

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 2.2-4343 and 23.1-1003 of the Code of Virginia and to amend the Code of*
 3 *Virginia by adding in Article 1 of Chapter 43 of Title 2.2 a section numbered 2.2-4302.3, relating to*
 4 *Virginia Public Procurement Act; additional public works contract requirements; report.*

5 [S 324]

6 Approved

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

8 **1. That §§ 2.2-4343 and 23.1-1003 of the Code of Virginia are amended and reenacted and that the**
 9 **Code of Virginia is amended by adding in Article 1 of Chapter 43 of Title 2.2 a section numbered**
 10 **2.2-4302.3 as follows:**

11 **§ 2.2-4302.3. Additional public works contract requirements.**12 *A. For purposes of this section:*13 *"Construction contract" means any public contract for construction initiated after July 1, 2027.*

14 *"Employee" means a worker on a construction contract that (i) is free from the control and direction of*
 15 *the remunerating entity in connection with the performance of the work, both under the contract for the*
 16 *performance of the work and in fact; (ii) performs work outside the usual course of the remunerating entity's*
 17 *business; and (iii) is customarily engaged in an independently established trade, occupation, or business of*
 18 *the same nature as that involved in the work performed.*

19 *B. For any construction contract, a public body shall require the contractor and its subcontractors at any*
 20 *tier to demonstrate compliance with the following requirements:*

21 *1. Completion of specified safety training programs established by the U.S. Department of Labor's*
 22 *Occupational Safety and Health Administration; and*

23 *2. Demonstration of no more than one administrative determination, arbitral award, civil judgment, or*
 24 *settlement agreement of more than \$25,000 in the past three years involving the contractor or subcontractor*
 25 *for violations of the National Labor Relations Act, 29 U.S.C. § 151 et seq.; the federal Fair Labor Standards*
 26 *Act, 29 U.S.C. § 201 et seq.; the federal Davis-Bacon Act, 40 U.S.C. § 3141, or Davis-Bacon Related Acts;*
 27 *the Virginia Minimum Wage Act (§ 40.1-28.8 et seq.); Article 2 (§ 40.1-29 et seq.) of Chapter 3 of Title 40.1;*
 28 *the provisions of § 2.2-4321.3; or the provisions of § 40.1-28.7:7.*

29 *C. If a construction contract with a state public body is valued at an amount greater than \$5 million, no*
 30 *contractor, subcontractor, or party to such contract shall provide remuneration to more than one*
 31 *independent contractor for the performance of construction work on such contract unless the remunerating*
 32 *party receives written authorization from the state public body to enter into an agreement with the*
 33 *independent contractor to provide construction services on such contract.*

34 *Such written authorization shall disclose that the state public body finds that:*

35 *1. The remunerating party demonstrated a good faith effort to directly hire employees to perform the work*
 36 *sought;*

37 *2. The remunerating party demonstrated that it was not feasible to directly hire employees to perform the*
 38 *work sought due to the work being of a specialized nature that cannot be performed by the remunerating*
 39 *party's own workforce, and it would require significant investment of time and resources on the part of the*
 40 *remunerating party to directly hire employees to perform the work sought; and*

41 *3. The remunerating party has provided adequate notice to all independent contractors pursuant to*
 42 *subsection F.*

43 *No state public body shall be liable for any determination made by such body in response to a request for*
 44 *authorization pursuant to this subsection. An authorization from a state public body pursuant to this*
 45 *subsection shall not be considered a defense by a contractor against any violation of law.*

46 *D. If a construction contract with a local public body is valued at an amount greater than \$5 million, the*
 47 *prime contractor shall provide written notification to the local public body party to such contract:*

48 *1. Detailing information on any independent contractors hired by any contractor, subcontractor, or party*
 49 *to the construction contract. Such information shall include the independent contractor's trade and at least*
 50 *one point of contact;*

51 *2. Demonstrating compliance to the requirements of remunerating parties pursuant to subdivisions C1,*
 52 *C2, and C3.*

53 *E. Nothing in subsection C or D shall be construed as limiting a contractor's right to subcontract work to*
 54 *a bona fide firm that performs work on a construction contract with its own employees and that otherwise*
 55 *complies with the provisions of this section.*

56 *F. If a contractor, subcontractor, or any party on a construction contract provides remuneration to an*

57 independent contractor, such remunerating party shall provide a written notice to each such independent
58 contractor that contains the following information:

59 1. Notification to the individual that he has been hired as an independent contractor;

60 2. A statement by the remunerating party that the independent contractor will perform work free from
61 control of the remunerating party except as to the product and result;

62 3. Notification regarding the independent contractor's tax obligations, including the filing of self-
63 employment income tax with the U.S. Internal Revenue Service;

64 4. Notification that the individual's classification as an independent contractor means that he is not
65 eligible for protection under protective laws, including employment discrimination and anti-retaliation laws,
66 occupational safety and health laws, living wage and prevailing wage laws, and wage and hour laws;

