipt by the local government, whichever is later.

“*State agency*” means any authority, board, department, instrumentality, institution, agency or other unit of state government. The term shall not include any county, city or town or any local or regional governmental authority.

“*Subcontractor*” means any entity that has a contract to supply labor or materials to the contractor to whom the contract was awarded or to any subcontractor in the performance of the work provided for in such contract.

**§ 2.2-4348. Exemptions.**

The provisions of this article shall not apply to (i) the late payment provisions contained in any public utility tariffs prescribed by the State Corporation Commission or (ii) payments for services provided under the state plan for medical assistance identified as potentially fraudulent, abusive, or erroneous in accordance with the program established pursuant to § 32.1- 319.1 and delayed until such time as the claim can be validated.

**§ 2.2-4349. Retainage to remain valid.**

Notwithstanding the provisions of this article, the provisions of § 2.2-4333 relating to retainage shall remain valid.

**§ 2.2-4350. Prompt payment of bills by state agencies.--**A. Every state agency that acquires goods or services, or conducts any other type of contractual business with nongovernmental, privately owned enterprises shall promptly pay for the completely delivered goods or services by the required payment date. Payment shall be deemed to have been made when offset proceedings have been instituted, as authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.).

B. Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial deliveries or executions to the extent that such contract provides for separate payment for such partial delivery or execution.

**§ 2.2-4350.1. Prohibition on payment without an appropriation; prohibition on IOUs.**

A. As used in this section, “IOU” means a document issued by a governmental entity or representative (i) that acknowledges a debt but that does not specify all repayment terms, such as the repayment date, and (ii) when moneys are not available to pay a current debt.

B. 1. Notwithstanding any other provision of law, unless the General Assembly has appropriated funds to pay for a good or service or to make payment on a debt, no state department, agency, or other state entity nor any state official, officer, employee, or agent shall (i) attempt to pay for the good or service or attempt to make payment on the debt; (ii) issue any document or paper that guarantees payment, or purports to pay, for the good or service or guarantees payment, or purports to make payment, on the debt; or (iii) in any other way attempt to pay, guarantee payment, or purport to pay for the same.

2. The prohibition on payment under subdivision 1 shall not apply (i) to payments required by federal law or (ii) if funds are lawfully available.

C. In addition, in no case shall any (i) state department, agency, or other state entity or (ii) state official, officer, or employee in performing the duties of his position furnish an IOU in exchange for any good or service, as a means to pay for any good or service, or in lieu of a payment on a debt.

**§ 2.2-4351. Defect or impropriety in the invoice or goods and/or services received.**

In instances where there is a defect or impropriety in an invoice or in the goods or services received, the state agency shall notify the supplier of the defect or impropriety, if the defect or impropriety would prevent

payment by the payment date. The notice shall be sent within fifteen days after receipt of the invoice or the goods or services.

**§ 2.2-4352. Prompt payment of bills by localities.**

Every agency of local government that acquires goods or services, or conducts any other type of contractual business with a nongovernmental, privately owned enterprise, shall promptly pay for the completed delivered goods or services by the required payment date. The required payment date shall be either: (i) the date on which payment is due under the terms of the contract for the provision of the goods or services; or (ii) if a date is not established by contract, not more than forty-five days after goods or services are received or not more than forty-five days after the invoice is rendered, whichever is later.

Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial executions or deliveries to the extent that the contract provides for separate payment for partial execution or delivery.

Within twenty days after the receipt of the invoice or goods or services, the agency shall notify the supplier of any defect or impropriety that would prevent payment by the payment date.

Unless otherwise provided under the terms of the contract for the provision of goods or services, every agency that fails to pay by the payment date shall pay any finance charges assessed by the supplier that shall not exceed one percent per month.

The provisions of this section shall not apply to the late payment provisions in any public utility tariffs or public utility negotiated contracts.

**§ 2.2-4353. Date of postmark deemed to be date payment is made.**

In those cases where payment is made by mail, the date of postmark shall be deemed to be the date payment is made for purposes of this chapter.

**§ 2.2-4354. Payment clauses to be included in contracts.**

Any contract awarded by any state agency, or any contract awarded by any agency of local government in accordance with § 2.2-4352, shall include:

1. A payment clause that obligates the contractor to take one of the two following actions within seven days after receipt of amounts paid to the contractor by the state agency or local government for work performed by the subcontractor under that contract:

a. Pay the subcontractor for the proportionate share of the total payment received from the agency attributable to the work performed by the subcontractor under that contract; or

b. Notify the agency and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

2. A payment clause that requires (i) individual contractors to provide their social security numbers and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.

3. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts owed by the contractor that remain unpaid after seven days following receipt by the contractor of payment from the state agency or agency of local government for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision 1.

4. An interest rate clause stating, “Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month.”

Any such contract awarded shall further require the contractor to include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

A contractor’s obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of the state agency or agency of local government. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

**§ 2.2-4355. Interest penalty; exceptions.**

A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by a state agency to a vendor that remain unpaid after seven days following the payment date. However, nothing in this section shall affect any contract providing for a different rate of interest, or for the payment of interest in a different manner.

B. The rate of interest charged a state agency pursuant to subsection A shall be the base rate on corporate loans (prime rate) at large United States money center commercial banks as reported daily in the publication entitled The Wall Street Journal. Whenever a split prime rate is published, the lower of the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of interest established pursuant to § 58.1-1812.

C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed because of disagreement between a state agency and a vendor regarding the quantity, quality or time of delivery of goods or services or the accuracy of any invoice received for the goods or services. The exception from the interest penalty provided by this subsection shall apply only to that portion of a delayed payment that is actually the subject of the disagreement and shall apply only for the duration of the disagreement.

D. This section shall not apply to § 2.2-4333 pertaining to retainage on construction contracts, during the period of time prior to the date the final payment is due. Nothing contained herein shall prevent a contractor from receiving interest on such funds under an approved escrow agreement.

E. Notwithstanding subsection A, no interest penalty shall be paid to any debtor on any payment, or portion thereof, withheld pursuant to the Comptroller’s Debt Setoff Program, as authorized by the Virginia Debt Collection Act (§ 2.2-4800 et seq.), commencing with the date the payment is withheld. If, as a result of

an error, a payment or portion thereof is withheld, and it is determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue at the rate determined pursuant to subsection B on amounts withheld that remain unpaid after seven days following the payment date.

**§ 2.2-4356. Comptroller to file annual report.**

The Comptroller shall file an annual report with the Governor, the Senate Committee on Finance, the House Committees on Finance and Appropriations on November 1 for the preceding fiscal year including (i) the number and dollar amounts of late payments by departments, institutions and agencies, (ii) the total amount of interest paid and (iii) specific steps being taken to reduce the incidence of late payments.

**Article 5.**  
**Remedies**

**§ 2.2-4357. Ineligibility.**

A. Any bidder, offeror or contractor refused permission to participate, or disqualified from participation, in public contracts shall be notified in writing. Prior to the issuance of a written determination of disqualification or ineligibility, the public body shall (i) notify the bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

Within ten business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The public body shall issue its written determination of disqualification or ineligibility based on all information in the possession of the public body, including any rebuttal information, within five business days of the date the public body received such rebuttal information.

If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to participate in the public contract, the public body shall cancel the proposed disqualification action. If the evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, the public body shall so notify the bidder, offeror or contractor. The notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten days after receipt of the notice by invoking administrative procedures meeting the standards of § 2.2-4365, if available, or in the alternative by instituting legal action as provided in § 2.2-4364.

B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be restoration of eligibility.

**§ 2.2-4358. Appeal of denial of withdrawal of bid.**

A. A decision denying withdrawal of bid under the provisions of § 2.2-4330 shall be final and conclusive unless the bidder appeals the decision within ten days after receipt of the decision by invoking administrative procedures meeting the standards of § 2.2-4365, if available, or in the alternative by instituting legal action as provided in § 2.2-4364.

B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 2.2-4330, prior to appealing, shall deliver to the public body a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.

C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.

**§ 2.2-4359. Determination of nonresponsibility.**

A. Following public opening and announcement of bids received on an Invitation to Bid, the public body shall evaluate the bids in accordance with element 4 of the process for competitive sealed bidding set forth in § 2.2-4302.1. At the same time, the public body shall determine whether the apparent low bidder is responsible. If the public body so determines, then it may proceed with an award in accordance with element 5 of the process for competitive sealed bidding set forth in § 2.2-4302.1. If the public body determines that the apparent low bidder is not responsible, it shall proceed as follows:

1. Prior to the issuance of a written determination of nonresponsibility, the public body shall (i) notify the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

2. Within ten business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The public body shall issue its written determination of responsibility based on all information in the possession of the public body, including any rebuttal information, within five business days of the date the public body received the rebuttal information. At the same time, the public body shall notify, with return receipt requested, the bidder in writing of its determination.

3. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten days after receipt of the notice by invoking administrative procedures meeting the standards of § 2.2-4365, if available, or in the alternative by instituting legal action as provided in § 2.2-4364. The provisions of this subsection shall not apply to procurements involving the prequalification of bidders and the rights of any potential bidders under such prequalification to appeal a decision that such bidders are not responsible.

B. If, upon appeal pursuant to § 2.2-4364 or 2.2-4365, it is determined that the decision of the public body was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or directed award as provided in subsection A of § 2.2-4364 or both.

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If it is determined that the decision of the public body was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract has been made, the relief shall be as set forth in subsection B of § 2.2-4360.

C. A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under the provisions of § 2.2-4360.

D. Nothing contained in this section shall be construed to require a public body, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

**§ 2.2-4360. Protest of award or decision to award.**

A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall submit the protest in writing to the public body, or an official designated by the public body, no later than ten days after the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the public body in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit the protest in the same manner no later than ten days after posting or publication of the notice of such contract as provided in § 2.2-4303. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under § 2.2-4342, then the time within which the protest shall be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under § 2.2-4342, or at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The public body or designated official shall issue a decision in writing within ten days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten days of receipt of the written decision by invoking administrative procedures meeting the standards of § 2.2-4365, if available, or in the alternative by instituting legal action as provided in § 2.2-4364. Nothing in this subsection shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation to Bid or Request for Proposal.

B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The public body shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided.

Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the public body may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

C. Where a public body, an official designated by that public body, or an appeals board determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of Article 6 (§ 2.2-4367 et seq.) of this chapter, the public body, designated official or appeals board may enjoin the award of the contract to a particular bidder.

**§ 2.2-4361. Effect of appeal upon contract.**

Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this chapter shall not be affected by the fact that a protest or appeal has been filed.

**§ 2.2-4362. Stay of award during protest.**

An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest as provided in § 2.2-4360, or the filing of a timely legal action as provided in § 2.2-4364, no further action to award the contract shall be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

**§ 2.2-4363. Contractual disputes.**

A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after final payment. However, written notice of the contractor's intention to file a claim shall be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

B. Each public body shall include in its contracts a procedure for consideration of contractual claims. Such procedure, which may be contained in the contract or may be specifically incorporated into the contract by reference and made available to the contractor, shall establish a time limit for a final decision in writing by the public body. If the public body has established administrative procedures meeting the standards of § 2.2-4365, such procedures shall be contained in the contract or specifically incorporated in the contract by reference and made available to the contractor.

C. If, however, the public body fails to include in its contracts a procedure for consideration of contractual claims, the following procedure shall apply:

1. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after receipt of final payment; however, written notice of the contractor's intention to file a claim shall be given at the time of the occurrence or at the beginning of the work upon which the claim is based.

2. No written decision denying a claim or addressing issues related to the claim shall be considered a denial of the claim unless the written decision is signed by the public body's chief administrative officer or his designee. The contractor may not institute legal action prior to receipt of the final written decision on the claim unless the public body fails to render a decision within 90 days of submission of the claim. Failure of the public

body to render a decision within 90 days shall not result in the contractor being awarded the relief claimed or in any other relief or penalty. The sole remedy for the public body's failure to render a decision within 90 days shall be the contractor's right to institute immediate legal action.

D. A contractor may not invoke administrative procedures meeting the standards of § 2.2-4365, if available, or institute legal action as provided in § 2.2-4364, prior to receipt of the public body's decision on the claim, unless the public body fails to render such decision within the time specified in the contract or, if no time is specified, then within the time provided by subsection

C. A failure of the public body to render a final decision within the time provided in subsection C shall be deemed a final decision denying the claim by the public body.

E. The decision of the public body shall be final and conclusive unless the contractor appeals within six months of the date of the final decision on the claim by the public body by invoking administrative procedures meeting the standards of § 2.2-4365, if available, or in the alternative by instituting legal action as provided in § 2.2-4364.

**§ 2.2-4364. Legal actions.**

A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in subsection B of § 2.2-4317. In the event the apparent low bidder, having been previously determined by the public body to be not responsible in accordance with § 2.2-4301, is found by the court to be a responsible bidder, the court may direct the public body to award the contract to such bidder in accordance with the requirements of this section and the Invitation to Bid.

B. A bidder denied withdrawal of a bid under § 2.2-4358 may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the public body was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid.

C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis in the manner provided in § 2.2-4303, whose protest of an award or decision to award under § 2.2-4360 is denied, may bring an action in the appropriate circuit court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.

D. If injunctive relief is granted, the court, upon request of the public body, shall require the posting of reasonable security to protect the public body.

E. A contractor may bring an action involving a contract dispute with a public body in the appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be named as a defendant in any action brought pursuant to this chapter or § 33.2-1103, except for disputes involving contracts of the Office of the Comptroller or the Department of Accounts.

F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of § 2.2-4365, if available, but if those procedures are invoked by the bidder, offeror or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the public body agrees otherwise.

G. Nothing herein shall be construed to prevent a public body from instituting legal action against a contractor.

**§ 2.2-4365. Administrative appeals procedure.**

A. A public body may establish an administrative procedure for hearing (i) protests of a decision to award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes arising during the performance of a contract, or (v) any of these. Such administrative procedure shall provide for a hearing before a disinterested person or panel, the opportunity to present pertinent information and the issuance of a written decision containing findings of fact. The disinterested person or panel shall not be an employee of the governmental entity against whom the claim has been filed. The findings of fact shall be final and conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b) so grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings were not based upon the criteria for denial of prequalification set forth in subsection B of § 2.2-4317. No determination on an issue of law shall be final if appropriate legal action is instituted in a timely manner.

B. Any party to the administrative procedure, including the public body, shall be entitled to institute judicial review if such action is brought within thirty days of receipt of the written decision.

**§ 2.2-4366. Alternative dispute resolution.**

Public bodies may enter into agreements to submit disputes arising from contracts entered into pursuant to this chapter to arbitration and utilize mediation and other alternative dispute resolution procedures. However, such procedures entered into by the Commonwealth, or any department, institution, division, commission, board or bureau thereof, shall be nonbinding and subject to § 2.2-514, as applicable. Alternative dispute resolution procedures entered into by school boards shall be nonbinding.

**Article 6.**

**Ethics in Public Contracting**

**§ 2.2-4367. Purpose.**

The provisions of this article supplement, but shall not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.), the Virginia

Governmental Frauds Act (§ 18.2-498.1 et seq.), and Articles 2 (§ 18.2-438 et seq.) and 3 (§ 18.2-446 et seq.) of Chapter 10 of Title 18.2. The provisions of this article shall apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.

**§ 2.2-4368. Definitions.**

As used in this article:

“*Immediate family*” means a spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee.

“*Official responsibility*” means administrative or operating authority, whether intermediate or final, to initiate, approve, disapprove or otherwise affect a procurement transaction, or any claim resulting therefrom.

“*Pecuniary interest arising from the procurement*” means a personal interest in a contract as defined in the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.).

“*Procurement transaction*” means all functions that pertain to the obtaining of any goods, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

“*Public employee*” means any person employed by a public body, including elected officials or appointed members of governing bodies.

**§ 2.2-4369. Proscribed participation by public employees in procurement transactions.**

Except as may be specifically allowed by subdivisions B 1, 2, and 3 of § 2.2-3112, no public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the public body when the employee knows that:

1. The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction;
2. The employee, the employee’s partner, or any member of the employee’s immediate family holds a position with a bidder, offeror or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent;
3. The employee, the employee’s partner, or any member of the employee’s immediate family has a pecuniary interest arising from the procurement transaction; or
4. The employee, the employee’s partner, or any member of the employee’s immediate family is negotiating, or has an arrangement concerning, prospective employment with a bidder, offeror or contractor.

**§ 2.2-4370. Disclosure of subsequent employment.**

No public employee or former public employee having official responsibility for procurement transactions shall accept employment with any bidder, offeror or contractor with whom the employee or former employee dealt in an official capacity concerning procurement transactions for a period of one year from the cessation of employment by the public body unless the employee or former employee provides written notification to the public body, or a public official if designated by the public body, or both, prior to commencement of employment by that bidder, offeror or contractor.

**§ 2.2-4371. Prohibition on solicitation or acceptance of gifts; gifts by bidders, offerors, contractor or subcontractors prohibited.**

A. No public employee having official responsibility for a procurement transaction shall solicit, demand, accept, or agree to accept from a bidder, offeror, contractor or subcontractor any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged. The public body may recover the value of anything conveyed in violation of this subsection.

B. No bidder, offeror, contractor or subcontractor shall confer upon any public employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

**§ 2.2-4372. Kickbacks.**

A. No contractor or subcontractor shall demand or receive from any of his suppliers or his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.

B. No subcontractor or supplier shall make, or offer to make, kickbacks as described in this section.

C. No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a public contract.

D. If a subcontractor or supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the public body and shall be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

**§ 2.2-4373. Participation in bid preparation; limitation on submitting bid for same procurement.**

No person who, for compensation, prepares an invitation to bid or request for proposal for or on behalf of a public body shall (i) submit a bid or proposal for that procurement or any portion thereof or (ii) disclose to any bidder or offeror information concerning the procurement that is not available to the public. However, a public body may permit such person to submit a bid or proposal for that procurement or any portion thereof if

the public body determines that the exclusion of the person would limit the number of potential qualified bidders or offerors in a manner contrary to the best interests of the public body.

**§ 2.2-4374. Purchase of building materials, etc., from architect or engineer prohibited.**

A. No building materials, supplies or equipment for any building or structure constructed by or for a public body shall be sold by or purchased from any person employed as an independent contractor by the public body to furnish architectural or engineering services, but not construction, for such building or structure or from any partnership, association or corporation in which such architect or engineer has a personal interest as defined in § 2.2-3101.

B. No building materials, supplies or equipment for any building or structure constructed by or for a public body shall be sold by or purchased from any person who has provided or is currently providing design services specifying a sole source for such materials, supplies or equipment to be used in the building or structure to the independent contractor employed by the public body to furnish architectural or engineering services in which such person has a personal interest as defined in § 2.2-3101.

C. The provisions of subsections A and B shall not apply in cases of emergency or for transportation-related projects conducted by the Department of Transportation or the Virginia Port Authority.

**§ 2.2-4375. Certification of compliance required; penalty for false statements.**

A. Public bodies may require public employees having official responsibility for procurement transactions in which they participated to annually submit for such transactions a written certification that they complied with the provisions of this article.

B. Any public employee required to submit a certification as provided in subsection A who knowingly makes a false statement in the certification shall be punished as provided in § 2.2-4377.

**§ 2.2-4376. Misrepresentations prohibited.**

No public employee having official responsibility for a procurement transaction shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make any false, fictitious or fraudulent statements or representations; or make or use any false writing or document knowing it to contain any false, fictitious or fraudulent statement or entry.

**§ 2.2-4376.1. Contributions and gifts; prohibition during procurement process.**

A. No bidder or offeror who has submitted a bid or proposal to an executive branch agency that is directly responsible to the Governor for the award of a public contract pursuant to this chapter, and no individual who is an officer or director of such a bidder or offeror, shall knowingly provide a contribution, gift, or other item with a value greater than \$50 or make an express or implied promise to make such a contribution or gift to the Governor, his political action committee, or the Governor's Secretaries, if the Secretary is responsible to the Governor for an executive branch agency with jurisdiction over the matters at issue, during the period between the submission of the bid and the award of the public contract under this chapter. The provisions of this section shall apply only for public contracts where the stated or expected value of the contract

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is \$5 million or more. The provisions of this section shall not apply to contracts awarded as the result of competitive sealed bidding.

B. Any person who knowingly violates this section shall be subject to a civil penalty of \$500 or up to two times the amount of the contribution or gift, whichever is greater. The attorney for the Commonwealth shall initiate civil proceedings to enforce the civil penalties. Any civil penalties collected shall be payable to the State Treasurer for deposit to the general fund.

**§ 2.2-4377. Penalty for violation.**

Any person convicted of a willful violation of any provision of this article shall be guilty of a Class 1 misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, shall forfeit his employment.

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**Title 2.2  
Administration of Government  
-- Subtitle  
II.  
Administration of State Government  
-- Part  
B  
Transaction of Public Business  
-- CHAPTER  
43.1  
Construction Management and Design-Build Contracting**

**Article 1. General  
Provisions**

**§ 2.2-4378. Purpose; applicability.**

A. The purpose of this chapter is to enunciate the public policies pertaining to governmental procurement of construction utilizing the construction management and design-build procurement methods. Notwithstanding any other provision of law, the Commonwealth may enter into contracts on a fixed price design-build basis or construction management basis in accordance with the provisions of this chapter and § 2.2-1502.

B. Except as provided in subsection C, this chapter shall apply regardless of the source of financing, whether it is general fund, nongeneral fund, federal trust fund, state debt, or institutional debt.

C. The following shall be exempt from the provisions of this chapter:

1. Projects of a covered institution that are to be funded exclusively by a foundation that (i) exists for the primary purpose of supporting the covered institution and (ii) is exempt from taxation under § 501(c)(3) of the Internal Revenue Code; and

2. Transportation construction projects procured and awarded by the Commonwealth Transportation Board pursuant to subsection B of § 33.2-209.

D. The provisions of this chapter shall supplement the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.), which provisions shall remain applicable. In the event of any conflict between this chapter and the Virginia Public Procurement Act (§ 2.2-4300 et seq.), the Restructured Higher Education Financial and Administrative Operations Act of 2005 (§ 23.1-1000 et seq.), or any other provision of law, this chapter shall control.

**§ 2.2-4379. Definitions.**

As used in this chapter, unless the context requires a different meaning:

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“*Complex project*” means a construction project that includes one or more of the following significant components: difficult site location, unique equipment, specialized building systems, multifaceted program, accelerated schedule, historic designation, or intricate phasing or some other aspect that makes competitive sealed bidding not practical.

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

“*Covered institution*” means a public institution of higher education operating (i) subject to a management agreement set forth in Article 4 (§ 23.1-1004 et seq.) of Chapter 10 of Title 23.1, (ii) under a memorandum of understanding pursuant to § 23.1-1003, or (iii) under the pilot program authorized in the appropriation act.

“*Department*” means the Department of General Services.

“*Design-build contract*” means a contract between a public body and another party in which the party contracting with the public body agrees to both design and build the structure, or other item specified in the contract.

“*Public body*” means the same as that term is defined in § 2.2-4301.

“*State public body*” means any authority, board, department, instrumentality, agency, or other unit of state government. “*State public body*” does not include any covered institution; any county, city, or town; or any local or regional governmental authority.

**Article 2.  
Procedures for State Public Bodies**

**§ 2.2-4380. Construction management or design-build contracts for state public bodies authorized.**

A. Any state public body may enter into a contract for construction on a fixed price or not-to-exceed price construction management or design-build basis, provided that such public body complies with the requirements of this article and the procedures adopted by the Secretary of Administration for using construction management or design-build contracts.

B. Procedures adopted by a state public body pursuant to this article shall include the following requirements:

1. A written determination is made in advance by the state public body that competitive sealed bidding is not practicable or fiscally advantageous, and such writing shall document the basis for the determination to use construction management or design-build. The determination shall be included in the Request for Qualifications and maintained in the procurement file;

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2. Prior to making a determination as to the use of construction management or design-build for a specific construction project, a state public body shall have in its employ or under contract a licensed architect or engineer with professional competence appropriate to the project who shall (i) advise the public body regarding the use of construction management or design-build for that project and (ii) assist the public body with the preparation of the Request for Proposal and the evaluation of such proposals;

3. Public notice of the Request for Qualifications is posted on the Department's central electronic procurement website, known as eVA, at least 30 days prior to the date set for receipt of qualification proposals;

4. For construction management contracts, the contract is entered into no later than the completion of the schematic phase of design, unless prohibited by authorization of funding restrictions;

5. Prior construction management or design-build experience or previous experience with the Department's Bureau of Capital Outlay Management shall not be required as a prerequisite for award of a contract. However, in the selection of a contractor, a state public body may consider the experience of each contractor on comparable projects;

6. Construction management contracts shall require that (i) no more than 10 percent of the construction work, as measured by the cost of the work, be performed by the construction manager with its own forces and (ii) the remaining 90 percent of the construction work, as measured by the cost of the work, be performed by subcontractors of the construction manager, which the construction manager shall procure by publicly advertised, competitive sealed bidding to the maximum extent practicable; and

7. The procedures allow for a two-step competitive negotiation process.

C. The Department shall evaluate the proposed procurement method selected by the state public body and make its recommendation as to whether the use of the construction management or design-build procurement method is appropriate for the specific project. In its review, the Department shall also consider:

1. The written determination of the state public body;

2. The compliance by the state public body with subdivisions B 1, 2, and 7;

3. The project cost, expected timeline, and use;

4. Whether the project is a complex project; and

5. Any other criteria established by the Department to evaluate the proposed procurement method for the project.

D. The Department shall conduct its review within five working days after receipt of the written determination and render its written recommendation within such five-working-day period. The written recommendation of the Department shall be maintained in the procurement file.

E. If a state public body elects to proceed with the project using a construction management or design-build procurement method despite the recommendation of the Department to the contrary, such state public

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body shall state in writing its reasons therefor and any justification for not following the recommendation of the Department and submit same to the Department. The written statement of a state public body's decision to not follow the recommendation of the Department shall be maintained in the procurement file.

**Article 3.  
Procedures for Covered Institutions.**

**§ 2.2-4381. Construction management or design-build contracts for covered institutions authorized.**

A. Any covered institution may enter into a contract for construction on a fixed price or not-to-exceed price construction management or design-build basis, provided that such institution complies with the requirements of this article and with the procedures adopted by the Secretary of Administration for using construction management or design-build contracts.

B. Covered institutions shall:

1. Develop procedures for determining the selected procurement method which, at a minimum, shall consider cost, schedule, complexity, and building use;

2. Submit such procedures, and any subsequent changes to adopted procedures, to the Department for review and comment; and

3. Submit Department-reviewed procedures to its board of visitors for adoption.

C. Procedures adopted by a board of visitors pursuant to this article shall include the following requirements:

1. A written determination is made in advance by the covered institution that competitive sealed bidding is not practicable or fiscally advantageous, and such writing shall document the basis for the determination to use construction management or design-build. The determination shall be included in the Request for Qualifications and maintained in the procurement file;

2. Prior to making a determination as to the use of construction management or design-build for a specific construction project, a covered institution shall have in its employ or under contract a licensed architect or engineer with professional competence appropriate to the project who shall (i) advise the covered institution regarding the use of construction management or design-build for that project and (ii) assist the covered institution with the preparation of the Request for Proposal and the evaluation of such proposals;

3. Public notice of the Request for Qualifications is posted on the Department's central electronic procurement website, known as eVA, at least 30 days prior to the date set for receipt of qualification proposals;

4. For construction management contracts, the contract is entered into no later than the completion of the schematic phase of design, unless prohibited by authorization of funding restrictions;

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5. Prior construction management or design-build experience or previous experience with the Department's Bureau of Capital Outlay Management shall not be required as a prerequisite for award of a contract. However, in the selection of a contractor, a covered institution may consider the experience of each contractor on comparable projects;

6. Construction management contracts shall require that (i) no more than 10 percent of the construction work, as measured by the cost of the work, be performed by the construction manager with its own forces and (ii) the remaining 90 percent of the construction work, as measured by the cost of the work, be performed by subcontractors of the construction manager, which the construction manager shall procure by publicly advertised, competitive sealed bidding to the maximum extent practicable; and

7. The procedures allow for a two-step competitive negotiation process.

D. The Department shall evaluate the proposed procurement method selected by a covered institution and make its recommendation as to whether the use of the construction management or design-build procurement method is appropriate for the specific project. In its review, the Department shall also consider:

1. The written determination of the covered institution;
2. The compliance by the covered institution with subdivisions C 1, 2, and 7;
3. The project cost, expected timeline, and use;
4. Whether the project is a complex project; and

5. Any other criteria established by the Department to evaluate the proposed procurement method for the project.

E. The Department shall conduct its review within five working days after receipt of the written determination and render its written recommendation within such five-working-day period. The written recommendation of the Department shall be maintained in the procurement file.

F. If a covered institution elects to proceed with the project using a construction management or design-build procurement method despite the recommendation of the Department to the contrary, such covered institution shall state in writing its reasons therefor and any justification for not following the recommendation of the Department and submit same to the Department. The written statement of a covered institution's decision to not follow the recommendation of the Department shall be maintained in the procurement file.

**Article 4.  
Procedures for Local Public Bodies.**

**§ 2.2-4382. Design-build or construction management contracts for local public bodies authorized.**

A. Any local public body may enter into a contract for construction on a fixed price or not-to-exceed price construction management or design-build basis, provided that the local public body (i) complies with the

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requirements of this article and (ii) has by ordinance or resolution implemented procedures consistent with the procedures adopted by the Secretary of Administration for utilizing construction management or design-build contracts.

B. Prior to making a determination as to the use of construction management or design-build for a specific construction project, a local public body shall have in its employ or under contract a licensed architect or engineer with professional competence appropriate to the project who shall (i) advise such public body regarding the use of construction management or design-build for that project and (ii) assist such public body with the preparation of the Request for Proposal and the evaluation of such proposals.

C. A written determination shall be made in advance by the local public body that competitive sealed bidding is not practicable or fiscally advantageous, and such writing shall document the basis for the determination to utilize construction management or design-build. The determination shall be included in the Request for Qualifications and be maintained in the procurement file.

D. Procedures adopted by a local public body for construction management pursuant to this article shall include the following requirements:

1. Construction management contracts may be utilized for projects where the project cost is expected to be more than \$10 million;

2. Construction management may be utilized on projects where the project cost is expected to be less than \$10 million, provided that (i) the project is a complex project and (ii) the project procurement method is approved by the local governing body. The written approval of the governing body shall be maintained in the procurement file;

3. Public notice of the Request for Qualifications is posted on the Department's central electronic procurement website, known as eVA, at least 30 days prior to the date set for receipt of qualification proposals;

4. The construction management contract is entered into no later than the completion of the schematic phase of design, unless prohibited by authorization of funding restrictions;

5. Prior construction management or design-build experience or previous experience with the Department's Bureau of Capital Outlay Management shall not be required as a prerequisite for award of a contract. However, in the selection of a contractor, the local public body may consider the experience of each contractor on comparable projects;

6. Construction management contracts shall require that (i) no more than 10 percent of the construction work, as measured by the cost of the work, be performed by the construction manager with its own forces and (ii) the remaining 90 percent of the construction work, as measured by the cost of the work, be performed by subcontractors of the construction manager, which the construction manager shall procure by publicly advertised, competitive sealed bidding to the maximum extent practicable;

7. The procedures allow for a two-step competitive negotiation process; and

8. Price is a critical basis for award of the contract.

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E. Procedures adopted by a local public body for design-build construction projects shall include a two-step competitive negotiation process consistent with the standards established by the Division of Engineering and Buildings of the Department for state public bodies.

**Article 5.**

**Reporting Requirements for All Public Bodies.**

**§ 2.2-4383. Reporting requirements.**

A. The Department shall report by December 1 of each year to the Governor and the Chairmen of the House Committee on Appropriations, the House Committee on General Laws, the Senate Committee on Finance, and the Senate Committee on General Laws and Technology the following information: (i) the number of projects reviewed pursuant to Articles 2 (§ 2.2-4380) and 3 (§ 2.2-4381) and (ii) for each project (a) the identity of the state public body or covered institution and a description of each such project, (b) the estimated cost of the project at the time of the Department's review, (c) the recommendation made by the Department concerning the proposed procurement method, and (d) the final procurement method used by the state public body or covered institution.

B. All public bodies subject to the provisions of this chapter shall report no later than November 1 of each year to the Director of the Department on all completed capital projects in excess of \$2 million, which report shall include at a minimum (i) the procurement method utilized, (ii) the project budget, (iii) the actual project cost, (iv) the expected timeline, (v) the actual completion time, and (vi) any post-project issues.

The Department shall consolidate received report data and submit the consolidated data to the Governor and Chairmen of the House Committee on Appropriations and the Senate Committee on Finance by December 1 of each year

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ORDINANCE NO. 2005-09

~~An Ordinance repealing the current Hopewell City Code Chapter governing procurement transactions, Hopewell City Code Chapter 29A, and enacting a new procurement chapter of the Hopewell City Code, Hopewell City Code Chapter 2A, to be effective July 1, 2005.~~

~~BE IT ORDAINED BY THE COUNCIL OF THE CITY OF HOPEWELL, that, effective July 1, 2005, Hopewell City Code Chapter 29A is hereby repealed, and the following provisions, to be codified as Hopewell City Code Chapter 2A, shall be enacted and become effective:~~

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ARTICLE I – GENERAL PROVISIONS

2A-1 – PURPOSE.

Title 2.2  
Administration of Government  
-- Subtitle  
II.  
Administration of State Government  
-- Part  
B  
Transaction of Public Business  
-- CHAPTER  
43  
Virginia Public Procurement Act

Article 1. General  
Provisions

§ 2.2-4300. Short title; purpose; declaration of intent.

A. This chapter may be cited as the Virginia Public Procurement Act.

~~B. The purpose of this ordinance chapter is to encourage competition in unincorporated the public purchasing among vendors or contractors, to administer fairly and equitably purchasing policies pertaining to governmental procurement from nongovernmental sources, to include governmental procurement that may or may not result in monetary consideration for either party. This chapter shall apply whether the consideration is monetary or nonmonetary and regardless of whether the public body, the contractor, or some third party is providing the consideration.~~

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~~C. among bidders and to To the end that public bodies in the Commonwealth obtain high quality goods and services at the lowest possible price reasonable cost, that all procurement procedures be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to public business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the General Assembly that competition be sought to the maximum feasible degree, that procurement procedures involve openness and administrative efficiency, that individual public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered. Public bodies may consider best value concepts when procuring goods and nonprofessional services, but not construction or professional services. The criteria, factors, and basis for consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation.~~

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2A-2 – APPLICATION.

~~This ordinance applies to contracts for the procurement of goods, services, insurance and construction entered into by this city involving every expenditure for public purchasing irrespective of its source which is in excess of Fifty Thousand Dollars (\$50,000.00), except as where otherwise specified herein.~~

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~~When the procurement involves the expenditure of Federal assistance or contract funds, the procurement shall be conducted in accordance with any applicable mandatory federal law and regulation. Nothing in this ordinance shall prevent any public agency from complying with the terms and conditions of any grant, gift, or bequest which is otherwise consistent with the law.~~

~~**2A-3 – EFFECTIVE DATE OF ORDINANCE.**~~

~~This ordinance shall become effective, and shall govern and apply to city procurement transactions, on and after July 1, 2005.~~

~~**2A-4 – SEVERABILITY.**~~

~~If any provision of this ordinance or any application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are declared to be severable.~~

~~2A-5 – DEFINITIONS. § 2.2-4301. Definitions.~~

~~As used in this chapter:~~

~~“Affiliate” means an individual or business that controls, is controlled by, or is under common control with another individual or business. A person controls an entity if the person owns, directly or indirectly, more than 10 percent of the voting securities of the entity. For the purposes of this definition “voting security” means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive,~~

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upon its exercise, a security that confers such a right to vote. A general partnership interest shall be deemed to be a voting security.

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

“Business” means any type of

~~1. **Brand Name Specification** – A specification limited to one or more items by manufacturers’ names or catalogue numbers.~~

~~2. **Brand Name or Equal Specification** – A specification limited to one or more items by manufacturers’ names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics needed to meet city requirements and which provides for the submission of equivalent products.~~

~~3. **Business** – Any corporation, partnership, limited liability company, association, individual, or sole proprietorship, joint stock company, joint venture or any other private legal entity operated for profit.~~

~~4. **Change Order (unilateral)** – A written order signed and unilaterally issued by the Purchasing Agent directing the contractor to make changes which the “changes” clauses of the contract authorizes the Purchasing Agent to order without the consent of the contractor.~~

~~5. **City Council** – The Council of the City of Hopewell, Virginia.~~

~~6. **City Manager** – City Manager of the City of Hopewell, Virginia.~~

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

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

“Construction” means building.

~~7. **City Purchasing Agent or Agent** – The Purchasing Agent of the City of Hopewell, Virginia.~~

~~8. **Confidential Information** – Any information which is available to an employee only because of the employee’s status as an employee of this city and is not a matter of public knowledge or available to the public on request.~~

~~9. **Construction** – Building, altering, repairing, improving, or demolishing any structure, building, or highway, and any draining, dredging, excavation, grading or similar work upon real property.~~

~~10. **Construction Management Contract** – A contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.~~

“Construction management contract” means the same as that term is defined in § 2.2-4379.

“Design-build contract” means the same as that term is defined in § 2.2-4379.

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

“Goods” means all

~~11. **Contract** – All types of city agreements, regardless of what they may be called, for the procurement of goods, services, insurance or construction.~~

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~~12. **Contract Modification** Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provision of any contract accomplished by mutual action of the parties of the contract.~~

~~13. **Contractor** Any person having a contract with the city or a using agency thereof.~~

~~14. **Cost Analysis** The evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.~~

~~15. **Cost Data** Factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.~~

~~16. **Cost-reimbursement Contract** A contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this ordinance, and a fee or profit, if any.~~

~~17. **Direct or indirect participation** Any involvement in the approval, disapproval, recommendation, or preparation of any part of a purchase request; influencing the content of any specification or procurement standard; and advising, investigating or auditing in connection with a procurement process.~~

~~18. **Disadvantaged business** A small business which is owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages.~~

~~19. **Employee** An individual drawing a salary or wages from the city whether elected or not and any non-compensated individual performing personal services for the city or any department, agency, commission, council, or board of the city.~~

~~20. **Goods** All material, equipment, supplies, printing, and automated data processing hardware and software.~~

~~21. **Informality** A minor defect or variation of a bid or proposal from the exact requirements of the invitation to bid, or the request for proposal, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.~~

~~22. **Insurance** A contract whereby, for a stipulated consideration, one party undertakes to compensate the other for loss on a specified subject by specified perils.~~

~~23. **Invitation for Bids** All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.~~

~~24. **Nominal Value** A worth or cost so small, slight, or the like, in comparison to what might properly be expected, but in no case to be more than five dollars.~~

~~25. **Non-professional Services** Any "Job order contracting" means a method of procuring construction by establishing a book of unit prices and then obtaining a contractor to perform work as needed using the prices, quantities, and specifications in the book as the basis of its pricing. The contractor may be selected through either competitive sealed bidding or competitive negotiation depending on the needs of the public body procuring the construction services. A minimum amount of work may be specified in the contract. The contract term and the project amount shall not exceed the limitations specified in § 2.2-4303.2.~~

~~"Multiphase professional services contract" means a contract for the providing of professional services where the total scope of work of the second or subsequent phase of the contract cannot be specified~~

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without the results of the first or prior phase of the contract.

“Nonprofessional services” means any services not specifically identified as professional services in the following definition of professional services.

26.

“Potential bidder or offeror,” for the purposes of §§ 2.2-4360 and 2.2-4364, means a person who, at the time a public body negotiates and awards or proposes to award a contract, is engaged in the sale or lease of

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goods, or the sale of services, insurance or construction, of the type to be procured under the contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.

“Professional Services—Workservices” means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, dentistry, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering. “Professional services” shall also include the services of an economist procured by the State Corporation Commission.

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27. Person—Any business, individual, union, committee, club, other organization, or group of individuals.

28. Price Analysis—The evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.

29. Pricing Data—Factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offer or proposed selling prices, historical selling prices and current selling prices. The definition refers to data relevant to both prime and subcontract prices.

30. Public Body—City Council of the City of Hopewell.

31. Qualified Products List—An approved list of goods, services, or construction items described by model or catalogue number, which prior to competitive solicitation, the city has determined will meet the applicable specification requirements.

32. Request for Proposals—All documents, whether attached or incorporated by reference, utilized for soliciting proposals.

33. “Public body” means any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in this chapter. “Public body” shall include (i) any independent agency of the Commonwealth, and (ii) any metropolitan planning organization or planning district commission which operates exclusively within the Commonwealth of Virginia.

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

“Responsible Bidder—bidder” or Offeror—A “offeror” means a person who has the capability in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which that will assure good faith performance, and who has been prequalified, if required.

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34. “Responsible Bidder—Abidder” means a person who has submitted a bid which that conforms in all material respects to the invitation Invitation to Bid.

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

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~~35. **Services** Any~~

~~“Services” means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.~~

~~36. **Small Business** – A United States business which is independently owned and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation.~~

~~37. **Specification** – Any description of the physical or functional characteristics, or of the nature of a good, service or construction item. It may include a description of any requirement for inspecting, testing, or preparing a good, service or construction item for delivery.~~

~~38. **Using Agency** – Any department, agency, commission, bureau, or other unit in the city government requiring goods, services, insurance or construction as provided for in this ordinance.~~

**ARTICLE II – OFFICE OF THE PURCHASING AGENT**

**2A-6 – ESTABLISHMENT, APPOINTMENT, AND BOND.**

~~1. There is hereby created a purchasing system to operate under the direction and supervision of the City Manager. The City Manager is authorized to perform all duties of the Purchasing Agent contained herein; and nothing contained in this ordinance shall prevent the City Manager from designating a responsible person to perform the duties of Purchasing Agent, subject to his direction.~~

~~2. Appointment of Purchasing Agent. There is hereby created the position of Purchasing Agent, who shall be this city’s principal public purchasing official, and who shall be appointed in accordance with the city’s personnel regulations.~~

**§ 2.2-4302. Implementation.**

This chapter may be implemented by ordinances, resolutions or regulations consistent with this chapter and with the provisions of other applicable law promulgated by any public body empowered by law to undertake the activities described in this chapter. Any such public body may act by and through its duly designated or authorized officers or employees.

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**§ 2.2-4302.1. Process for competitive sealed bidding.**

The process for competitive sealed bidding shall include the following:

1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the public body has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. No Invitation to Bid for construction services shall condition a successful bidder's eligibility on having a specified experience modification factor. When it is impractical to prepare initially a purchase description to support an award based on prices, an Invitation to Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation;

**2. Public notice of**

~~3. Purchasing Agent Bond. The Purchasing Agent shall give an official bond, the form and amount of which shall be approved by the City Attorney.~~

**2A-7 AUTHORITY AND DUTIES.**

~~1. The Purchasing Agent shall serve as the principal public purchasing official for this city and shall be responsible for the procurement of goods, services, insurance and construction in accordance with this ordinance, as well as the management and disposal of supplies.~~

2. Subject to the supervision of the City Manager, the Purchasing Agent shall:

A. Purchase or supervise the purchasing of all goods, services, insurance and construction needed by this city;

~~B. Sell, trade or otherwise dispose of surplus goods belonging to the city; and  
C. Establish and maintain programs for specifications development, contract administration and inspection and acceptance, in cooperation with the public agencies using the goods, services, and construction.~~

~~3. With the approval of the City Manager, the Purchasing Agent may establish operational procedures consistent with this ordinance.~~

**2A-8 DELEGATION.**

~~With the approval of the City Manager, the Purchasing Agent may delegate authority to purchase certain supplies, services, or construction items to other city officials, if such delegation is deemed necessary for the effective procurement of those items.~~

**2A-9 UNAUTHORIZED PURCHASES.**

~~Except as herein provided, no official elected or appointed, or any employee shall purchase or contract for any goods, services, insurance, or construction within the purview of this ordinance other than by and through the purchasing department, and any purchase order or contract made contrary to the provisions hereof is not approved and the city shall not be bound thereby.~~

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ARTICLE III – COOPERATIVE PROCUREMENT

~~2A-10 – CONDITIONS FOR USE.~~

~~The city may participate in, sponsor, conduct or administer a cooperative procurement agreement with one or more other public bodies for the purpose of combining requirements to increase efficiency or reduce administrative expenses. Except for contracts for professional services, the city may purchase from another public body's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies. Any public body which enters into a cooperative procurement agreement with the city shall comply with the policies and procedures adopted by this ordinance.~~

ARTICLE IV – CONTRACT FORMATION AND METHODS  
OF SOURCE SELECTION

~~2A-11 – COMPETITIVE BIDDING ON STATE AID PROJECTS.~~

~~No contract for the construction of any building or for an addition to or improvement of an existing building for which state funds of not more than Thirty Thousand Dollars (\$30,000.00) in the aggregate or for the sum of all phases of a contract or project either by appropriation, grant in aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive bidding or competitive negotiation. The procedure for the advertising for bids and letting of the contract shall conform, mutatis mutandis, to this ordinance.~~

~~2A-12 – COMPETITIVE SEALED BIDDING.~~

- ~~1. **Conditions for Use.** All public contracts with non governmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction shall be awarded after competitive sealed bidding, or competitive negotiation as provided in this section, unless otherwise authorized by law.~~
- ~~2. **Public Access to Procurement Information.** Except as provided herein, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm, or corporation, in accordance with the Virginia Freedom of Information Act. Cost estimates relating to a proposed transaction prepared by or for the city shall not be open to public inspection. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the city decides not to accept any of the bids. Otherwise, bid and proposal records shall be open to public inspection only after award of the contract. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the bidder, offeror or contractor must invoke the~~

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protections of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary.

**3. ~~Employment Discrimination/Drug Free Workplace by Contractor.~~ Every contract over Ten Thousand Dollars (\$10,000) shall include the provisions in A and B below:**

**A. ~~During the performance of this contract, the contractor agrees as follows:~~**

(1) ~~The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or other basis prohibited by state law related discrimination employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.~~

(2) ~~The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor will state that such contractor is an equal opportunity employer.~~

(3) ~~Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.~~

(4) ~~To provide a drug free workplace for the contractor's employees.~~

(5) ~~To post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition.~~

(6) ~~To state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug free workplace.~~

**B.** ~~The contractor will include the provisions of the foregoing paragraphs 1, 2, 3, 4, 5 and 6 in every subcontract or purchase order of over Ten Thousand Dollars (\$10,000) so that the provisions will be binding upon each subcontractor or vendor.~~

**4. ~~Prequalification of Bidders.~~ The Purchasing Agent is authorized to prequalify bidders prior to any solicitation of bids, whether for goods, services, insurance or construction, by requiring prospective bidders to submit such information as the Purchasing Agent shall deem appropriate, including samples, financial reports, and references; provided, however, that opportunity to prequalify shall be given to any prospective bidder who has not been suspended or debarred under this ordinance.**

~~In considering any request for pre-qualification, the Purchasing Agent shall determine whether there is reason to believe that the bidder possesses the management, financial soundness, and history of performance which indicate apparent ability to successfully complete the plans and specifications of the invitations for bid. The Purchasing Agent may employ standard forms designed to elicit necessary information, or may design other forms for that purpose.~~

~~Prequalification of prospective contractors for construction shall be consistent with Va. Code § 2.2-4317 (1950), and all amendments thereto.~~

~~Prequalification of a bidder shall not constitute a conclusive determination that the bidder is responsible, and such bidder may be rejected as non-responsible on the basis of subsequently discovered information.~~

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~~Failure of a bidder to prequalify with respect to a given procurement shall not bar the bidder from seeking prequalification as to future procurements, or from bidding on procurements which do not require prequalification.~~

- ~~5. **Notice of Invitation to Bid.** Notice inviting bids shall be published at least once in a newspaper of general circulation in the city at least ten (10) days preceding the last day set for the receipt of proposals.~~

~~The newspaper notice required herein shall include a general description of the articles to be purchased or sold, shall state where bid blanks and specifications may be secured, and the time and place for opening bids.~~

~~The Purchasing Agent shall also solicit sealed bids from all responsible prospective suppliers who have requested their names to be added to a "Bidders' List" which the Purchasing Agent shall maintain, by sending other notice as will acquaint them with the proposed purchase or sale. In any case, invitations sent to the vendors on the bidders' list shall be limited to commodities that are similar in character and ordinarily handled by the trade group to which the invitations are sent.~~

~~The Purchasing Agent shall post all bids or requests for proposals on the official bid board located in the Municipal Building, 2<sup>nd</sup> Floor.~~

- ~~6. **Use of Brand Names.** Unless otherwise provided in the invitation to bid, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer name; it conveys the general style, type, character, and quality of the article desired, and any article which the public body in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.~~

- ~~7. **Comments on Specifications.** For complex equipment, supplies or repair, pre-bid conferences with prospective bidders are desirable after draft specifications have been prepared. Such conferences help to detect unclear provisions and tend to widen competition by removing unnecessarily restrictive language. Conferences on purchasing bids may be called by the Purchasing Agent and attended by a department representative and, if necessary, the City Attorney.~~

- ~~8. **Bid Bonds on Construction Contracts.**~~

~~A. Except in cases of emergency, all bids or proposals for construction contracts in excess of One Hundred Thousand (\$100,000) shall be accompanied by a bid bond from a surety company selected by the bidder which is legally authorized to do business in Virginia, as a guarantee that if the contract is awarded to such bidder, that bidder will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not be less than five percent (5%) of the amount bid.~~

~~B. No forfeiture under a bid bond shall exceed the lesser of the (1) the difference between the bid for which the bond was written and the next low bid, or (2) the face amount of the bid bond.~~

- ~~9. **Bonds for Other Than Construction Contracts.** At the discretion of the Purchasing Agent, bidders may be required to submit with their bid a bid bond, or a certified check in an amount to be determined by the Purchasing Agent and specified in the invitation to bid, which shall be forfeited to the city as liquidated damages upon the bidder's failure to execute a contract awarded to him or upon the bidder's failure to furnish any required performance or payment bonds in connection with a contract awarded to him.~~

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The Purchasing Agent may require successful bidders to furnish a performance bond and/or a payment bond at the expense of the successful bidder, in amounts to be determined by the Purchasing Agent and specified in the invitation to bid, to ensure the satisfactory completion of the work for which a contract or purchase order is awarded.

10. ~~Rejection of Bids.~~

A. ~~An invitation to bid, a request for proposal, any other solicitation, or any and all bids or proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of the contract file.~~

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B. ~~The City may waive informalities in bids.~~

~~**Bid Opening.** Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid, and such other relevant information as the Purchasing Agent deems appropriate, together with the name of each bidder shall be recorded. The bid record shall be open to public inspection.~~

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12. ~~Withdrawal of Bid Due to Error.~~

~~A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.~~

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~~If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.~~

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~~The procedure for bid withdrawal must be stated in the advertisement for bids, and must be stated as one of the following:~~

~~(1) The bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice; or~~

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~~(2) The bidder shall submit to the Purchasing Agent his original work papers, documents and materials used in the preparation of the bid within one day after the date fixed for submission of bids. The work papers shall be delivered by the bidder in person or by registered mail at or prior to the time fixed for the opening of bids. The bids shall be opened one day following the time fixed by the city for the submission of bids. Thereafter, the bidder shall have two (2) hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the city until the two-hour period has elapsed. Such mistake shall be proved only from the original work papers, documents and materials delivered as required herein.~~

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~~B. Procedures for the withdrawal of bids for other than construction contracts may be established by the Purchasing Agent.~~

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~~C. No bid may be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent (5%).~~

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~~D. If a bid is withdrawn under the authority of this section, the lowest remaining bid shall be deemed to be the low bid.~~

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~~E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit directly or indirectly from the performance of the project for which the withdrawn bid was submitted.~~

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~~the Invitation to Bid at least 10 days prior to the date set for receipt of bids by posting on the Department of General Services' central electronic procurement website or other appropriate websites. In addition, public bodies may publish in a newspaper of general circulation. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities. In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall include certified businesses selected from a list made available by the Department of Small Business and Supplier Diversity;~~

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~~3. F. If Purchasing Agent denies the withdrawal of a bid under the provisions of this section, he shall notify the bidder in writing stating the reasons for his decision.~~

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~~13. Bid Public opening and announcement of all bids received;~~

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~~4. Evaluation Evaluation of bids shall be based upon the requirements set forth in the invitation Invitation to Bid, which may include special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability. In determining the 'lowest responsible bidder', in addition to price, the Purchasing Agent shall consider: and~~

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- ~~A. The ability, capacity and skill of the bidder to perform the contract or provide the service required;~~
- ~~B. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;~~
- ~~C. The character, integrity, reputation, judgment, experience, and efficiency of the bidder;~~
- ~~D. The quality of performance of previous contracts or services;~~
- ~~E. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;~~
- ~~F. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;~~
- ~~G. The quality, availability and adaptability of the goods, or services to the particular use required;~~
- ~~H. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract; and~~

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~~1. The number and scope of conditions attached to the bid.~~

~~14. Bid~~

~~5. Award. Bids shall be awarded to the lowest responsive and responsible bidder. When the terms and conditions of multiple bids awards are so provided in the invitation Invitation to bid Bid, awards may be made to more than one bidder.~~

~~Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the city may negotiate with the apparent low bidder to obtain a contract price within available funds.~~

~~15. Tie Bids.~~

~~A. In the case of a tie bid, preference shall be given to goods, services and construction produced in Virginia or provided by Virginia persons, firms or corporations, if such a choice is available; otherwise the tie shall be decided by lot.~~

~~B. Whenever any bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a preference, a like preference may be allowed to the lowest responsible bidder who is a resident of Virginia.~~

~~If all bids received are for the same total amount or unit price, quality and service being equal, the contract shall be awarded to a local bidder.~~

~~In the event that there is a tie bid, the tie bidders may be invited to resubmit written bids below the original bid, and award shall be made to the bidder with the lowest bid price. Any price quote made verbally shall be confirmed in writing.~~

~~In the event that none of the foregoing provisions of this section resolve the tie, the Purchasing Agent may cancel the solicitation and re-bid. Records shall be kept of any proceeding connected with tie bids.~~

~~C. Notwithstanding the provisions of subsection A and B, in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.~~

~~16. Multi Step Sealed Bidding. When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.~~

~~17. Contract Pricing Arrangements. Except as prohibited herein, public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other basis that is not prohibited.~~

~~Subject to the limitations of this section, any type of contract which is appropriate to the procurement and which will promote the best interests of the city may be used. A cost reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the city than any other type or that it is impracticable to obtain the supply, service or construction item required except under such a contract. Except in the case of emergency affecting the public health, safety or welfare, no contract shall be awarded on the basis of cost plus a percentage of cost.~~

~~18. Multi Term Contracts.~~

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A. Unless otherwise provided by law, a contract for goods, services or insurance may be entered into for any period of time deemed to be in the best interest of the city provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.

B. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled.

19. ~~Contract Modification.~~ A public contract may include provisions for modification of the contract during performance, but no fixed price contract may be increased by more than twenty five percent (25%) of the amount of the contract or Fifty Thousand Dollars (\$50,000.00), whichever is greater, without the advance written approval of the City Council.

20. ~~Retainage on Construction Contracts.~~

A. In any public contract for construction which provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least ninety five percent (95 %) of the earned sum when payment is due, with not more than five percent (5%) being retained to assure faithful performance of the contract. ~~All amounts withheld may be included in the final payment.~~

B. Any subcontract for a public project which provides for similar progress payments shall be subject to ~~For the same limitations.~~

21. ~~Performance and Payment Bonds.~~

A. Upon the award ~~purposes of~~ any public construction contract exceeding Fifty Thousand Dollars (\$50,000.00) awarded to any prime contractor, such contractor shall furnish to the city the following bonds:

~~(subdivision 1) A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract.~~

~~(2) "experience modification factor" means a value assigned to an employer as determined. A payment bond in the sum of the contract amount. Such bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in the prosecution of the work provided for in such contract, and shall be conditioned upon the prompt payment for all such materials furnished or labor supplied or performed in the prosecution of the work. "Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.~~

B. Each of such bonds shall be executed ~~by one or more surety companies selected by the contractor which are legally authorized to do business in Virginia.~~

C. Bonds shall be made payable to the city.

D. Each of the bonds shall be filed with the city, or a designated office or official thereof.

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~~E. Nothing in this section shall preclude the Purchasing Agent from requiring payment or performance bonds for construction contracts below Fifty Thousand Dollars (\$50,000.00).~~

~~F. Nothing in this section shall preclude the Contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts which are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.~~

~~22. **Action on Performance Bond.** Any action against the surety on a performance bond shall be brought within one year after (1) completion of the contract, including the expiration of all warranties and guarantees, or (2) discovery of the defect or breach of warranty, if the action be for such, whichever is later.~~

~~23. **Actions on Payment Bonds.**~~

~~A. Subject to the provisions of subsection B hereof, any claimant who has performed labor or furnished materials rate service organization in accordance with the contract for which a payment bond has been given, and who has not been paid in full before the expiration of ninety (90) days after the such claimant performed the last labor or furnished the last materials for which he claims payment, may bring an action on such payment bond to recover any amount due him for such labor or materials, and may prosecute such action to final judgment and have execution on the judgment. The obligee named in the bond need not be named a party to such action.~~

~~B. Any claimant who has a direct contractual relationship with any subcontractor from whom the contractor has not its uniform experience rating plan required a subcontractor payment bond under 2A-12 (21) but who has no contractual relationship, express or implied, with such contractor, may bring an action on the contractor's payment bond only if he has given written notice to such contractor within 180 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Any claimant who has a direct contractual relationship with a subcontractor from whom the contractor has required a subcontractor payment bond under 2A-12 (21) but who has no contractual relationship, express or implied, with such contractor, may bring an action on the subcontractor's payment bond. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished shall not be subject to the time limitations stated in this subsection to be filed pursuant to subsection D of § 38.2-1913.~~

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

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

~~1. C. Any action on a payment bond must be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.~~

~~24. **Alternative Forms of Security.**~~

~~A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash escrow in the face amount required for the bond.~~

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~~B. If approved by the City Attorney, a bidder may furnish a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the City of Hopewell equivalent to the corporate surety's bond.~~

~~**2A-13 COMPETITIVE NEGOTIATION.**~~

~~1. **Definition of Competitive Negotiation.** Competitive negotiation is a method of source selection which involves individual discussions between the City of Hopewell and the offeror on the basis of responses to the City of Hopewell's request for proposals. The source selection method of competitive negotiation incorporates 2A-12 (2), (3), (4), (6), (7), (9), (16), (18), in addition to the provisions outlined in 2A-13 and 2A-14.~~

~~2. **Conditions for Use.** Upon a determination in writing the competitive sealed bidding is either not practicable or not advantageous to the public, goods, services, insurance or construction may be procured by competitive negotiation. The writing shall document the basis for this determination.~~

~~3. **Issuance of a written Request for Proposals.** A request for proposals shall be in writing and indicate Proposal indicating in general terms that which is sought to be procured specifying the factors which that will be used in evaluating the proposal, indicating whether a numerical scoring system will be used in evaluation of the proposal, and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities, specifications or qualifications which that will be required of. In the contractor event that a numerical scoring system will be used in the evaluation~~

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of proposals, the point values assigned to each of the evaluation criteria shall be included in the Request for Proposal or posted at the location designated for public posting of procurement notices prior to the due date and time for receiving proposals. No Request for Proposal for construction authorized by this chapter shall condition a successful offeror's eligibility on having a specified experience modification factor;

~~2. Public Notice.~~ A notice of the Request for Proposal at least ten (10) days prior to the date set for receipt of proposals, public notice shall be given by posting in a public area normally used for posting of public notices and by publication on the Department of General Services' central electronic procurement website or other appropriate websites. Additionally, public bodies shall publish in a newspaper of general circulation in the area in which the contract is to be performed, or both, so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities. In addition, proposals may be solicited directly from potential contractors. Any additional solicitations shall include certified businesses selected from a list made available by the Department of Small Business and Supplier Diversity; and

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5. ~~Evaluation Factors and Award.~~ Selection

3. For goods, nonprofessional services, and insurance, selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the requestRequest for proposalsProposal, including price if so stated in the requestRequest for Proposal. In the case of a proposal for information technology, as defined in § 2.2-2006, a public body shall not require an offeror to state in a proposal any exception to any liability provisions contained in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. The offeror shall state any exception to any liability provisions contained in the Request for Proposal in writing at the beginning of negotiations, and such exceptions shall be considered during negotiation. Price shall be considered, but need not be the sole or primary determining factor. After negotiations have been conducted with each offeror so selected, the Purchasing Agentpublic body shall select the offeror which, in his/herits opinion, has made the best proposal and provides the best value, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should the Purchasing Agentpublic body determine in writing and in his or herits sole discretion that only one offeror is thefully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror: or

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~~2A-14 CONTRACTING FOR PROFESSIONAL SERVICES BY COMPETITIVE NEGOTIATION.~~

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4. For professional services, the public bodyProfessional services shall be procured by competitive negotiation. The process includes 2A-12 (2), (3), (4), (6), (7), (9), (16), (18) and 2A-13 (3) and (4).

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~~Discussion and Award.~~ The Purchasing Agent shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable, on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. SuchThe offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposedpro- posed project, as well as alternative concepts. These discussionsIn addition, offerors shall be informed of any ranking criteria that will be used by the public body in addition to the review of the professional competence of the offeror. The Request for Proposal shall not, however, request that

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~~offerors furnish estimates of man-hours or cost for services. At the discussion stage, the public body may encompass non-binding discuss nonbinding estimates of total project costs, including-, but not limited to, life-cycle costing, and where appropriate life cycle costs and, nonbinding estimates of price for services. Methods to be utilized in arriving at price for services may also be discussed. Proprietary~~ In accordance with § 2.2-4342, ~~proprietary information from competing offerors shall not be disclosed to the public or to competitors. For architectural or engineering services, the public body shall not request or require offerors to list any exceptions to proposed contractual terms and conditions, unless such terms and conditions are required by statute, regulation, ordinance, or standards developed pursuant to § 2.2-1132, until after the qualified offerors are ranked for negotiations. At the conclusion of discussion, outlined herein in this~~

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~~subdivision, on the basis of evaluation factors published in the requestRequest for proposaProposal and all information developed in the selection process to this point, the Purchasing Agentpublic body shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious.-~~

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~~Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the City of Hopewellpublic body can be negotiated at a price considered fair and reasonable and pursuant to contractual terms and conditions acceptable to the public body, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price.-~~

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

~~Should the Purchasing Agentpublic body determine in writing and in hisits sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.~~

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

~~For the purposes of subdivision A 1, "experience modification factor" means a value assigned to an employer as determined by a rate service organization in accordance with its uniform experience rating plan required to be filed pursuant to subsection D of § 38.2-1913.~~

**Article 2.**  
**Contract Formation and Administration**

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

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

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

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~~C. Goods, services other than professional services, and insurance may be procured by competitive sealed bidding or competitive negotiation.~~

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~~Upon a written determination made in advance by (i) the Governor or his designee in the case of a procurement by the Commonwealth or by a department, agency or institution thereof or (ii) the local governing body in the case of a procurement by a political subdivision of the Commonwealth, that competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured through a licensed~~

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agent or broker selected in the manner provided for the procurement of things other than professional services set forth in § 2.2-4302.2. The basis for this determination shall be documented in writing.

D. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances:

1. 2A-15 SOLE SOURCE PROCUREMENT.

By any public body on a fixed price design-build basis or construction management basis as provided in Chapter 43.1 (§ 2.2-4378 et seq.); or

2. By any public body for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination.

E. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The public body shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the Department of General Services' central electronic procurement website or other appropriate websites, and in addition, public bodies may publish in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

2A-16 EMERGENCY PURCHASES.

F. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. ~~The Purchasing Agent~~public body shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. ~~This notice shall be posted on the Bid Board located~~Department of General Services' central electronic procurement website or other appropriate websites, and ~~in the Municipal Building, 2<sup>nd</sup> Floor or published~~addition, public bodies may publish in a newspaper of general circulation on the day the ~~City~~public body awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

G. A public body may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts for:

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1. Goods and services other than professional services and non-transportation-related construction, if the aggregate or the sum of all phases is not expected to exceed \$100,000; and

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2. Transportation-related construction, if the aggregate or sum of all phases is not expected to exceed \$25,000.

~~However, An emergency shall be deemed to exist when a breakdown in machinery or equipment and/or a threatened termination of essential services or dangerous condition develops, or when any unforeseen circumstances arise causing curtailment or diminution of an essential service or where materials or services are needed to prevent loss of life or property.~~

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**2A-17 SMALL PURCHASES.**

Any contract not exceeding Fifty Thousand Dollars (\$50,000.00) may be made in accordance with such small purchase procedures; shall provide for competition wherever practicable.

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Such purchase procedures may allow for single or term contracts for professional services without requiring competitive negotiation, provided, however, that contract requirements shall not be artificially divided so as the aggregate or the sum of all phases is not expected to constitute a exceed \$60,000. Where small purchase under this section. Insofar as it is practical, no less than three (3) businesses shall be solicited to submit quotations. Purchases procedures are adopted for construction, the procedures shall not waive compliance with the Uniform State Building Code.

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For state public bodies, purchases under this subsection that are expected to exceed Thirty Thousand (\$30,000) shall require the (a) written informal solicitation of a minimum of four (4) bidders or offerors. Award shall be made and (b) posting of a public notice on the Department of General Services' central electronic procurement website or other appropriate websites. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to the business offering the lowest acceptable quotation. The name of the business submitting a quotation, and the date and amount of each quotation, shall be recorded and maintained as a public record provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

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**2A-18 AUCTION PURCHASES.**

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

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**2A-19 MISCELLANEOUS SOURCES.**

The following transactions are hereby exempt from the provisions of this ordinance:

Purchases from the State Penitentiary or state contracts from the State Purchasing Department.

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~~Legal Services associated with actual or potential litigation.~~

~~Purchases for special police work when the Chief of Police certifies to the Purchasing Agent that items are needed for undercover police operations.~~

**ARTICLE V – DISPOSAL OF SURPLUS PROPERTY**

~~2A-20 – PROCEDURE.~~

~~All using agencies shall submit to the Purchasing Agent at such time and in such form as he shall prescribe, reports showing stocks of all supplies which are no longer used or which have become obsolete, worn out or scrapped.~~

~~The Purchasing Agent shall have the authority to transfer surplus stock to other using agencies.~~

~~The Purchasing Agent shall have the authority to sell all supplies which are unsuitable for public use, or to exchange the same for, or trade in the same on, new supplies.~~

~~Sales under this section shall be made to the highest responsible bidder.~~

**ARTICLE VI – DEBARMENT**

**2A-21 AUTHORITY TO DEBAR OR SUSPEND.**

~~After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Purchasing Agent after consulting with the City Attorney is authorized to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three (3) years. After consultation with the City of Attorney, the Purchasing Agent is authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall not be for a period exceeding three (3) months. The causes for debarment include:~~

- ~~1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;~~
  - ~~2. Conviction under state and federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as city contractor;~~
  - ~~3. Conviction under state or federal anti trust statutes arising out of the submission of bids or proposals.~~
- ~~4-1. The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning. However, bulk purchases of commodities used in road and highway construction and maintenance, and aggregates shall not be made by reverse auctioning.~~

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

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

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

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

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~~1. Violation of contract provisions, as set forth below, of a character which is regarded by the public body or its designee to be so serious as to justify debarment action:~~

~~A. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in a contract; or~~

~~B. A recent record of failure to perform or unsatisfactory performance in one or more contracts, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment; or~~

~~5. Any other cause the Purchasing Agent determines to be so serious and compelling as to affect responsibility as a city contractor, including debarment by another governmental entity for any cause in this ordinance; and for violation of the ethical standards set forth in this ordinance.~~

**2A-22 – DECISION TO DEBAR OR SUSPEND**

~~The Purchasing Agent shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended person involved of his rights concerning judicial review.~~

**2A-23 NOTICE OF DECISION:**

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

~~2. Any locality with a population in excess of 78,000 or school division within such locality, or any authority, sanitation district, metropolitan planning organization, transportation district commission, or planning district commission, or any city within Planning District 8, the sum of all projects performed in a one-year contract term shall not exceed \$6 million and those awarded for any airport as defined in § 5.1-1 and aviation transportation projects, the sum of all such projects shall not exceed \$1.5 million;~~

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

~~4. 2A-22 decision to debar or suspend Environmental location, design, and inspection work regarding highways and bridges by the Commissioner of Highways, the initial contract term shall be limited to two years or when the cumulative total project fees reach \$5 million, whichever occurs first. Such contract may be renewable for two additional one-year terms at the option of the Commissioner, and the sum of all projects in each one-year contract term shall not exceed \$5 million.~~

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

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D. The fee for any single project shall not exceed \$150,000; however, for architectural or engineering services for airports as defined in § 5.1-1 and aviation transportation projects, the project fee of any single project shall not exceed \$500,000, except that for:

1. A state agency as defined in § 2.2-4347, the project fee shall not exceed \$200,000, as may be mailed or determined by the Director of the Department of General Services or as otherwise provided by the Restructured Higher Education Financial and Administrative Operations Act (§ 23.1-1000 et seq.); and

2. Any locality with a population in excess of 78,000 or school division within such locality, or any authority, transportation district commission, or sanitation district, or any city within Planning District 8, the project fee shall not exceed \$2.5 million.

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

E. For the purposes of subsection B, any unused amounts from one contract term shall not be carried forward to any additional term, except as otherwise provided by the Restructured Higher Education Financial and Administrative Operations Act (§ 23.1-1000 et seq.).

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

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

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

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

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

E. No public body shall issue or use a job order, under a job order contract, solely for the purpose of receiving professional architectural or engineering services that constitute the practice of architecture or the practice of engineering as those terms are defined in § 54.1-400. However, professional architectural or engineering services may be included on a job order where such professional services (i) are incidental and directly related to the job, (ii) do not exceed \$25,000 per job order, and (iii) do not exceed \$75,000 per contract term. F. Job order contracting shall not be used for construction, maintenance, or asset management services for a highway, bridge, tunnel, or overpass.

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

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

B. In addition, a public body may purchase from another public body's contract or from the contract of the Metropolitan Washington Council of Governments or the Virginia Sheriffs' Association even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was a cooperative procurement being conducted on behalf of other public bodies, except for:

1. Contracts for architectural or engineering services; or

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2. Construction, except for the installation of artificial turf and track surfaces, including all associated and necessary construction, which shall not be subject to the limitations prescribed in this subdivision. Nothing in this subdivision shall be construed to prohibit sole source or emergency procurements awarded pursuant to subsections E and F of § 2.2-4303.

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

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

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

Pursuant to § 2.2-2012, such approval is not required if the procurement arrangement is for telecommunications and information technology goods and services of every description. In instances where the procurement arrangement is for telecommunications and information technology goods and services, such arrangement shall be permitted if approved by the Chief Information Officer of the Commonwealth. However, such acquisitions shall be procured competitively.

Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement. D. As authorized by the United States Congress and consistent with applicable federal regulations, and provided the terms of the contract permit such purchases:

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

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

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

**§ 2.2-4305. Competitive procurement by localities on state-aid projects.**

No contract for the construction of any building or for an addition to or improvement of an existing building by any local governing body or subdivision thereof for which state funds of not more than \$50,000 in the aggregate or for the sum of all phases of a contract or project either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed bidding or after competitive negotiation as provided under subsection D of § 2.2-4303 or Chapter 43.1 (§ 2.2-4378 et seq.). The procedure for the advertising for bids or for proposals and for letting of the contract shall conform, mutatis mutandis, to this chapter.

**§§ 2.2-4306 through 2.2-4308. Repealed**

**§ 2.2-4308.1. Purchase of owner-controlled insurance in construction projects.**

A. furnished immediately to the debarred or suspended. Notwithstanding any other provision of law to the contrary, a public body may purchase at its expense an owner-controlled insurance program in connection with any public construction contract where the amount of the contract or combination of contracts is more than \$100 million, provided that no single contract valued at less than \$50 million shall be combined pursuant to this section. The public body shall provide notice if it intends to use an owner-controlled insurance program, including the specific coverages of such program, in any request for proposal, invitation to bid, or other applicable procurement documents.

B. A public body shall not require a provider of architecture or professional engineering services to participate in the owner-controlled insurance program, except to the extent that the public body may elect to secure excess coverage. No contractor or subcontractor shall be required to provide insurance coverage for a construction project if that specified coverage is included in an owner-controlled insurance program in which the contractor or subcontractor is enrolled.

C. For the purposes of this section, “owner-controlled insurance program” means a consolidated insurance program or series of insurance policies issued to a public body that may provide for some or all of the following types of insurance coverage for any contractor or subcontractor working on or at a public construction contract or combination of such contracts: general liability, property damage, workers’ compensation, employer’s liability, pollution or environmental liability, excess or umbrella liability, builder’s risk, and excess or contingent professional liability.

**§ 2.2-4308.2. Registration and use of federal employment eligibility verification program required; debarment.**

A. For purposes of this section, “E-Verify program” means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208), Division C, Title IV, § 403(a), as amended, operated by the U.S. Department of Homeland Security, or a successor work authorization program designated by the U.S. Department of Homeland Security or other

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federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99-603).

B. Any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with any agency of the Commonwealth to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract.

C. Any such employer who fails to comply with the provisions of subsection B shall be debarred from contracting with any agency of the Commonwealth for a period up to one year. Such debarment shall cease upon the employer's registration and participation in the E-Verify program.

**§ 2.2-4309. Modification of the contract.**

A. A public contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than twenty-five percent of the amount of the contract or \$50,000, whichever is greater, without the advance written approval of the Governor or his designee, in the case of state agencies, or the governing body, in the case of political subdivisions. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.

B. Any public body may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.

C. Nothing in this section shall prevent any public body from placing greater restrictions on contract modifications.

D. The provisions of this section shall not limit the amount a party to a public contract may claim or recover against a public body pursuant to § 2.2-4363 or any other applicable statute or regulation. Modifications made by a political subdivision that fail to comply with this section are voidable at the discretion of the governing body, and the unauthorized approval of a modification cannot be the basis of a contractual claim as set forth in § 2.2-4363.

**§ 2.2-4310. Discrimination prohibited; participation of small, women- owned, minority-owned, and service disabled veteran- owned business and employment services organization.**

A. In the solicitation or awarding of contracts, no public body shall discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by state law relating to discrimination in employment. Whenever solicitations are made, each public body shall include businesses selected from a list made available by the Department of Small Business and Supplier Diversity, which list shall include all companies and organizations certified by the Department.

B. All public bodies shall establish programs consistent with this chapter to facilitate the participation of small businesses, businesses owned by women, minorities, and service disabled veterans, and employment services organizations in procurement transactions. The programs established shall be in writing and shall

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comply with the provisions of any enhancement or remedial measures authorized by the Governor pursuant to subsection C or, where applicable, by the chief executive of a local governing body pursuant to § 15.2-965.1, and shall include specific plans to achieve any goals established therein. State agencies shall submit annual progress reports on (i) small, women-owned, and minority-owned business procurement, (ii) service disabled veteran-owned business procurement, and (iii) employment services organization procurement to the Department of Small Business and Supplier Diversity in a form specified by the Department of Small Business and Supplier Diversity. Contracts and subcontracts awarded to employment services organizations shall be credited toward the small business, women-owned, and minority-owned business contracting and subcontracting goals of state agencies and contractors. The Department of Small Business and Supplier Diversity shall make information on service disabled veteran-owned procurement available to the Department of Veterans Services upon request.

C. Whenever there exists (i) a rational basis for small business or employment services organization enhancement or (ii) a persuasive analysis that documents a statistically significant disparity between the availability and utilization of women-owned and minority-owned businesses, the Governor is authorized and encouraged to require state agencies to implement appropriate enhancement or remedial measures consistent with prevailing law. Any enhancement or remedial measure authorized by the Governor pursuant to this subsection for state public bodies may allow for small businesses certified by the Department of Small Business and Supplier Diversity or a subcategory of small businesses established as a part of the enhancement program to have a price preference over noncertified businesses competing for the same contract award on designated procurements, provided that the bid of the certified small business or the business in such subcategory of small businesses established as a part of an enhancement program does not exceed the low bid by more than five percent.

D. In awarding a contract for services to a small, women-owned, or minority-owned business that is certified in accordance with § 2.2-1606, or to a business identified by a public body as a service disabled veteran-owned business where the award is being made pursuant to an enhancement or remedial program as provided in subsection C, the public body shall include in every such contract of more than \$10,000 the following:

“If the contractor intends to subcontract work as part of its performance under this contract, the contractor shall include in the proposal a plan to subcontract to small, women-owned, minority-owned, and service disabled veteran-owned businesses.”

E. In the solicitation or awarding of contracts, no state agency, department or institution shall discriminate against a bidder or offeror because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest.

F. As used in this section:

“Employment services organization” means an organization that provides community-based employment services to individuals with disabilities that is an approved Commission on Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Department for Aging and Rehabilitative Services.

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“Minority individual” means an individual who is a citizen of the United States or a legal resident alien and who satisfies one or more of the following definitions:

“African American” means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.

“Asian American” means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana Islands, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh, or Sri Lanka and who is regarded as such by the community of which this person claims to be a part.

“Hispanic American” means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.

“Native American” means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.

“Minority-owned business” means a business that is at least 51 percent owned by one or more minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more minority individuals, or any historically black college or university as defined in § 2.2-1604, regardless of the percentage ownership by minority individuals or, in the case of a corporation, partnership, or limited liability company or other entity, the equity ownership interest in the corporation, partnership, or limited liability company or other entity.

“Service disabled veteran” means a veteran who (i) served on active duty in the United States military ground, naval, or air service, (ii) was discharged or released under conditions other than dishonorable, and (iii) has a service-connected disability rating fixed by the United States Department of Veterans Affairs.

“Service disabled veteran business” means a business that is at least 51 percent owned by one or more service disabled veterans or, in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more individuals who are service disabled veterans and both the management and daily business operations are controlled by one or more individuals who are service disabled veterans.

“Small business” means a business, independently owned and controlled by one or more individuals who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees, or annual gross receipts of \$10 million or less averaged over the previous three years. One or more of

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the individual owners shall control both the management and daily business operations of the small business.

“State agency” means any authority, board, department, instrumentality, institution, agency, or other unit of state government. “State agency” shall not include any county, city, or town.

“Women-owned business” means a business that is at least 51 percent owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest is owned by one or more women who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women.

**§ 2.2-4310.1. Awards as a result of any authorized enhancement or remedial measure; requirements.**

A. Any enhancement or remedial measure authorized by the Governor pursuant to subsection C of § 2.2-4310 for state public bodies shall include a provision that the procurement shall be conducted in accordance with such enhancement or remedial measure for businesses certified by the Department of Small Business and Supplier Diversity. If such enhancement or remedial measure provides for an award priority for such businesses, then the contract shall be awarded in accordance with such priority if such priority business participated in the solicitation and requirements are met. If an award is not made based on the foregoing, then the contract shall be awarded in accordance with the next award priority and so on until a contract is awarded based on the established award priority.

B. If an award is not made pursuant to subsection A, the procurement award may be made without regard to such enhancement or remedial measure.

**§ 2.2-4310.2. State agency’s goals for participation by small businesses; requirements.**

Any state agency’s goals under § 2.2-4310 for participation by small businesses shall include within the goals a minimum of three percent participation by service disabled veteran businesses as defined in §§ 2.2-2001 and 2.2-4310 when contracting for information technology goods and services.

As used in this section, “information technology” and “state agency” mean the same as those terms are defined in § 2.2-2006.

**§ 2.2-4310.3. Fiscal data pertaining to certain enhancement or remedial measures.**

The Department of General Services shall make available a dashboard of purchase order reports from the Commonwealth’s statewide electronic procurement system known as eVA. The dashboard shall include aggregated data showing (i) current fiscal year purchase orders, (ii) purchase orders from the previous fiscal year, and (iii) other relevant data derived from any enhancement or remedial measure implemented by the Governor pursuant to subsection C of § 2.2-4310.

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**§ 2.2-4311. Employment discrimination by contractor prohibited; required contract provisions.**

All public bodies shall include in every contract of more than \$10,000 the following provisions:

**1. During the performance of this contract, the contractor agrees as follows:**

**a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.**

**b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.**

**c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.**

**2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.**

**§ 2.2-4311.1. Compliance with federal, state, and local laws and federal immigration law; required contract provisions.**

All public bodies shall provide in every written contract that the contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

**§ 2.2-4311.2. Compliance with state law; foreign and domestic businesses authorized to transact business in the Commonwealth.**

**A. All public bodies shall include in every written contract a provision that a contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.**

**B. Pursuant to competitive sealed bidding or competitive negotiation, all public bodies shall include in the solicitation a provision that requires a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 to include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized.**

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C. Any bidder or offeror described in subsection B that fails to provide the required information shall not receive an award unless a waiver of this requirement and the administrative policies and procedures established to implement this section is granted by the Director of the Department of General Services or his designee or by the chief executive of a local governing body.

D. Any business entity described in subsection A that enters into a contract with a public body pursuant to this chapter shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract.

E. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

**§ 2.2-4312. Drug-free workplace to be maintained by contractor; required contract provisions.**

~~§ 2.2-4312. FINALITY OF DECISION.~~

~~A decision under 2A-22 decision to debar or suspend public bodies shall include in every contract over \$10,000 the following provisions:~~

~~During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.~~

~~For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.~~

**§ 2.2-4313. Petition for recycled goods and products; periodic review of procurement standards.**

A. Any person who believes that particular goods or products with recycled content are functionally equivalent to the same goods or products produced from virgin materials may petition the Department of General Services or other appropriate agency of the Commonwealth to include the recycled goods or products in its procurement process. The petitioner shall submit, prior to or during the procurement process, documentation that establishes that the goods or products (i) contain recycled content and (ii) can meet the performance standards set forth in the applicable specifications. If the Department of General Services or other agency of the Commonwealth that receives the petition determines that the documentation demonstrates that the goods or products with recycled content will meet the performance standards set forth in the applicable specifications, it shall incorporate the goods or products into its procurement process.

B. The Department of General Services and all agencies of the Commonwealth shall review and revise their procurement procedures and specifications on a continuing basis to encourage the use of goods and

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products with recycled content and shall, in developing new procedures and specifications, encourage the use of goods and products with recycled content.

**§ 2.2-4314. Petition for procurement of less toxic goods and products; periodic review of procurement standards.**

A. As used in this section:

“Goods and products” means goods and products that are used or consumed by an agency of the Commonwealth in the performance of its statutory functions. The term shall include, but not be limited to (i) cleaning materials, (ii) paints and coatings, (iii) solvents, (iv) adhesives, (v) inks, and (vi) pesticides and herbicides. The term shall not include: (i) fuels, (ii) food and beverages, (iii) furniture and fixtures, (iv) tobacco products, and (v) packaging and containers.

“Less toxic goods and products” means goods and products that (i) are functionally equivalent to and (ii) contain, emit, produce, or generate, less toxic or hazardous substances, or other toxic or hazardous substances that pose less of a hazard to public health and safety, or both, than goods and products procured by the Department of General Services or other agency of the Commonwealth.

“Toxic or hazardous substance” means (i) a chemical identified on the Toxic Chemical List established pursuant to § 313 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq. (P.L. 99-499) or (ii) a chemical listed pursuant to §§ 101 (14) or 102 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. (P.L. 92-500).

B. Any person who manufactures, sells, or supplies goods or products may petition the Department of General Services or other appropriate agency of the Commonwealth for the inclusion of the less toxic goods and products in its procurement process. The petitioner shall submit, prior to or during the procurement process, documentation that establishes that the goods or products meet the performance standards set forth in the applicable specifications. If the Department of General Services or other agency of the Commonwealth that receives the petition determines that the documentation establishes that the less toxic goods or products meet the performance standards set forth in the applicable specifications, it shall incorporate such goods or products into its procurement process.

C. The Department of General Services and all agencies of the Commonwealth shall review and revise their procurement procedures and specifications on a continuing basis to encourage the use of less toxic goods and products. However, nothing in this section shall require the Department or other agencies to purchase, test or evaluate any particular goods or products. Nor shall this section require the Department to purchase goods or products other than those that would be purchased under regular procurement procedures.

**§ 2.2-4315. Use of brand names.**

Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or manufacturer shall not restrict bidders to the specific brand, make or manufacturer named and shall be deemed to convey the general style, type, character, and quality of the article desired. Any article that the public body in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

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**§ 2.2-4316. Comments concerning specifications.**

Every public body awarding public contracts shall establish procedures whereby comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal can be received and considered prior to the time set for receipt of bids or proposals or award of the contract.

**§ 2.2-4317. Prequalification generally; prequalification for construction.**

A. Prospective contractors may be prequalified for particular types of supplies, services, insurance or construction, and consideration of bids or proposals limited to prequalified contractors. Any prequalification procedure shall be established in writing and sufficiently in advance of its implementation to allow potential contractors a fair opportunity to complete the process.

B. Any prequalification of prospective contractors for construction by a public body shall be pursuant to a prequalification process for construction projects adopted by the public body. The process shall be consistent with the provisions of this section. The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information subject to the provisions of subsection D of § 2.2-4342.

In all instances in which the public body requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.

At least 30 days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the public body shall advise in writing each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to the contractor shall state the reasons for the denial of prequalification and the factual basis of such reasons.

A decision by a public body denying prequalification under the provisions of this subsection shall be final and conclusive, unless the debarred contractor appeals the decision as provided in § 2.2-4357.

C. A public body may deny prequalification to any contractor only if the public body finds one of the following:

1. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the public body shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement;

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2. The contractor does not have appropriate experience to perform the construction project in question;

3. The contractor or ~~suspended person~~ any officer, director or owner thereof has had judgments entered against him, within the past ten years for the breach of contracts for governmental or nongovernmental construction, including, but not limited to, design-build or construction management;

4. The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with a public body without good cause. If the public body has not contracted with a contractor in any prior construction contracts, the public body may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. A public body may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto given to the contractor at that time, with the opportunity to respond;

5. The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past ten years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6 (§ 2.2-4367 et seq.) of this chapter, (ii) the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.), (iii) Chapter 4.2 (§ 59.1-68.6 et seq.) of Title 59.1, or (iv) any substantially similar law of the United States or another state;

6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government; and

7. ~~(40) days after receipt of the decision commences~~ The contractor failed to provide to the public body in a timely manner any information requested by the public body relevant to subdivisions 1 through 6 of this subsection.

D. If a public body has a prequalification ordinance that provides for minority participation in municipal construction contracts, that public body may also deny prequalification based on minority participation criteria. However, nothing herein shall authorize the adoption or enforcement of minority participation criteria except to the extent that such criteria, and the adoption and enforcement thereof, are in accordance with the Constitution and laws of the United States and the Commonwealth.

E. A state public body shall deny prequalification to any contractor who fails to register and participate in the E-Verify program as required by § 2.2-4308.2.

F. The provisions of subsections B, C, and D shall not apply to prequalification for contracts let under § 33.2-209, 33.2-214, or 33.2-221.

**§ 2.2-4318. Negotiation with lowest responsible bidder.**

Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the public body may negotiate with the apparent low bidder to obtain a contract price within available funds. However, the

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negotiation may be undertaken only under conditions and procedures described in writing and approved by the public body prior to issuance of the Invitation to Bid and summarized therein.

**§ 2.2-4319. Cancellation, rejection of bids; waiver of informalities.**

A. An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of the contract file. A public body shall not cancel or reject an Invitation to Bid, a Request for Proposal, any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror.

B. A public body may waive informalities in bids.

**§ 2.2-4320. Exclusion of insurance bids prohibited.**

Notwithstanding any other provision of law, no insurer licensed to transact the business of insurance in the Commonwealth or approved to issue surplus lines insurance in the Commonwealth shall be excluded from presenting an insurance bid proposal to a public body in response to a request for proposal or an invitation to bid. Nothing in this section shall preclude a public body from debaring a prospective insurer pursuant to § 2.2-4321.

**§ 2.2-4321. Debarment.**

Prospective contractors may be debarred from contracting for particular types of supplies, services, insurance or construction, for specified periods of time. Any debarment procedure shall be established in writing for state agencies and institutions by the agency designated by the Governor and for political subdivisions by their governing bodies. Any debarment procedure may provide for debarment on the basis of a contractor's unsatisfactory performance for a public body.

**§ 2.2-4321.1. Prohibited contracts; exceptions; determination by Department of Taxation; appeal; remedies.**

A. No state agency shall contract for goods or services with a nongovernmental source if the source, or any affiliate of the source, is subject to the provisions of (i) § 58.1-612 and fails or refuses to collect and remit the tax on its sales delivered by any means to locations within the Commonwealth or (ii) Article 2 (§ 58.1-320 et seq.) or Article 10 (§ 58.1-400 et seq.) of Chapter 3 of Title 58.1 and fails or refuses to remit any tax due thereunder. The provisions of clause (ii) shall not apply to any person that has (a) entered into a payment agreement with the Department of Taxation to pay the tax and is not delinquent under the terms of the agreement or (b) appealed the assessment of the tax in accordance with law and such appeal is pending.

B. A state agency may contract for goods or services with a source prohibited under subsection A in the event of an emergency or where the nongovernmental source is the sole source of such goods or services.

C. The determination of whether a source is a prohibited source shall be made by the Department of Taxation after providing the prohibited source with notice and an opportunity to respond to the proposed

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determination. The Department of Taxation shall notify the Department of General Services of its determination.

D. The Department of General Services shall post public notice of all prohibited sources on its public internet procurement website and on other appropriate websites.

E. The remedies provided in Article 5 (§ 2.2-4357 et seq.) of this chapter shall not apply to any determination made pursuant to this section and the sole remedy for any adverse determination shall be as provided in subsection F.

F. Any source aggrieved by a determination of the Department of Taxation made under this section may apply to the Tax Commissioner for correction of the determination. The Tax Commissioner shall respond within 30 days of receipt of the application for corrective action. Within 10 days after receipt of the Tax Commissioner's response, the aggrieved source may appeal to the Circuit Court for the City of Richmond. If it is determined that the determination of the Department of Taxation was arbitrary, capricious, or not in accordance with law, the sole relief shall be restoration of the source's eligibility to contract with state agencies. No claim for damages or attorney's fees shall be awarded.

G. Any action of the Department of Taxation, the Department of General Services, or of any state agency under this section shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

H. For the purposes of this section, "state agency" means any authority, board, department, instrumentality, institution, agency or other unit of state government. State agency shall not include any public institution of higher education or any county, city or town or any local or regional governmental authority.

**§ 2.2-4321.2. Public works contract requirements.**

A. As used in this section:

"Public works" means the operation, erection, construction, alteration, improvement, maintenance, or repair of any public facility or immovable property owned, used, or leased by a state agency.

"State agency" means any authority, board, department, instrumentality, institution, agency, or other unit of state government. "State agency" shall not include any county, city, or town.

B. Except as provided in subsection F or as required by federal law, each state agency, when engaged in procuring products or services or letting contracts for construction, manufacture, maintenance, or operation of public works paid for in whole or in part by state funds, or when overseeing or administering such procurement, construction, manufacture, maintenance, or operation, shall ensure that neither the state agency nor any construction manager acting on behalf of the state agency shall, in its bid specifications, project agreements, or other controlling documents:

1. Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or related public works projects; or

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2. Otherwise discriminate against bidders, offerors, contractors, subcontractors, or operators for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related public works projects. Nothing in this subsection shall prohibit contractors or subcontractors from voluntarily entering into agreements described in subdivision 1.

C. A state agency issuing grants, providing financial assistance, or entering into cooperative agreements for the construction, manufacture, maintenance, or operation of public works shall ensure that neither the bid specifications, project agreements, nor other controlling documents therefor awarded by recipients of grants or financial assistance or by parties to cooperative agreements, nor those of any construction manager acting on behalf of such recipients, shall:

1. Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or related projects; or

2. Otherwise discriminate against bidders, offerors, contractors, subcontractors, or operators for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related projects.

D. If an awarding authority, a recipient of grants or financial assistance, a party to a cooperative agreement, or a construction manager acting on behalf of any of them performs in a manner contrary to the provisions of subsection B or C, the state agency awarding the contract, grant, or assistance shall be entitled to injunctive relief to prevent any violation of this section.

E. Any interested party, which shall include a bidder, offeror, contractor, subcontractor, or operator, shall have standing to challenge any bid specification, project agreement, neutrality agreement, controlling document, grant, or cooperative agreement that violates the provisions of this section. Furthermore, such interested party shall be entitled to injunctive relief to prevent any violation of this section.

F. The provisions of this section shall not:

1. Apply to any public-private agreement for any construction or infrastructure project in which the private body, as a condition of its investment or partnership with the state agency, requires that the private body have the right to control its labor relations policy and perform all work associated with such investment or partnership in compliance with all collective bargaining agreements to which the private party is a signatory and is thus legally bound with its own employees and the employees of its contractors and subcontractors in any manner permitted by the National Labor Relations Act, 29 U.S.C. § 151 et seq., or the Railway Labor Act, 45 U.S.C. § 151 et seq.;

2. Prohibit an employer or any other person covered by the National Labor Relations Act or the Railway Labor Act from entering into agreements or engaging in any other activity protected by law; or

3. Be interpreted to interfere with the labor relations of persons covered by the National Labor Relations Act or the Railway Labor Act.

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**§ 2.2-4322. Acceptance of bids submitted to the Department of Transportation.**

In a procurement by the Department of Transportation by competitive sealed bidding for highway construction and maintenance contracts, the Department may accept bids in response to an Invitation to Bid at the Department's central office or at district offices or other satellite locations designated in the Invitation to Bid, in accordance with specifications adopted by the Department. An Invitation to Bid may authorize agents of the Department to accept from bidders on a voluntary basis a supplemental submission referencing the total bid amount on a form prescribed by the Department. Information contained in any supplemental submission may be made available to the public by the Department after the time for receiving bids has expired and before the public opening and announcement of all sealed bids.

**§ 2.2-4323. Purchase programs for recycled goods; agency responsibilities.**

A. All state agencies shall implement a purchase program for recycled goods and shall coordinate their efforts so as to achieve the goals and objectives established in subsection C as well as those set forth in §§ 10.1-1425.6, 10.1-1425.7, 10.1-1425.8, 2.2-4313, 2.2-4324, and 2.2-4326.

B. The Department of Environmental Quality shall advise the Department of General Services concerning the designation of recycled goods. In cooperation with the Department of General Services, the Department of Environmental Quality shall increase the awareness of state agencies as to the benefits of using such products.

C. The Department of General Services shall:

1. Ensure that the Commonwealth's procurement guidelines for state agencies promote the use of recycled goods.

2. Promote the Commonwealth's interest in the use of recycled products to vendors.

3. Make agencies aware of the availability of recycled goods, including those that use post-consumer and other recovered materials processed by Virginia- based companies.

D. All state agencies shall, to the greatest extent possible, adhere to the procurement program guidelines for recycled products to be established by the Department of General Services.

**§ 2.2-4323.1. Purchase of flags of the United States and the Commonwealth by public bodies.**

Notwithstanding any provision of law to the contrary, whenever a state or local public body or school division purchases a flag of the United States or a flag of the Commonwealth for public use, such flag shall be made in the United States from articles, materials, or supplies that are grown, produced, and manufactured in the United States, if available.

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**§ 2.2-4324. Preference for Virginia products with recycled content and for Virginia firms.**

A. In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be decided by lot.

B. Whenever the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a percentage preference, a like preference shall be allowed to the lowest responsive and responsible bidder who is a resident of Virginia and is the next lowest bidder. If the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a price-matching preference, a like preference shall be allowed to responsive and responsible bidders who are residents of Virginia. If the lowest bidder is a resident contractor of a state with an absolute preference, the bid shall not be considered. The Department of General Services shall post and maintain an updated list on its website of all states with an absolute preference for their resident contractors and those states that allow their resident contractors a percentage preference, including the respective percentage amounts. For purposes of compliance with this section, all public bodies may rely upon the accuracy of the information posted on this website.

C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.

D. For the purposes of this section, a Virginia person, firm or corporation shall be deemed to be a resident of Virginia if such person, firm or corporation has been organized pursuant to Virginia law or maintains a principal place of business within Virginia.

**§ 2.2-4325. Preference for Virginia coal used in state facilities.**

In determining the award of any contract for coal to be purchased for use in state facilities with state funds, the Department of General Services shall procure using competitive sealed bidding and shall award to the lowest responsive and responsible bidder offering coal mined in Virginia so long as its bid price is not more than four percent greater than the bid price of the low responsive and responsible bidder offering coal mined elsewhere.

**§ 2.2-4326. Preference for recycled paper and paper products used by state agencies.**

A. In determining the award of any contract for paper and paper products to be purchased for use by agencies of the Commonwealth, the Department of General Services shall procure using competitive sealed bidding and shall award to the lowest responsible bidder offering recycled paper and paper products of a quality suitable for the purpose intended, so long as the bid price is not more than ten percent greater than the bid price of the low responsive and responsible bidder offering a product that does not qualify under subsection B.

B. For purposes of this section, recycled paper and paper products means any paper or paper products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 247.

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**§ 2.2-4327. Preference for community reinvestment activities in contracts for investment of funds.**

Notwithstanding any other provision of law, any county, town, or city that is authorized to and has established affordable housing programs may provide by resolution that in determining the award of any contract for time deposits or investment of its funds, the treasurer or director of finance of such county, town, or city may consider, in addition to the typical criteria, the investment activities of qualifying institutions that enhance the supply of, or accessibility to, affordable housing within the jurisdiction, including the accessibility of such housing to employees of the county, town, or city or employees of the local school board. No more than 50 percent of the funds of the county, town, or city, calculated on the basis of the average daily balance of the general fund during the previous fiscal year, may be deposited or invested by considering such investment activities as a factor in the award of a contract. A qualifying institution shall meet the provisions of the Virginia Security for Public Deposits Act (§ 2.2-4400 et seq.) and all local terms and conditions for security, liquidity and rate of return. For the purposes of this section, affordable housing means the same as that term is defined in § 15.2-2201.

**§ 2.2-4328. Preference for local products and firms; applicability.**

A. The governing body of a county, city or town may, in the case of a tie bid, give preference to goods, services and construction produced in such locality or provided by persons, firms or corporations having principal places of business in the locality, if such a choice is available; otherwise the tie shall be decided by lot, unless § 2.2-4324 applies.

B. The provisions of this section shall apply only to bids submitted pursuant to a written Invitation to Bid.

**§ 2.2-4329. Expired.**

**§ 2.2-4329.1. Energy forward pricing mechanisms.**

A. As used in this section, unless the context requires a different meaning:

“Energy” means natural gas, heating oil, propane, diesel fuel, unleaded fuel, and any other energy source except electricity.

“Forward pricing mechanism” means either: (i) a contract or financial instrument that obligates a public body to buy or sell a specified quantity of energy at a future date at a set price or (ii) an option to buy or sell the contract or financial instrument.

B. Notwithstanding any other law to the contrary but subject to available appropriation, a public body may use forward pricing mechanisms for budget risk reduction.

C. Forward pricing mechanism transactions shall be made only under the following conditions:

1. The quantity of energy affected by the forward pricing mechanism shall not exceed the estimated energy use for the public body for the same period, which shall not exceed 48 months from the trade date of the transaction; and

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2. A separate account shall be established for operational energy for each public body using a forward pricing mechanism.

D. Before exercising the authority under this section, the public body shall develop written policies and procedures governing the use of forward pricing mechanisms and disclosure of the same to the public.

E. Before exercising authority under subsection B, the public body shall establish an oversight process that provides for review of the public body's use of forward pricing mechanisms. The oversight process shall include internal or external audit reviews; annual reports to, and review by, an internal investment committee; and internal management control.

**§ 2.2-4330. Withdrawal of bid due to error.**

A. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

B. One of the following procedures for withdrawal of a bid shall be selected by the public body and stated in the advertisement for bids:

1. The bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice; or

2. Where the public body opens the bids one day following the time fixed for the submission of bids, the bidder shall submit to the public body or designated official his original work papers, documents and materials used in the preparation of the bid at or prior to the time fixed for the opening of bids. The work papers shall be delivered by the bidder in person or by registered mail. The bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the public body until the two-hour period has elapsed. Under these procedures, the mistake shall be proved only from the original work papers, documents and materials delivered as required herein. The work papers, documents and materials submitted by the bidder shall, at the bidder's request, be considered trade secrets or proprietary information subject to the conditions of subsection F of § 2.2-4342.

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C. A public body may establish procedures for the withdrawal of bids for other than construction contracts.

D. No bid shall be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.

E. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed to be the low bid.

F. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

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G. The public body shall notify the bidder in writing within five business days of its decision regarding the bidder's request to withdraw its bid. If the public body denies the withdrawal of a bid under the provisions of this section, it shall state in such notice the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder. At the same time that the notice is provided, the public body shall return all work papers and copies thereof that have been submitted by the bidder.

**§ 2.2-4331. Contract pricing arrangements.**

A. Except as prohibited in this section, public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other basis that is not prohibited.

B. Except in case of emergency affecting the public health, safety, or welfare, no public contract shall be awarded on the basis of cost plus a percentage of cost.

C. The following contract pricing arrangements shall not be prohibited by this section:

1. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or part as a percentage of such claims; or

2. A cost plus a percentage of the private investment made by a private entity as a basis for the procurement of commercial or financial consulting services related to a qualifying transportation facility under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or a qualifying project under the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) where the commercial or financial consulting services are sought to solicit or to solicit and evaluate proposals for the qualifying transportation facility or the qualifying project. As used in this section, "private entity" and "qualifying transportation facility" mean the same as those terms are defined in § 33.2-1800 and "qualifying project" means the same as that term is defined in § 56-575.1.

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**§ 2.2-4332. Workers' compensation requirements for construction contractors and subcontractors.**

A. No contractor shall perform any work on a construction project of a department, agency or institution of the Commonwealth or any of its political subdivisions unless he (i) has obtained, and continues to maintain for the duration of the work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 and (ii) provides prior to the award of contract, on a form furnished by the department, agency, or institution of the Commonwealth or political subdivision thereof, evidence of such coverage.

B. The Department of General Services shall provide the form to such departments, agencies, institutions, and political subdivisions. Failure of a department, agency, institution or political subdivision to provide the form prior to the award of contract shall waive the requirements of clause (ii) of subsection A.

C. No subcontractor shall perform any work on a construction project of a department, agency or institution of the Commonwealth unless he has obtained, and continues to maintain for the duration of such work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2.

**§ 2.2-4333. Retainage on construction contracts.**

A. In any public contract for construction that provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least ninety-five percent of the earned sum when payment is due, with no more than five percent being retained to ensure faithful performance of the contract. All amounts withheld may be included in the final payment.

B. Any subcontract for a public project that provides for similar progress payments shall be subject to the provisions of this section.

**§ 2.2-4334. Deposit of certain retained funds on certain contracts with local governments; penalty for failure to timely complete.**

A. Any county, city, town or agency thereof or other political subdivision of the Commonwealth when contracting directly with contractors for public contracts of \$200,000 or more for construction of highways, roads, streets, bridges, parking lots, demolition, clearing, grading, excavating, paving, pile driving, miscellaneous drainage structures, and the installation of water, gas, sewer lines and pumping stations where portions of the contract price are to be retained, shall include in the Bid Proposal an option for the contractor to use an escrow account procedure for utilization of the political subdivision's retainage funds by so indicating in the space provided in the proposal documents. In the event the contractor elects to use the escrow account procedure, the escrow agreement form included in the Bid Proposal and Contract shall be executed and submitted to the political subdivision within fifteen calendar days after notification. If the escrow agreement form is not submitted within the fifteen-day period, the contractor shall forfeit his rights to the use of the escrow account procedure.

B. In order to have retained funds paid to an escrow agent, the contractor, the escrow agent, and the surety shall execute an escrow agreement form. The contractor's escrow agent shall be a trust company, bank

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or savings institution with its principal office located in the Commonwealth. The escrow agreement and all regulations adopted by the political subdivision entering into the contract shall be substantially the same as that used by the Virginia Department of Transportation.

C. This section shall not apply to public contracts for construction for railroads, public transit systems, runways, dams, foundations, installation or maintenance of power systems for the generation and primary and secondary distribution of electric current ahead of the customer's meter, the installation or maintenance of telephone, telegraph or signal systems for public utilities and the construction or maintenance of solid waste or recycling facilities and treatment plants.

D. Any such public contract for construction with a county, city, town or agency thereof or other political subdivision of the Commonwealth, which includes payment of interest on retained funds, may require a provision whereby the contractor, exclusive of reasonable circumstances beyond the control of the contractor stated in the contract, shall pay a specified penalty for each day exceeding the completion date stated in the contract.

E. Any subcontract for such public project that provides for similar progress payments shall be subject to the provisions of this section.

**§ 2.2-4335. Public construction contract provisions barring damages for unreasonable delays declared void.**

A. Any provision contained in any public construction contract that purports to waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the extent the delay is caused by acts or omissions of the public body, its agents or employees and due to causes within their control shall be void and unenforceable as against public policy.

B. Subsection A shall not be construed to render void any provision of a public construction contract that:

1. Allows a public body to recover that portion of delay costs caused by the acts or omissions of the contractor, or its subcontractors, agents or employees;
2. Requires notice of any delay by the party claiming the delay;
3. Provides for liquidated damages for delay; or
4. Provides for arbitration or any other procedure designed to settle contract disputes.

C. A contractor making a claim against a public body for costs or damages due to the alleged delaying of the contractor in the performance of its work under any public construction contract shall be liable to the public body and shall pay it for a percentage of all costs incurred by the public body in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage shall be equal to the percentage of the contractor's total delay claim that is determined through litigation or arbitration to be false or to have no basis in law or in fact.

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D. A public body denying a contractor's claim for costs or damages due to the alleged delaying of the contractor in the performance of work under any public construction contract shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the public body shall be equal to the percentage of the contractor's total delay claim for which the public body's denial is determined through litigation or arbitration to have been made in bad faith.

**§ 2.2-4336. Bid bonds.**

A. Except in cases of emergency, all bids or proposals for nontransportation- related construction contracts in excess of \$500,000 or transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 that are in excess of \$250,000 and partially or wholly funded by the Commonwealth shall be accompanied by a bid bond from a surety company selected by the bidder that is authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent of the amount bid.

B. For nontransportation-related construction contracts in excess of \$100,000 but less than \$500,000, where the bid bond requirements are waived, prospective contractors shall be prequalified for each individual project in accordance with § 2.2-4317. However, a locality may waive the requirement for prequalification of a bidder with a current Class A contractor license for contracts in excess of \$100,000 but less than \$300,000 upon a written determination made in advance by the local governing body that waiving the requirement is in the best interests of the locality. A locality shall not enter into more than 10 such contracts per year.

C. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

D. Nothing in this section shall preclude a public body from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$500,000 for nontransportation-related projects or \$250,000 for transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 and partially or wholly funded by the Commonwealth.

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

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

1. A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract. For transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2, such bond shall be in a form and amount satisfactory to the public body.

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2. A payment bond in the sum of the contract amount. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or performed in the furtherance of the work. For transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 and partially or wholly funded by the Commonwealth, such bond shall be in a form and amount satisfactory to the public body.

As used in this subdivision, “labor or materials” includes public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

B. For nontransportation-related construction contracts in excess of \$100,000 but less than \$500,000, where the performance and payment bond requirements are waived, prospective contractors shall be prequalified for each individual project in accordance with § 2.2-4317. However, a locality may waive the requirement for prequalification of a contractor with a current Class A contractor license for contracts in excess of \$100,000 but less than \$300,000 upon a written determination made in advance by the local governing body that waiving the requirement is in the best interests of the locality. A locality shall not enter into more than 10 such contracts per year.

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

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

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

F. Nothing in this section shall preclude a public body from requiring payment or performance bonds for construction contracts below \$500,000 for nontransportation-related projects or \$350,000 for transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 and partially or wholly funded by the Commonwealth.

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

H. The performance and payment bond requirements of subsection A for transportation-related projects that are valued in excess of \$250,000 but less than \$350,000 may only be waived by a public body if the bidder provides evidence, satisfactory to the public body, that a surety company has declined an application from the contractor for a performance or payment bond.

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**§ 2.2-4338. Alternative forms of security.**

A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check, cashier's check, or cash escrow in the face amount required for the bond.

B. If approved by the Attorney General in the case of state agencies, or the attorney for the political subdivision in the case of political subdivisions, a bidder may furnish a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment, or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the public body equivalent to a corporate surety's bond.

C. The provisions of this section shall not apply to the Department of Transportation.

**§ 2.2-4339. Bonds on other than construction contracts.**

A public body may require bid, payment, or performance bonds for contracts for goods or services if provided in the Invitation to Bid or Request for Proposal.

**§ 2.2-4340. Action on performance bond.**

No action against the surety on a performance bond shall be brought unless within five years after completion of the work on the project to the satisfaction of the Department of Transportation, in cases where the public body is the Department of Transportation, or, in all other cases, within one year after (i) completion of the contract, including the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty that gave rise to the action.

**§ 2.2-4341. Actions on payment bonds; waiver of right to sue.**

A. Any claimant who has a direct contractual relationship with the contractor and who has performed labor or furnished material in accordance with the contract documents in furtherance of the work provided in any contract for which a payment bond has been given, and who has not been paid in full before the expiration of 90 days after the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, may bring an action on the payment bond to recover any amount due him for the labor or material. The obligee named in the bond need not be named a party to the action.

B. Any claimant who has a direct contractual relationship with any subcontractor but who has no contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond only if he has given written notice to the contractor within 90 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.

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C. Any action on a payment bond shall be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.

D. Any waiver of the right to sue on the payment bond required by this section shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has performed labor or furnished material in accordance with the contract documents.

**§ 2.2-4342. Public inspection of certain records.**

A. Except as provided in this section, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

B. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.

C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the public body decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.

D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award, except in the event that the public body decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only after award of the contract.

E. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection B of § 2.2-4317 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.

**Article 3. Exemptions and Limitations**

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

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

1. The Virginia Port Authority in the exercise of any of its powers in accordance with Chapter 10 (§ 62.1-128 et seq.) of Title 62.1, provided the Authority implements, by policy or regulation adopted by the Board of Commissioners, procedures to ensure fairness and competitiveness in the procurement of goods and

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services and in the administration of its capital outlay program. This exemption shall be applicable only so long as such policies and procedures meeting the requirements remain in effect.

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

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

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

5. The College of William and Mary in Virginia, Virginia Commonwealth University, the University of Virginia, and Virginia Polytechnic Institute and State University in the selection of services related to the management and investment of their endowment funds, endowment income, gifts, all other nongeneral fund reserves and balances, or local funds of or held by the respective public institution of higher education pursuant to § 23.1-2210, 23.1-2306, 23.1-2604, or 23.1-2803. However, selection of these services shall be governed by the Uniform Prudent Management of Institutional Funds Act (§ 64.2-1100 et seq.) as required by §§ 23.1-2210, 23.1-2306, 23.1-2604, and 23.1-2803.

6. The Board of the Virginia College Savings Plan for the selection of services related to the operation and administration of the Plan, including, but not limited to, contracts or agreements for the management, purchase, or sale of authorized investments or actuarial, record keeping, or consulting services. However, such selection shall be governed by the standard set forth in § 23.1-706.

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

8. The purchase of goods and services by agencies of the legislative branch that may be specifically exempted therefrom by the Chairman of the Committee on Rules of either the House of Delegates or the Senate. Nor shall the contract review provisions of § 2.2-2012 apply to such procurements. The exemption shall be in writing and kept on file with the agency's disbursement records.

9. Any town with a population of less than 3,500, except as stipulated in the provisions of §§ 2.2-4305, 2.2-4311, 2.2-4315, 2.2-4330, 2.2-4333 through 2.2-4338, 2.2-4343.1, and 2.2-4367 through 2.2-4377 and Chapter 43.1 (§ 2.2- 4378 et seq.).

10. Any county, city or town whose governing body has adopted, by ordinance or resolution, alternative policies and procedures which are (i) based on competitive principles and (ii) generally applicable to procurement of goods and services by such governing body and its agencies, except as stipulated in subdivision 12. This exemption shall be applicable only so long as such policies and procedures, or other policies and procedures meeting the requirements of § 2.2-4300, remain in effect in such county, city or town. Such policies

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and standards may provide for incentive contracting that offers a contractor whose bid is accepted the opportunity to share in any cost savings realized by the locality when project costs are reduced by such contractor, without affecting project quality, during construction of the project. The fee, if any, charged by the project engineer or architect for determining such cost savings shall be paid as a separate cost and shall not be calculated as part of any cost savings.

11. Any school division whose school board has adopted, by policy or regulation, alternative policies and procedures that are (i) based on competitive principles and (ii) generally applicable to procurement of goods and services by the school board, except as stipulated in subdivision 12. This exemption shall be applicable only so long as such policies and procedures, or other policies or procedures meeting the requirements of § 2.2-4300, remain in effect in such school division. This provision shall not exempt any school division from any centralized purchasing ordinance duly adopted by a local governing body.

12. Notwithstanding the exemptions set forth in subdivisions 9 through 11, the provisions of subsections C and D of § 2.2-4303, §§ 2.2-4305, 2.2-4311, 2.2-4315, 2.2-4317, 2.2-4330, 2.2-4333 through 2.2-4338, 2.2-4343.1, and 2.2-4367 through 2.2-4377, and Chapter 43.1 (§ 2.2-4378 et seq.) shall apply to all counties, cities and school divisions, and to all towns having a population greater than 3,500 in the Commonwealth.

The method for procurement of professional services through competitive negotiation set forth in §§ 2.2-4303.1 and 2.2-4303.2 shall also apply to all counties, cities and school divisions, and to all towns having a population greater than 3,500, where the cost of the professional service is expected to exceed \$60,000 in the aggregate or for the sum of all phases of a contract or project. A school board that makes purchases through its public school foundation or purchases educational technology through its educational technology foundation, either as may be established pursuant to § 22.1-212.2:2 shall be exempt from the provisions of this chapter, except, relative to such purchases, the school board shall comply with the provisions of §§ 2.2-4311 and 2.2-4367 through 2.2-4377.

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

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

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

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

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

18. The University of Virginia Medical Center to the extent provided by subdivision A 3 of § 23.1-2213.

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

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

21. [Expired].

22. The purchase of Virginia-grown food products for use by a public body where the annual cost of the product is not expected to exceed \$100,000.

23. The Virginia Industries for the Blind when procuring components, materials, supplies, or services for use in commodities and services furnished to the federal government in connection with its operation as an AbilityOne Program-qualified nonprofit agency for the blind under the Javits-Wagner- O'Day Act, 41 U.S.C. §§ 8501-8506, provided that the procurement is accomplished using procedures that ensure that funds are used as efficiently as practicable. Such procedures shall require documentation of the basis for awarding contracts. Notwithstanding the provisions of § 2.2-1117, no public body shall be required to purchase such components, materials, supplies, services, or commodities.

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

**§ 2.2-4343.1. Permitted contracts with certain religious organizations; purpose; limitations.**

A. It is the intent of the General Assembly, in accordance with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, to authorize public bodies to enter into contracts with faith-based organizations for the purposes described in this section on the same basis as any other

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nongovernmental source without impairing the religious character of such organization, and without diminishing the religious freedom of the beneficiaries of assistance provided under this section.

B. For the purposes of this section, “faith-based organization” means a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.

C. Public bodies, in procuring goods or services, or in making disbursements pursuant to this section, shall not (i) discriminate against a faith-based organization on the basis of the organization’s religious character or (ii) impose conditions that (a) restrict the religious character of the faith-based organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.

D. Public bodies shall ensure that all invitations to bid, requests for proposals, contracts, and purchase orders prominently display a nondiscrimination statement indicating that the public body does not discriminate against faith-based organizations.

E. A faith-based organization contracting with a public body (i) shall not discriminate against any recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on the basis of the recipient’s religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. Nothing in clause (ii) shall be construed to supersede or otherwise override any other applicable state law.

F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent for religious worship, instruction, or proselytizing; however, this prohibition shall not apply to expenditures pursuant to contracts, if any, for the services of chaplains.

G. Nothing in this section shall be construed as barring or prohibiting a faith-based organization from any opportunity to make a bid or proposal or contract on the grounds that the faith-based organization has exercised the right, as expressed in 42 U.S.C. (§ 2000 e-1 et seq.), to employ persons of a particular religion.

H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant to a contract between a public body and a faith-based organization, objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

The public body shall provide to each individual who applies for or receives goods, services, or disbursements provided pursuant to a contract between a public body and a faith-based organization a notice in bold face type that states: “Neither the public body’s selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider’s charitable or religious character, practices, or expression. No provider of services may discriminate against you on the basis

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of religion, a religious belief, or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please discuss the complaint with your provider or notify the appropriate person as indicated in this form.”

**§ 2.2-4344. Exemptions from competition for certain transactions.**

**A. Any public body may enter into contracts without competition for:**

**1. The purchase of goods or services that are produced or performed by:**

**a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired; or**

**b. Employment services organizations that offer transitional or supported employment services serving individuals with disabilities.**

**2. The purchase of legal services, provided that the pertinent provisions of Chapter 5 (§ 2.2-500 et seq.) remain applicable, or expert witnesses or other services associated with litigation or regulatory proceedings.**

**B. An industrial development authority or regional industrial facility authority may enter into contracts without competition with respect to any item of cost of “authority facilities” or “facilities” as defined in § 15.2-4902 or “facility” as defined in § 15.2-6400.**

**C. A community development authority formed pursuant to Article 6 (§ 15.2-5152 et seq.) of Chapter 51 of Title 15.2, with members selected pursuant to such article, may enter into contracts without competition with respect to the exercise of any of its powers permitted by § 15.2-5158. However, this exception shall not apply in cases where any public funds other than special assessments and incremental real property taxes levied pursuant to § 15.2-5158 are used as payment for such contract.**

**D. The State Inspector General may enter into contracts without competition to obtain the services of licensed health care professionals or other experts to assist in carrying out the duties of the Office of the State Inspector General.**

**§ 2.2-4345. Exemptions from competitive sealed bidding and competitive negotiation for certain transactions; limitations.**

**A. The following public bodies may enter into contracts without competitive sealed bidding or competitive negotiation:**

**1. The Director of the Department of Medical Assistance Services for special services provided for eligible recipients pursuant to subsection H of § 32.1-325, provided that the Director has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public, or would constitute an imminent threat to the health or welfare of such recipients. The writing shall document the basis for this determination.**

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2. The State Health Commissioner for the compilation, storage, analysis, evaluation, and publication of certain data submitted by health care providers and for the development of a methodology to measure the efficiency and productivity of health care providers pursuant to Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1, if the Commissioner has made a determination in advance, after reasonable notice to the public and set forth in writing, that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public. The writing shall document the basis for this determination. Such agreements and contracts shall be based on competitive principles.

3. The Virginia Code Commission when procuring the services of a publisher, pursuant to §§ 30-146 and 30-148, to publish the Code of Virginia or the Virginia Administrative Code.

4. (Effective until January 15, 2018) The Department of Alcoholic Beverage Control for the purchase of alcoholic beverages.

4. (Effective January 15, 2018) The Virginia Alcoholic Beverage Control Authority for the purchase of alcoholic beverages.

5. The Department for Aging and Rehabilitative Services, for the administration of elder rights programs, with (i) nonprofit Virginia corporations granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code with statewide experience in Virginia in conducting a state long-term care ombudsman program or (ii) designated area agencies on aging.

6. The Department of Health for (a) child restraint devices, pursuant to § 46.2-1097; (b) health care services with Virginia corporations granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code and operating as clinics for the indigent and uninsured that are organized for the delivery of primary health care services in a community (i) as federally qualified health centers designated by the Health Care Financing Administration or (ii) at a reduced or sliding fee scale or without charge; or (c) contracts with laboratories providing cytology and related services if competitive sealed bidding and competitive negotiations are not fiscally advantageous to the public to provide quality control as prescribed in writing by the Commissioner of Health.

7. Virginia Correctional Enterprises, when procuring materials, supplies, or services for use in and support of its production facilities, provided the procurement is accomplished using procedures that ensure as efficient use of funds as practicable and, at a minimum, includes obtaining telephone quotations. Such procedures shall require documentation of the basis for awarding contracts under this section.

8. The Virginia Baseball Stadium Authority for the operation of any facilities developed under the provisions of Chapter 58 (§ 15.2-5800 et seq.) of Title 15.2, including contracts or agreements with respect to the sale of food, beverages and souvenirs at such facilities.

9. With the consent of the Governor, the Jamestown-Yorktown Foundation for the promotion of tourism through marketing with private entities provided a demonstrable cost savings, as reviewed by the Secretary of Education, can be realized by the Foundation and such agreements or contracts are based on competitive principles.

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10. The Chesapeake Hospital Authority in the exercise of any power conferred under Chapter 271, as amended, of the Acts of Assembly of 1966, provided that it does not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability in the procurement of goods and services.

~~11. in Richmond Eye and Ear Hospital Authority, any authorities created under Chapter 53 (§ 15.2-5300 et seq.) of Title 15.2 and any hospital or health center commission created under Chapter 52 (§ 15.2-5200 et seq.) of Title 15.2 in the exercise of any power conferred under their respective authorizing legislation, provided that these entities shall not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability in the procurement of goods and services.~~

12. The Patrick Hospital Authority sealed in the exercise of any power conferred under the Acts of Assembly of 2000, provided that it does not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability in the procurement of goods and services.

13. Public bodies for insurance or electric utility services if purchased through an association of which it is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance or electric utility services by use of competitive principles and provided that the public body has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.

14. Public bodies administering public assistance and social services pro- grams as defined in § 63.2-100, community services boards as defined in § 37.2-100, or any public body purchasing services under the Children’s Services Act (§ 2.2-5200 et seq.) or the Virginia Juvenile Community Crime Control Act (§ 16.1-309.2 et seq.) for goods or personal services for direct use by the recipients of such programs if the procurement is made for an individual recipient. Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted from the requirements of § 2.2-4303.

15. The Eastern Virginia Medical School in the exercise of any power conferred pursuant to Chapter 471, as amended, of the Acts of Assembly of 1964.

B. No contract for the construction of any building or for an addition to or improvement of an existing building by any local government or subdivision of local government for which state funds of not more than \$50,000 in the aggregate or for the sum of all phases of a contract or project either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed bidding or after competitive negotiation as provided under subsection D of § 2.2-4303 or Chapter 43.1 (§ 2.2-4378 et seq.). The procedure for the advertising for bids or for proposals and for letting of the contract shall conform, mutatis mutandis, to this chapter.

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**§ 2.2-4346. Other exemptions for certain transactions.**

The following public bodies may enter into contracts as provided in this section.

A. Contracts for certain essential election materials and services are exempted from the requirements of Articles 1 (§ 2.2-4300 et seq.), 2 (§ 2.2-4303 et seq.), and 5 (§ 2.2-4357 et seq.) of this chapter pursuant to § 24.2-602.

B. Any local school board may authorize any of its public schools or its school division to enter into contracts providing that caps and gowns, photographs, class rings, yearbooks and graduation announcements will be available for purchase or rental by students, parents, faculty or other persons using nonpublic money through the use of competitive negotiation as provided in this chapter; competitive sealed bidding is not necessarily required for such contracts. The Superintendent of Public Instruction may provide assistance to public school systems regarding this chapter and other related laws.

C. The Virginia Racing Commission may designate an entity to administer and promote the Virginia Breeders Fund created pursuant to § 59.1-372 without competitive procurement.

**Article 4.**  
**Prompt Payment**

**§ 2.2-4347. Definitions.**

As used in this article, unless the context requires a different meaning:

“Contractor” means the entity that has a direct contract with any “state agency” as defined herein, or any agency of local government as discussed in § 2.2-4352.

“Debtor” means any individual, business, or group having a delinquent debt or account with any state agency that obligation has not been satisfied or set aside by court in accordance with applicable law or order or discharged in bankruptcy.

**ARTICLE VII – APPEALS AND REMEDIES FOR BID PROTESTS**

**2A-25 – INELIGIBILITY OF BIDDER, OFFEROR OR CONTRACTOR.**

“Payment date” means either (i) the date on which payment is due under the terms of a contract for provision of goods or services; or (ii) if such date has not been established by contract, (a) thirty days after receipt of a proper invoice by the state agency or its agent or forty-five days after receipt by the local government or its agent responsible under the contract for approval of such invoices for the amount of payment due, or (b) thirty days after receipt of the goods or services by the state agency or forty-five days after receipt by the local government, whichever is later.

“State agency” means any authority, board, department, instrumentality, institution, agency or other unit of state government. The term shall not include any county, city or town or any local or regional governmental authority.

“Subcontractor” means any entity that has a contract to supply labor or materials to the contractor to

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whom the contract was awarded or to any subcontractor in the performance of the work provided for in such contract.

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**§ 2.2-4348. Exemptions.**

The provisions of this article shall not apply to (i) the late payment provisions contained in any public utility tariffs prescribed by the State Corporation Commission or (ii) payments for services provided under the state plan for medical assistance identified as potentially fraudulent, abusive, or erroneous in accordance with the program established pursuant to § 32.1- 319.1 and delayed until such time as the claim can be validated.

**§ 2.2-4349. Retainage to remain valid.**

Notwithstanding the provisions of this article, the provisions of § 2.2-4333 relating to retainage shall remain valid.

**§ 2.2-4350. Prompt payment of bills by state agencies.--A.** Every state agency that acquires goods or services, or conducts any other type of contractual business with nongovernmental, privately owned enterprises shall promptly pay for the completely delivered goods or services by the required payment date. Payment shall be deemed to have been made when offset proceedings have been instituted, as authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.).

B. Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial deliveries or executions to the extent that such contract provides for separate payment for such partial delivery or execution.

**§ 2.2-4350.1. Prohibition on payment without an appropriation; prohibition on IOUs.**

A. As used in this section, “IOU” means a document issued by a governmental entity or representative (i) that acknowledges a debt but that does not specify all repayment terms, such as the repayment date, and (ii) when moneys are not available to pay a current debt.

B. 1. Notwithstanding any other provision of law, unless the General Assembly has appropriated funds to pay for a good or service or to make payment on a debt, no state department, agency, or other state entity nor any state official, officer, employee, or agent shall (i) attempt to pay for the good or service or attempt to make payment on the debt; (ii) issue any document or paper that guarantees payment, or purports to pay, for the good or service or guarantees payment, or purports to make payment, on the debt; or (iii) in any other way attempt to pay, guarantee payment, or purport to pay for the same.

2. The prohibition on payment under subdivision 1 shall not apply (i) to payments required by federal law or (ii) if funds are lawfully available.

C. In addition, in no case shall any (i) state department, agency, or other state entity or (ii) state official, officer, or employee in performing the duties of his position furnish an IOU in exchange for any good or service, as a means to pay for any good or service, or in lieu of a payment on a debt.

**§ 2.2-4351. Defect or impropriety in the invoice or goods and/or services received.**

In instances where there is a defect or impropriety in an invoice or in the goods or services received, the state agency shall notify the supplier of the defect or impropriety, if the defect or impropriety would prevent

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payment by the payment date. The notice shall be sent within fifteen days after receipt of the invoice or the goods or services.

**§ 2.2-4352. Prompt payment of bills by localities.**

Every agency of local government that acquires goods or services, or conducts any other type of contractual business with a nongovernmental, privately owned enterprise, shall promptly pay for the completed delivered goods or services by the required payment date. The required payment date shall be either: (i) the date on which payment is due under the terms of the contract for the provision of the goods or services; or (ii) if a date is not established by contract, not more than forty-five days after goods or services are received or not more than forty-five days after the invoice is rendered, whichever is later.

Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial executions or deliveries to the extent that the contract provides for separate payment for partial execution or delivery.

Within twenty days after the receipt of the invoice or goods or services, the agency shall notify the supplier of any defect or impropriety that would prevent payment by the payment date.

Unless otherwise provided under the terms of the contract for the provision of goods or services, every agency that fails to pay by the payment date shall pay any finance charges assessed by the supplier that shall not exceed one percent per month.

The provisions of this section shall not apply to the late payment provisions in any public utility tariffs or public utility negotiated contracts.

**§ 2.2-4353. Date of postmark deemed to be date payment is made.**

In those cases where payment is made by mail, the date of postmark shall be deemed to be the date payment is made for purposes of this chapter.

**§ 2.2-4354. Payment clauses to be included in contracts.**

Any contract awarded by any state agency, or any contract awarded by any agency of local government in accordance with § 2.2-4352, shall include:

1. A payment clause that obligates the contractor to take one of the two following actions within seven days after receipt of amounts paid to the contractor by the state agency or local government for work performed by the subcontractor under that contract:

a. Pay the subcontractor for the proportionate share of the total payment received from the agency attributable to the work performed by the subcontractor under that contract; or

b. Notify the agency and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

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2. A payment clause that requires (i) individual contractors to provide their social security numbers and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.

3. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts owed by the contractor that remain unpaid after seven days following receipt by the contractor of payment from the state agency or agency of local government for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision 1.

4. An interest rate clause stating, “Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month.”

Any such contract awarded shall further require the contractor to include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

A contractor’s obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of the state agency or agency of local government. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

**§ 2.2-4355. Interest penalty; exceptions.**

A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by a state agency to a vendor that remain unpaid after seven days following the payment date. However, nothing in this section shall affect any contract providing for a different rate of interest, or for the payment of interest in a different manner.

B. The rate of interest charged a state agency pursuant to subsection A shall be the base rate on corporate loans (prime rate) at large United States money center commercial banks as reported daily in the publication entitled The Wall Street Journal. Whenever a split prime rate is published, the lower of the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of interest established pursuant to § 58.1-1812.

C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed because of disagreement between a state agency and a vendor regarding the quantity, quality or time of delivery of goods or services or the accuracy of any invoice received for the goods or services. The exception from the interest penalty provided by this subsection shall apply only to that portion of a delayed payment that is actually the subject of the disagreement and shall apply only for the duration of the disagreement.

D. This section shall not apply to § 2.2-4333 pertaining to retainage on construction contracts, during the period of time prior to the date the final payment is due. Nothing contained herein shall prevent a contractor from receiving interest on such funds under an approved escrow agreement.

E. Notwithstanding subsection A, no interest penalty shall be paid to any debtor on any payment, or portion thereof, withheld pursuant to the Comptroller’s Debt Setoff Program, as authorized by the Virginia Debt Collection Act (§ 2.2-4800 et seq.), commencing with the date the payment is withheld. If, as a result of

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an error, a payment or portion thereof is withheld, and it is determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue at the rate determined pursuant to subsection B on amounts withheld that remain unpaid after seven days following the payment date.

**§ 2.2-4356. Comptroller to file annual report.**

The Comptroller shall file an annual report with the Governor, the Senate Committee on Finance, the House Committees on Finance and Appropriations on November 1 for the preceding fiscal year including (i) the number and dollar amounts of late payments by departments, institutions and agencies, (ii) the total amount of interest paid and (iii) specific steps being taken to reduce the incidence of late payments.

**Article 5.**  
**Remedies**

**§ 2.2-4357. Ineligibility.**

A. Any bidder, offeror, or contractor refused permission to participate, or disqualified from participation, in public contracts shall be notified in writing. Such notice shall state the reasons for the action taken. This decision shall be final unless the bidder, offeror, or contractor appeals within ten (10) days of receipt by instituting legal action as provided in 2A-32 of this ordinance. Prior to the issuance of a written determination of disqualification or ineligibility, the public body shall (i) notify the bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

Within ten business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The public body shall issue its written determination of disqualification or ineligibility based on all information in the possession of the public body, including any rebuttal information, within five business days of the date the public body received such rebuttal information.

If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to participate in the public contract, the public body shall cancel the proposed disqualification action. If the evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, the public body shall so notify the bidder, offeror or contractor. The notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten days after receipt of the notice by invoking administrative procedures meeting the standards of § 2.2-4365, if available, or in the alternative by instituting legal action as provided in § 2.2-4364.

B. If upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statutes applicable state law or regulations, the sole relief shall be restoration of eligibility.

**2A-26 APPEAL OF DENIAL OF WITHDRAWAL OF BID.**

**1. § 2.2-4358. Appeal of denial of withdrawal of bid.**

A. A decision denying withdrawal of bid under the provisions of 2A-12 (12) § 2.2-4330 shall be final and conclusive unless the bidder appeals the decision within ten (10) days after receipt of the decision by

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invoking administrative procedures meeting the standards of § 2.2-4365, if available, or in the alternative by instituting legal action as provided in ~~2A-22 of this ordinance~~ § 2.2-4364.  
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~~B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of 2A-12 (12), § 2.2-4330, prior to appealing, shall deliver to the Purchasing Agent public body a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next lowest low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.~~

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~~C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.~~

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~~2A-27 DETERMINATION OF NON-RESPONSIBILITY. § 2.2-4359. Determination of nonresponsibility.~~

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~~A. Following public opening and announcement of bids received on an Invitation to Bid, the public body shall evaluate the bids in accordance with element 4 of the process for competitive sealed bidding set forth in § 2.2-4302.1. At the same time, the public body shall determine whether the apparent low bidder is responsible. If the public body so determines, then it may proceed with an award in accordance with element 5 of the process for competitive sealed bidding set forth in § 2.2-4302.1. If the public body determines that the apparent low bidder is not responsible, it shall proceed as follows:~~

~~1. Prior to the issuance of a written determination of nonresponsibility, the public body shall (i) notify the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.~~

~~2. Within ten business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The public body shall issue its written determination of responsibility based on all information in the possession of the public body, including any rebuttal information, within five business days of the date the public body received the rebuttal information. At the same time, the public body shall notify, with return receipt requested, the bidder in writing of its determination.~~

~~3. Any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder for a particular contract shall be notified in writing. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten (10) days by instituting legal action as provided in 2A-32 (1) of this ordinance days after receipt of the notice by invoking administrative procedures meeting the standards of § 2.2-4365, if available, or in the alternative by instituting legal action as provided in § 2.2-4364. The provisions of this subsection shall not apply to procurements involving the prequalification of bidders and the rights of any potential bidders under such prequalification to appeal a decision that such bidders are not responsible.~~

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~~2. B. If, upon appeal pursuant to § 2.2-4364 or 2.2-4365, it is determined that the decision of the Purchasing Agent public body was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question. If it is determined that the decision of the Purchasing Agent was arbitrary or capricious, the relief shall be as set forth in~~

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~~2A-28 (2), or directed award as provided in subsection A of §~~  
~~3. — 2.2-4364 or both.~~

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If it is determined that the decision of the public body was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract has been made, the relief shall be as set forth in subsection B of § 2.2-4360.

C. A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under ~~2A-28~~ the provisions of this ordinance-§ 2.2-4360.

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D. Nothing contained in this section shall be construed to require ~~the city~~ a public body, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

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~~2A-28~~ PROTEST OF AWARD OR DECISION TO AWARD.

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~~1.~~ § 2.2-4360. Protest of award or decision to award.

A. Any bidder or offeror ~~may, who desires to~~ protest the award or decision to award a contract by ~~submitting such~~ shall submit the protest in writing to the ~~City Attorney~~ public body, or an official designated by the public body, no later than ten ~~(10)~~ days after the award or the announcement of the decision of intent to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the public body in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit the protest in the same manner no later than ten days after posting or publication of the notice of such contract as provided in § 2.2-4303. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under § 2.2-4342, then the time within which the protest shall be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under § 2.2-4342, or at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The ~~City Manager~~ public body or designated official shall issue a decision in writing within ten ~~(10)~~ days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten ~~(10)~~ days of receipt of the written decision by invoking administrative procedures meeting the standards of § 2.2-4365, if available, or in the alternative by instituting legal action as provided in ~~2A-32~~ of § 2.2-4364. Nothing in this ordinance subsection shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation to Bid or Request for Proposal.

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~~2.~~ B. If, prior to an award, it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The ~~Purchasing Agent~~ public body shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided.

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Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the ~~Purchasing Agent~~ public body may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up

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to the time of such declaration. In no event shall the performing contractor be entitled to lost profits or damages.

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~~C. Where the City Manager a public body, an official designated by that public body, or an appeals board determines, after a hearing held following reasonable notice to all bidders, finds that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of the ethics in public contracting article, the City Manager Article 6 (§ 2.2-4367 et seq.) of this chapter, the public body, designated official or appeals board may enjoy the award of the contract to a particular bidder.~~

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~~2A-29 EFFECT OF APPEAL UPON CONTRACT. § 2.2-4361. Effect of appeal upon contract.~~

~~Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this chapter shall not be affected by the fact that a protest or appeal has been filed.~~

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~~2A-30 STAY OF AWARD DURING PROTEST.~~

~~§ 2.2-4362. Stay of award during protest.~~

~~An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest as provided in § 2.2-4360, or appeal the filing of a timely legal action as provided in § 2.2-4364, no further action to award the contract will shall be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.~~

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~~2A-31 CONTRACTUAL DISPUTES.~~

~~1. § 2.2-4363. Contractual disputes.~~

~~A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty (60) days after final payment; however, However, written notice of the contractor's intention to file such a claim shall have been be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.~~

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~~2. A~~

~~B. Each public body shall include in its contracts a procedure for consideration of contractual claims shall be included in each contract. Such procedure, which may be contained in the contract or may be specifically incorporated into the contract by reference and made available to the contractor, shall establish a time limit for a final decision in writing by the city-public body. If the public body has established administrative procedures meeting the standards of § 2.2-~~

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~~3. A4365, such procedures shall be contained in the contract or specifically incorporated in the contract by reference and made available to the contractor.~~

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~~C. If, however, the public body fails to include in its contracts a procedure for consideration of contractual claims, the following procedure shall apply:~~

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~~1. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after receipt of final payment; however, written notice of the contractor's intention to file a claim shall be given at the time of the occurrence or at the beginning of the work upon which the claim is based.~~

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~~2. No written decision denying a claim or addressing issues related to the claim shall be considered a~~

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denial of the claim unless the written decision is signed by the public body's chief administrative officer or his designee. The contractor may not institute legal action as provided in 2A-32 of this chapter prior to receipt of the final written decision on the claim, unless the city unless the public body fails to render a decision within 90 days of submission of the claim. Failure of the public

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body to render a decision within 90 days shall not result in the contractor being awarded the relief claimed or in any other relief or penalty. The sole remedy for the public body's failure to render a decision within 90 days shall be the contractor's right to institute immediate legal action.

D. A contractor may not invoke administrative procedures meeting the standards of § 2.2-4365, if available, or institute legal action as provided in § 2.2-4364, prior to receipt of the public body's decision on the claim, unless the public body fails to render such decision within the time specified in the contract or, if no time is specified, then within the time provided by subsection

4. C. A failure of the public body to render a final decision within the time provided in subsection C shall be deemed a final decision denying the claim by the public body.

E. The decision of the public body shall be final and conclusive unless the contractor appeals within six (6) months of the date of the final decision on the claim by the public body by invoking administrative procedures meeting the standards of § 2.2-4365, if available, or in the alternative, by instituting legal action as provided in 2A-32 of this ordinance.

2A-32-  
LE  
GAL  
ACTIONS.  
2.2-4364.

§ 2.2-4364. Legal actions.

A. A bidder or offeror, actual or prospective, who is refused permission to participate, or disqualified from participating, participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the Hopewell Circuit Court appropriate circuit court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in subsection B of § 2.2-4317. In the event the apparent low bidder, having been previously determined by the public body to be not responsible in accordance with § 2.2-4301, is found by the court to be a responsible bidder, the court may direct the public body to award the contract to such bidder in accordance with the requirements of this section and the Invitation to Bid.

2. B. A bidder denied withdrawal of a bid under this ordinance § 2.2-4358, may bring an action in the Hopewell Circuit Court appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the City of Hopewell was arbitrary and capricious public body was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid.

3. C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis in the manner provided in § 2.2-4303, whose protest of an award or decision to award under § 2.2-4360 is denied, may bring an action in the Hopewell Circuit Court appropriate circuit court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner

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establishes that the proposed award or the award is not (i) an honest exercise of discretion, but rather is arbitrary or capricious or not (ii) in accordance with the Constitution of Virginia, statutes, regulations, applicable state law or regulation, or the terms and conditions of the invitation Invitation to bid Bid or request Request for proposal Proposal.

4. D. If injunctive relief is granted, the court, upon request of the city public body, shall require the posting of reasonable security to protect the city public body.

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~~E. A contractor may bring an action involving a contract dispute with the citya public body in the Hopewell Circuit Court appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be named as a defendant in any action brought pursuant to this chapter or § 33.2-1103, except for disputes involving contracts of the Office of the Comptroller or the Department of Accounts.~~

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~~6. F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of this ordinance§~~

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~~2.2-4365, if available, but if those procedures are invoked by the bidder, offeror or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the public body agrees otherwise.~~

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~~7. G. Nothing herein shall be construed to prevent the citya public body from instituting legal action against a contractor.~~

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~~ARTICLE VIII – ASSISTANCE TO SMALL AND DISADVANTAGED BUSINESSES~~

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~~2A-33 ESTABLISHMENT OF PROGRAMS TO EXPAND PARTICIPATION.~~

~~The Purchasing Agent may establish programs consistent with all provisions of this ordinance to facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions. Such programs shall be in writing, and may include cooperation with the State Office of Minority Business Enterprise, the United States Small Business Administration and other public or private agencies.~~

~~2A-34 DISCRIMINATION PROHIBITED.~~

~~In the solicitation or awarding of contracts, the City of Hopewell shall not discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability or any other basis prohibited by state law relating to discrimination in employment.~~

~~ARTICLE IX – ETHICS IN PUBLIC CONTRACTING~~

~~2A-35 PURPOSE.~~

~~§ 2.2-4365. Administrative appeals procedure.~~

~~A. A public body may establish an administrative procedure for hearing (i) protests of a decision to award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes arising during the performance of a contract, or (v) any of these. Such administrative procedure shall provide for a hearing before~~

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a disinterested person or panel, the opportunity to present pertinent information and the issuance of a written decision containing findings of fact. The disinterested person or panel shall not be an employee of the governmental entity against whom the claim has been filed. The findings of fact shall be final and conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b) so grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings were not based upon the criteria for denial of prequalification set forth in subsection B of § 2.2-4317. No determination on an issue of law shall be final if appropriate legal action is instituted in a timely manner.

B. Any party to the administrative procedure, including the public body, shall be entitled to institute judicial review if such action is brought within thirty days of receipt of the written decision.

**§ 2.2-4366. Alternative dispute resolution.**

Public bodies may enter into agreements to submit disputes arising from contracts entered into pursuant to this chapter to arbitration and utilize mediation and other alternative dispute resolution procedures. However, such procedures entered into by the Commonwealth, or any department, institution, division, commission, board or bureau thereof, shall be nonbinding and subject to § 2.2-514, as applicable. Alternative dispute resolution procedures entered into by school boards shall be nonbinding.

**Article 6,**  
**Ethics in Public Contracting**

**§ 2.2-4367. Purpose.**

The provisions of this ~~Article~~ ~~Article~~ supplement, but ~~do~~ shall not supersede, other provisions of law including, but not limited to, the ~~Virginia~~ State and Local Government Conflict of Interests Act, ~~Section~~ (§ 2.2-3100 et seq.), the Virginia-

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Governmental Frauds Act, ~~Section~~ (§ 18.2-498.1 et seq.), and Articles 2 (§ 18.2-438 et seq.) and 3 (§ 18.2-446 et seq.) of Chapter 10 of Title 18.2. The provisions of this ~~Article~~ article shall apply notwithstanding the fact that the conduct described may not constitute a violation of the Virginia State and Local Government Conflict of Interests Act.

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**2A-36 DEFINITIONS.**

The words defined in this section shall have the meaning set forth below throughout Article IX. **§ 2.2-4368. Definitions.**

As used in this article:

1. ~~“Immediate Family –family”~~ means a spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee.

2. ~~“Official Responsibility –responsibility”~~ means administrative or operating authority, whether immediate, intermediate or final, to initiate, approve, disapprove or otherwise affect a procurement transaction, or any claim resulting therefrom.

3. ~~“Pecuniary interest arising from the Procurement –procurement”~~ means a personal interest in a contract as defined in the Virginia State and Local Government Conflict of Interests Act. (§ 2.2-3100 et seq.).

4. ~~“Procurement Transaction –transaction”~~ means all functions that pertain to the obtaining of any goods, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

5. ~~“Public Employee –employee”~~ means any person employed by a public body, including elected officials or appointed members of public governing bodies.

**2A-37 PROSCRIBED PARTICIPATION BY PUBLIC EMPLOYEES IN**

**PROCUREMENT TRANSACTIONS.**

**§ 2.2-4369. Proscribed participation by public employees in procurement transactions.**

Except as may be specifically allowed by subdivisions A (B 1, 2), (3), and (4)3 of Va. Code Sec. § 2.2-3112, and all amendments thereto, no public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the ~~city~~ public body when the employee knows that:

1. The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction; or

2. The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent (5%); or

3. The employee, the employee's partner, or any member of the employee's immediate family

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has a pecuniary interest arising from the procurement transaction; or

4. —The employee, the employee's partner, or any member of the employee's immediate family is negotiating, or has an arrangement concerning prospective employment with a bidder, offeror or contractor.

**2A-38 SOLICITATION OR ACCEPTANCE OF GIFTS:**

No public employee or any member of the employee's immediate family shall solicit, demand, accept, or agree to accept from a bidder, offeror, contractor or subcontractor any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged. The City of Hopewell may recover the value of anything conveyed in violation of this section.

**2A-39 DISCLOSURE OF SUBSEQUENT EMPLOYMENT:**

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**§ 2.2-4370. Disclosure of subsequent employment.**

No public employee or former public employee having official responsibility for procurement transactions shall accept employment with any bidder, offeror or contractor with whom the employee or former employee dealt in an official capacity concerning procurement transactions for a period of one year from the cessation of employment by the ~~city~~public body, unless the employee or former employee provides written notification to the ~~City Manager~~public body, or a public official if designated by the public body, or both, prior to commencement of employment by that bidder, offeror or contractor.

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**2A-40 GIFTS BY BIDDERS, OFFERORS, CONTRACTORS OR SUBCONTRACTORS.**

**§ 2.2-4371. Prohibition on solicitation or acceptance of gifts; gifts by bidders, offerors, contractor or subcontractors prohibited.**

A. No public employee having official responsibility for a procurement transaction shall solicit, demand, accept, or agree to accept from a bidder, offeror, contractor or subcontractor any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged. The public body may recover the value of anything conveyed in violation of this subsection.

B. No bidder, offeror, contractor or subcontractor shall confer upon any public employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

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**2A-41 KICKBACKS. § 2.2-4372. Kickbacks.**

A. ~~1.~~ No contractor or subcontractor shall demand or receive from any of his suppliers or his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.

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B. No subcontractor or supplier shall make, or offer to make, kickbacks as described in this section.

C. No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a public contract.

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D. If a subcontractor or supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the ~~city~~public body and ~~will~~shall be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

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**2A-42 PURCHASE OF BUILDING MATERIALS, ETC. FROM ARCHITECT OR ENGINEER PROHIBITED.**

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~~Except in cases of emergency, no building materials, supplies or equipment for any building or structure constructed by or for the city shall be sold by or purchased from any person employed as an independent contractor by the city to furnish architectural or engineering services, but not construction, for such building or structure, or from any partnership, association, or corporation in which such architect or engineer has pecuniary interest.~~

**2A-43 PARTICIPATION IN BID PROCESS.**

**§ 2.2-4373. Participation in bid preparation; limitation on submitting bid for same procurement.**

~~No person who, for compensation, prepares an invitation to bid or request for proposal for or on behalf of the city shall: a public body shall (i) submit a bid or proposal for that procurement or any portion thereof or (ii) disclose to any bidder or offeror information concerning the procurement that is not available to the public. However, a public body may permit such person to submit a bid or proposal for that procurement or any portion thereof if~~

~~(1) submit a bid or proposal for that procurement or any portion thereof; or~~

~~(2) disclose to any bidder or offeror information concerning the procurement that is not available to the public.~~

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the public body.

~~However, the Purchasing Agent may permit such person to submit a bid or proposal for that procurement or any portion thereof if the Purchasing Agent determines that the exclusion of the person would limit the number of potential qualified bidders or offerors in a manner contrary to the best interest interests of the City public body.~~

**2A-44 PENALTY FOR VIOLATION.**

~~Willful § 2.2-4374. Purchase of building materials, etc., from architect or engineer prohibited.~~

~~A. No building materials, supplies or equipment for any building or structure constructed by or for a public body shall be sold by or purchased from any person employed as an independent contractor by the public body to furnish architectural or engineering services, but not construction, for such building or structure or from any partnership, association or corporation in which such architect or engineer has a personal interest as defined in § 2.2-3101.~~

~~B. No building materials, supplies or equipment for any building or structure constructed by or for a public body shall be sold by or purchased from any person who has provided or is currently providing design services specifying a sole source for such materials, supplies or equipment to be used in the building or structure to the independent contractor employed by the public body to furnish architectural or engineering services in which such person has a personal interest as defined in § 2.2-3101.~~

~~C. The provisions of subsections A and B shall not apply in cases of emergency or for transportation-related projects conducted by the Department of Transportation or the Virginia Port Authority.~~

**§ 2.2-4375. Certification of compliance required; penalty for false statements.**

~~A. Public bodies may require public employees having official responsibility for procurement transactions in which they participated to annually submit for such transactions a written certification that they complied with the provisions of this article.~~

~~B. Any public employee required to submit a certification as provided in subsection A who knowingly makes a false statement in the certification shall be punished as provided in § 2.2-4377.~~

**§ 2.2-4376. Misrepresentations prohibited.**

~~No public employee having official responsibility for a procurement transaction shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make any false, fictitious or fraudulent statements or representations; or make or use any false writing or document knowing it to contain any false, fictitious or fraudulent statement or entry.~~

**§ 2.2-4376.1. Contributions and gifts; prohibition during procurement process.**

~~A. No bidder or offeror who has submitted a bid or proposal to an executive branch agency that is directly responsible to the Governor for the award of a public contract pursuant to this chapter, and no individual who is an officer or director of such a bidder or offeror, shall knowingly provide a contribution, gift, or other item with a value greater than \$50 or make an express or implied promise to make such a contribution or gift to the Governor, his political action committee, or the Governor's Secretaries, if the Secretary is responsible to the Governor for an executive branch agency with jurisdiction over the matters at issue, during~~

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the period between the submission of the bid and the award of the public contract under this chapter. The provisions of this section shall apply only for public contracts where the stated or expected value of the contract

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is \$5 million or more. The provisions of this section shall not apply to contracts awarded as the result of competitive sealed bidding.

B. Any person who knowingly violates this section shall be subject to a civil penalty of \$500 or up to two times the amount of the contribution or gift, whichever is greater. The attorney for the Commonwealth shall initiate civil proceedings to enforce the civil penalties. Any civil penalties collected shall be payable to the State Treasurer for deposit to the general fund.

**§ 2.2-4377. Penalty for violation.**

Any person convicted of a willful violation of any provision of this article shall constitute be guilty of a Class 1 misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, shall forfeit his employment.

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I, Ann M. Romano, City Clerk of the City of Hopewell, Virginia, do certify that the foregoing is a true and correct copy of an ordinance adopted by the City Council at their meeting dated June 28, 2005.

Given under my hand and the Corporate Seal of the City of Hopewell, Virginia, this 8<sup>th</sup> day of July 2005.

\_\_\_\_\_  
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City Clerk

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**Title 2.2**  
**Administration of Government**  
**-- Subtitle**  
**II.**  
**Administration of State Government**  
**-- Part**  
**B**  
**Transaction of Public Business**  
**-- CHAPTER**  
**43.1**  
**Construction Management and Design-Build Contracting**

**Article 1. General Provisions**

**§ 2.2-4378. Purpose; applicability.**

A. The purpose of this chapter is to enunciate the public policies pertaining to governmental procurement of construction utilizing the construction management and design-build procurement methods. Notwithstanding any other provision of law, the Commonwealth may enter into contracts on a fixed price design-build basis or construction management basis in accordance with the provisions of this chapter and § 2.2-1502.

B. Except as provided in subsection C, this chapter shall apply regardless of the source of financing, whether it is general fund, nongeneral fund, federal trust fund, state debt, or institutional debt.

C. The following shall be exempt from the provisions of this chapter:

1. Projects of a covered institution that are to be funded exclusively by a foundation that (i) exists for the primary purpose of supporting the covered institution and (ii) is exempt from taxation under § 501(c)(3) of the Internal Revenue Code; and

2. Transportation construction projects procured and awarded by the Commonwealth Transportation Board pursuant to subsection B of § 33.2-209.

D. The provisions of this chapter shall supplement the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.), which provisions shall remain applicable. In the event of any conflict between this chapter and the Virginia Public Procurement Act (§ 2.2-4300 et seq.), the Restructured Higher Education Financial and Administrative Operations Act of 2005 (§ 23.1-1000 et seq.), or any other provision of law, this chapter shall control.

**§ 2.2-4379. Definitions.**

As used in this chapter, unless the context requires a different meaning:

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“Complex project” means a construction project that includes one or more of the following significant components: difficult site location, unique equipment, specialized building systems, multifaceted program, accelerated schedule, historic designation, or intricate phasing or some other aspect that makes competitive sealed bidding not practical.

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

“Covered institution” means a public institution of higher education operating (i) subject to a management agreement set forth in Article 4 (§ 23.1-1004 et seq.) of Chapter 10 of Title 23.1, (ii) under a memorandum of understanding pursuant to § 23.1-1003, or (iii) under the pilot program authorized in the appropriation act.

“Department” means the Department of General Services.

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

“Public body” means the same as that term is defined in § 2.2-4301.

“State public body” means any authority, board, department, instrumentality, agency, or other unit of state government. “State public body” does not include any covered institution; any county, city, or town; or any local or regional governmental authority.

**Article 2.**  
**Procedures for State Public Bodies**

**§ 2.2-4380. Construction management or design-build contracts for state public bodies authorized.**

A. Any state public body may enter into a contract for construction on a fixed price or not-to-exceed price construction management or design-build basis, provided that such public body complies with the requirements of this article and the procedures adopted by the Secretary of Administration for using construction management or design-build contracts.

B. Procedures adopted by a state public body pursuant to this article shall include the following requirements:

1. A written determination is made in advance by the state public body that competitive sealed bidding is not practicable or fiscally advantageous, and such writing shall document the basis for the determination to use construction management or design-build. The determination shall be included in the Request for Qualifications and maintained in the procurement file;

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2. Prior to making a determination as to the use of construction management or design-build for a specific construction project, a state public body shall have in its employ or under contract a licensed architect or engineer with professional competence appropriate to the project who shall (i) advise the public body regarding the use of construction management or design-build for that project and (ii) assist the public body with the preparation of the Request for Proposal and the evaluation of such proposals;

3. Public notice of the Request for Qualifications is posted on the Department's central electronic procurement website, known as eVA, at least 30 days prior to the date set for receipt of qualification proposals;

4. For construction management contracts, the contract is entered into no later than the completion of the schematic phase of design, unless prohibited by authorization of funding restrictions;

5. Prior construction management or design-build experience or previous experience with the Department's Bureau of Capital Outlay Management shall not be required as a prerequisite for award of a contract. However, in the selection of a contractor, a state public body may consider the experience of each contractor on comparable projects;

6. Construction management contracts shall require that (i) no more than 10 percent of the construction work, as measured by the cost of the work, be performed by the construction manager with its own forces and (ii) the remaining 90 percent of the construction work, as measured by the cost of the work, be performed by subcontractors of the construction manager, which the construction manager shall procure by publicly advertised, competitive sealed bidding to the maximum extent practicable; and

7. The procedures allow for a two-step competitive negotiation process.

C. The Department shall evaluate the proposed procurement method selected by the state public body and make its recommendation as to whether the use of the construction management or design-build procurement method is appropriate for the specific project. In its review, the Department shall also consider:

1. The written determination of the state public body;

2. The compliance by the state public body with subdivisions B 1, 2, and 7;

3. The project cost, expected timeline, and use;

4. Whether the project is a complex project; and

5. Any other criteria established by the Department to evaluate the proposed procurement method for the project.

D. The Department shall conduct its review within five working days after receipt of the written determination and render its written recommendation within such five-working-day period. The written recommendation of the Department shall be maintained in the procurement file.

E. If a state public body elects to proceed with the project using a construction management or design-build procurement method despite the recommendation of the Department to the contrary, such state public

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body shall state in writing its reasons therefor and any justification for not following the recommendation of the Department and submit same to the Department. The written statement of a state public body's decision to not follow the recommendation of the Department shall be maintained in the procurement file.

**Article 3.**  
**Procedures for Covered Institutions.**

**§ 2.2-4381. Construction management or design-build contracts for covered institutions authorized.**

A. Any covered institution may enter into a contract for construction on a fixed price or not-to-exceed price construction management or design-build basis, provided that such institution complies with the requirements of this article and with the procedures adopted by the Secretary of Administration for using construction management or design-build contracts.

B. Covered institutions shall:

1. Develop procedures for determining the selected procurement method which, at a minimum, shall consider cost, schedule, complexity, and building use;

2. Submit such procedures, and any subsequent changes to adopted procedures, to the Department for review and comment; and

3. Submit Department-reviewed procedures to its board of visitors for adoption.

C. Procedures adopted by a board of visitors pursuant to this article shall include the following requirements:

1. A written determination is made in advance by the covered institution that competitive sealed bidding is not practicable or fiscally advantageous, and such writing shall document the basis for the determination to use construction management or design-build. The determination shall be included in the Request for Qualifications and maintained in the procurement file;

2. Prior to making a determination as to the use of construction management or design-build for a specific construction project, a covered institution shall have in its employ or under contract a licensed architect or engineer with professional competence appropriate to the project who shall (i) advise the covered institution regarding the use of construction management or design-build for that project and (ii) assist the covered institution with the preparation of the Request for Proposal and the evaluation of such proposals;

3. Public notice of the Request for Qualifications is posted on the Department's central electronic procurement website, known as eVA, at least 30 days prior to the date set for receipt of qualification proposals;

4. For construction management contracts, the contract is entered into no later than the completion of the schematic phase of design, unless prohibited by authorization of funding restrictions;

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5. Prior construction management or design-build experience or previous experience with the Department's Bureau of Capital Outlay Management shall not be required as a prerequisite for award of a contract. However, in the selection of a contractor, a covered institution may consider the experience of each contractor on comparable projects;

6. Construction management contracts shall require that (i) no more than 10 percent of the construction work, as measured by the cost of the work, be performed by the construction manager with its own forces and (ii) the remaining 90 percent of the construction work, as measured by the cost of the work, be performed by subcontractors of the construction manager, which the construction manager shall procure by publicly advertised, competitive sealed bidding to the maximum extent practicable; and

7. The procedures allow for a two-step competitive negotiation process.

D. The Department shall evaluate the proposed procurement method selected by a covered institution and make its recommendation as to whether the use of the construction management or design-build procurement method is appropriate for the specific project. In its review, the Department shall also consider:

1. The written determination of the covered institution;
2. The compliance by the covered institution with subdivisions C 1, 2, and 7;
3. The project cost, expected timeline, and use;
4. Whether the project is a complex project; and

5. Any other criteria established by the Department to evaluate the proposed procurement method for the project.

E. The Department shall conduct its review within five working days after receipt of the written determination and render its written recommendation within such five-working-day period. The written recommendation of the Department shall be maintained in the procurement file.

F. If a covered institution elects to proceed with the project using a construction management or design-build procurement method despite the recommendation of the Department to the contrary, such covered institution shall state in writing its reasons therefor and any justification for not following the recommendation of the Department and submit same to the Department. The written statement of a covered institution's decision to not follow the recommendation of the Department shall be maintained in the procurement file.

**Article 4.**  
**Procedures for Local Public Bodies.**

**§ 2.2-4382. Design-build or construction management contracts for local public bodies authorized.**

A. Any local public body may enter into a contract for construction on a fixed price or not-to-exceed price construction management or design-build basis, provided that the local public body (i) complies with the

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requirements of this article and (ii) has by ordinance or resolution implemented procedures consistent with the procedures adopted by the Secretary of Administration for utilizing construction management or design-build contracts.

B. Prior to making a determination as to the use of construction management or design-build for a specific construction project, a local public body shall have in its employ or under contract a licensed architect or engineer with professional competence appropriate to the project who shall (i) advise such public body regarding the use of construction management or design-build for that project and (ii) assist such public body with the preparation of the Request for Proposal and the evaluation of such proposals.

C. A written determination shall be made in advance by the local public body that competitive sealed bidding is not practicable or fiscally advantageous, and such writing shall document the basis for the determination to utilize construction management or design-build. The determination shall be included in the Request for Qualifications and be maintained in the procurement file.

D. Procedures adopted by a local public body for construction management pursuant to this article shall include the following requirements:

1. Construction management contracts may be utilized for projects where the project cost is expected to be more than \$10 million;

2. Construction management may be utilized on projects where the project cost is expected to be less than \$10 million, provided that (i) the project is a complex project and (ii) the project procurement method is approved by the local governing body. The written approval of the governing body shall be maintained in the procurement file;

3. Public notice of the Request for Qualifications is posted on the Department's central electronic procurement website, known as eVA, at least 30 days prior to the date set for receipt of qualification proposals;

4. The construction management contract is entered into no later than the completion of the schematic phase of design, unless prohibited by authorization of funding restrictions;

5. Prior construction management or design-build experience or previous experience with the Department's Bureau of Capital Outlay Management shall not be required as a prerequisite for award of a contract. However, in the selection of a contractor, the local public body may consider the experience of each contractor on comparable projects;

6. Construction management contracts shall require that (i) no more than 10 percent of the construction work, as measured by the cost of the work, be performed by the construction manager with its own forces and (ii) the remaining 90 percent of the construction work, as measured by the cost of the work, be performed by subcontractors of the construction manager, which the construction manager shall procure by publicly advertised, competitive sealed bidding to the maximum extent practicable;

7. The procedures allow for a two-step competitive negotiation process; and

8. Price is a critical basis for award of the contract.

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E. Procedures adopted by a local public body for design-build construction projects shall include a two-step competitive negotiation process consistent with the standards established by the Division of Engineering and Buildings of the Department for state public bodies.

**Article 5.**

**Reporting Requirements for All Public Bodies.**

**§ 2.2-4383. Reporting requirements.**

A. The Department shall report by December 1 of each year to the Governor and the Chairmen of the House Committee on Appropriations, the House Committee on General Laws, the Senate Committee on Finance, and the Senate Committee on General Laws and Technology the following information: (i) the number of projects reviewed pursuant to Articles 2 (§ 2.2-4380) and 3 (§ 2.2-4381) and (ii) for each project (a) the identity of the state public body or covered institution and a description of each such project, (b) the estimated cost of the project at the time of the Department's review, (c) the recommendation made by the Department concerning the proposed procurement method, and (d) the final procurement method used by the state public body or covered institution.

B. All public bodies subject to the provisions of this chapter shall report no later than November 1 of each year to the Director of the Department on all completed capital projects in excess of \$2 million, which report shall include at a minimum (i) the procurement method utilized, (ii) the project budget, (iii) the actual project cost, (iv) the expected timeline, (v) the actual completion time, and (vi) any post-project issues.

The Department shall consolidate received report data and submit the consolidated data to the Governor and Chairmen of the House Committee on Appropriations and the Senate Committee on Finance by December 1 of each year.

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# CITY OF HOPEWELL CITY COUNCIL ACTION FORM

**Strategic Operating Plan Vision Theme:**

- Civic Engagement
- Culture & Recreation
- Economic Development
- Education
- Housing
- Safe & Healthy Environment
- None (Does not apply)

**Order of Business:**

- Consent Agenda
- Public Hearing
- Presentation-Boards/Commissions
- Unfinished Business
- Citizen/Councilor Request
- Regular Business
- Reports of Council Committees

**Action:**

- Approve and File
- Take Appropriate Action
- Receive & File (no motion required)
- Approve Ordinance 1<sup>st</sup> Reading
- Approve Ordinance 2<sup>nd</sup> Reading
- Set a Public Hearing
- Approve on Emergency Measure

**COUNCIL AGENDA ITEM TITLE: Approval of Hopewell Water Renewal Fund (Fund 032 – Enterprise Fund) Capital Projects Budget Amendment**

**ISSUE:** Past budgeting practices did not require the Hopewell Water Renewal to budget for capital projects in enterprise fund number 32. Currently, the Interim Finance Director is requiring that capital projects be included in the budget as good financial practice to document proposed project expenses and revenues for each fiscal year. Therefore, one capital project must be added to the FY 2017 capital budget and another project amount must be amended.

**RECOMMENDATION:** As a result, the City Administration recommends City Council’s approval to amend the FY 2017 Hopewell Water Renewal Fund Capital Projects Budget to increase the total funding sources (Fund Balance) and the total expenditure appropriations by \$622,400 to include the funding needed for both of these capital projects.

**TIMING:** Both capital projects are underway and procurement is ready to be awarded, but to proceed with both capital projects using FY 2017 funds, City Council must approve a budget amendment as soon as possible.

**BACKGROUND:** Based on past practices for the sewer enterprise fund, Hopewell Water Renewal (HWR) did not budget for capital project even though the Hopewell Water Renewal Commission (HWRC) approved its capital budget. As invoices were received from the vendors, billing of the Commission members for their allocated share of the costs would begin. Currently, the Interim Finance Director is requiring that capital projects be included in the budget as good financial practice to document proposed project expenses and revenues for each fiscal year. The FY 2017 Adopted Budget excluded capital projects, two (centrifuge installation and UNOC electrical system upgrade) of which were approved by Council at the June 27 meeting.

An additional FY 2017 capital project that received HRWC approval was for the purchase of Laboratory Information Management System (LIMS) software and has received bids and selected a vendor. The cost of purchasing the LIMS software is \$163,400.

**SUMMARY:**

- | Y                        | N                        |                                              | Y                        | N                        |                                    |
|--------------------------|--------------------------|----------------------------------------------|--------------------------|--------------------------|------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | Mayor, Michael C. Bujakowski Ward #3         | <input type="checkbox"/> | <input type="checkbox"/> | Vice Mayor Jasmine E. Gore Ward #4 |
| <input type="checkbox"/> | <input type="checkbox"/> | Councilor Christina J. Luman-Bailey, Ward #1 | <input type="checkbox"/> | <input type="checkbox"/> | Councilor Brenda Pelham, Ward #6   |
| <input type="checkbox"/> | <input type="checkbox"/> | Councilor Roosevelt Edwards, Ward #2         | <input type="checkbox"/> | <input type="checkbox"/> | Councilor Jackie Shornak, Ward #7  |
| <input type="checkbox"/> | <input type="checkbox"/> | Councilor Wayne Walton, Ward #5              |                          |                          |                                    |

In addition, the capital centrifuge installation project for which Council approved a budget appropriation of \$1.1 M at its meeting on June 27, 2017, received a winning bid of \$1,559,000 that is \$459,000 over budget. After an engineering evaluation of the bid documents was performed, it was determined that the bid amount was reasonable and justifiable based on the scope of the project.

The Hopewell Water Renewal Fund Capital Projects Budget must be amended through an appropriation of funds to reflect the additional \$622,400 total cost and sources of funding needed for these two capital projects. Based on the HRWC's project approval and payment policy, funds for payment of the capital project costs incurred shall be invoiced to the members of the HWRC as the vendor invoices are received for completed work.

**FISCAL IMPACT:** The current LIMS software is approximately 15 years old and is no longer technically supported. To ensure the integrity of the plant's laboratory data, a new system is needed. Staff have evaluated laboratory needs and software capabilities. A detailed Request for Proposals (RFP) document was developed. Based on interviews with the potential vendors submitting a proposal, staff selected a LIMS software at a cost of \$163,400. The RFP is currently in process of being awarded pending Council approval of the budget appropriation.

In the past year, the Hopewell Water Renewal Fund has spent approximately \$500,000 to repair the existing centrifuges and rent temporary sludge dewatering equipment during repair of the centrifuges. The centrifuge equipment was procured and is in the process of being built. Although the cost of installation exceeds the budgeted capital project amount by \$459,000, the installation is necessary and will provide the wastewater treatment facility plant with the back-up system needed to ensure that sludge will be processed and the permit limits for solids will be met.

**ENCLOSED DOCUMENTS:** FY 2017 5 Year Capital Improvement Plan

**STAFF:** Jeanie Grandstaff, Director, Hopewell Water Renewal

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**SUMMARY:**

**Y N**

- Mayor, Michael C. Bujakowski Ward #3
- Councilor Christina J. Luman-Bailey, Ward #1
- Councilor Roosevelt Edwards, Ward #2
- Councilor Wayne Walton, Ward #5

**Y N**

- Vice Mayor Jasmine E. Gore Ward #4
- Councilor Brenda Pelham, Ward #6
- Councilor Jackie Shornak, Ward #7

**H2O RENEWAL  
FIVE (5) YEAR CAPITAL IMPROVEMENT PLAN  
FY17-18 THRU FY21-22**

ITEM NO.	PROJECT	REPL/ ADD	TOTALS	Current	Five Year Plan					PROJECT DESCRIPTION
				FY 16-17	FY17-18	FY18-19	FY19-20	FY20-21	FY21-22	
1	Energy Recovery	A	5,000,000					5,000,000		To use heat energy from incinerator to offset a portion of utility down period at 2013 loadings in 13 years.
2	Primary Sludge Wet Well Rehab	R	100,000		100,000					To repair concrete structure damage from hydrogen sulfide.
3	Centrate Wet Well Rehab	R	100,000	100,000						To repair concert structure damage form hydrogen sulfide. Degrading concrete affecting pump.
4	Oxygen Plant Instrumentation Conversion	A	1,000,000				1,000,000			To replace the existing pneumatic controllers with electronic controllers . The existing controllers are obsolete and we cannot get repair parts. This will also upgrade the control system to a PLC system to be compatible with existing plant.
5	Transformer	A	100,000	100,000						To replace last transformer behind solids building.
6	SNR Wet Well Rehab	R	100,000		100,000					To repair concrete structure damage from hydrogen sulfide.
7	Pilot Study (Nitrogen Reduction)	A	500,000			500,000				Further study to determine technology needed to meet lower nitrogen limits.
8	UNOX/Electrical Upgrade	R	1,000,000	1,000,000						Replacement - Unox electrical upgrade -- existing equipment is 40 yrs. old.
9	LIMS System	R	150,000	150,000						Current vendor no longer supporting LIMS system
10	Compressor/Switchgear	R	1,300,000			1,300,000				Replacement: Increase liability; existing equipment is 40 yrs. Old
11	Centrifuge	A	1,250,000	1,250,000						Centrifuge is 20 years old and reliability is becoming a problem. Two solids violations occurred in 2015 due to centrifuge under repair. In 2016 filter press rented for \$260K to prevent violations during centrifuge repair. Adding a third centrifuge to improved redundancy and prevent permit violations.
12	Storm Water Facility Improvements	A	500,000		500,000					To reduce the number of outfalls by combining outfalls and improving access for sampling safety.
13	Air Pollution Control on Domestic Facility	A	100,000			100,000				To reduce effects of hydrogen sulfide corrosion.
14	9th Secondary Clarifier	A	250,000					250,000		To improve solids removal and increase hydraulic capacity of plant.
15	Mixer Replacement	R	3,250,000		250,000	1,000,000	1,000,000	1,000,000	1,000,000	Replace over four years through FY20-21 for a total of \$4M --current mixers are obsolete; parts are not available and have to be machined -- currently 40 year old equipment with high energy demand.
16	Polymer System Upgrade	R	300,000		300,000					Existing system 20+ years old -- needs to upgrade to meet needs of thrid centrifuge.
17	RAS Pipeline	R	1,200,000			1,200,000				Repair/replace due to deterioration.
	<b>GRAND TOTAL</b>		<b>16,200,000</b>	<b>2,600,000</b>	<b>1,250,000</b>	<b>4,100,000</b>	<b>2,000,000</b>	<b>6,250,000</b>	<b>1,000,000</b>	
18	Alternative 4A-1 Light Phase 2 Nitrogen Reduction	A	6,068,952	6,068,952						To eliminate ammonia toxicity and total nitrogen in the effluent to the new VA standards using biological nutrient removal (BNR) technology. Total project cost \$75 million, approximately 10% for design/engineering fees.