67 5. Notification that, if the independent contractor hires employees to perform work, the independent
68 contractor or exempt person is responsible as an employer for all tax, unemployment insurance, workers'
69 compensation insurance, and labor and employment law obligations on behalf of those employees;

70 6. Notification that the independent contractor is obligated to provide a written notice containing the
71 information in this subsection to independent contractors or exempt persons with whom they contract;

72 7. Notification that the individual is required to provide copies of any licenses or registrations issued to
73 the individual related to the work to be performed;

74 8. Instructions for filing a complaint with the Department of Labor and Industry if the individual is being
75 misclassified; and

76 9. A detailed statement of the work to be performed by the independent contractor or exempt person or the
77 appropriate provisions of the contract between the parties, which shall be attached to the notice.

78 **§ 2.2-4343. Exemption from operation of chapter for certain transactions.**

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

80 1. The Virginia Port Authority in the exercise of any of its powers in accordance with Chapter 10
81 (§ 62.1-128 et seq.) of Title 62.1, provided that the Authority implements, by policy or regulation adopted by
82 the Board of Commissioners, procedures to ensure fairness and competitiveness in the procurement of goods
83 and services and in the administration of its capital outlay program. This exemption shall be applicable only
84 so long as such policies and procedures meeting the requirements remain in effect.

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

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

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

94 5. The College of William and Mary in Virginia, Virginia Commonwealth University, the University of
95 Virginia, and Virginia Polytechnic Institute and State University in the selection of services related to the
96 management and investment of their endowment funds, endowment income, gifts, all other nongeneral fund
97 reserves and balances, or local funds of or held by the respective public institution of higher education
98 pursuant to § 23.1-2210, 23.1-2306, 23.1-2604, or 23.1-2803. However, selection of these services shall be
99 governed by the Uniform Prudent Management of Institutional Funds Act (§ 64.2-1100 et seq.) as required by
100 §§ 23.1-2210, 23.1-2306, 23.1-2604, and 23.1-2803.

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

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

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

112 9. Any town with a population of less than 3,500, except as stipulated in the provisions of §§ 2.2-4305,
113 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
114 Chapter 43.1 (§ 2.2-4378 et seq.).

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

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

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

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

133 12. Notwithstanding the exemptions set forth in subdivisions 9 through 11, § 2.2-4302.3, the provisions of
 134 subsections B, 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
 135 through 2.2-4338, 2.2-4342, 2.2-4343.1, and 2.2-4367 through 2.2-4377, Chapter 43.1 (§ 2.2-4378 et seq.),
 136 and § 58.1-1902 shall apply to all counties, cities, and school divisions and to all towns having a population
 137 greater than 3,500 in the Commonwealth.

138 The method for procurement of professional services through competitive negotiation set forth in
 139 §§ 2.2-4302.2, 2.2-4303.1, and 2.2-4303.2 shall also apply to all counties, cities, and school divisions, and to
 140 all towns having a population greater than 3,500, where the cost of the professional service is expected to
 141 exceed \$80,000 in the aggregate or for the sum of all phases of a contract or project. A school board that
 142 makes purchases through its public school foundation or purchases educational technology through its
 143 educational technology foundation, either as may be established pursuant to § 22.1-212.2:2 shall be exempt
 144 from the provisions of this chapter, except, relative to such purchases, the school board shall comply with the
 145 provisions of §§ 2.2-4311 and 2.2-4367 through 2.2-4377.

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

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

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

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

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

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

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

168 20. The purchase of Virginia-grown food products for use by a public body where the annual cost of the
 169 product is not expected to exceed \$100,000, provided that the procurement is accomplished by (i) obtaining
 170 written informal solicitation of a minimum of three bidders or offerors if practicable and (ii) including a
 171 written statement regarding the basis for awarding the contract.

172 21. The Virginia Industries for the Blind when procuring components, materials, supplies, or services for
 173 use in commodities and services furnished to the federal government in connection with its operation as an
 174 AbilityOne Program-qualified nonprofit agency for the blind under the Javits-Wagner-O'Day Act, 41 U.S.C.
 175 §§ 8501-8506, provided that the procurement is accomplished using procedures that ensure that funds are
 176 used as efficiently as practicable. Such procedures shall require documentation of the basis for awarding
 177 contracts. Notwithstanding the provisions of § 2.2-1117, no public body shall be required to purchase such
 178 components, materials, supplies, services, or commodities.

179 22. The purchase of personal protective equipment for private, nongovernmental entities by the Governor
 180 pursuant to subdivision (11) of § 44-146.17 during a disaster caused by a communicable disease of public

181 health threat for which a state of emergency has been declared. However, such purchase shall provide for
 182 competition where practicable and include a written statement regarding the basis for awarding any contract.
 183 As used in this subdivision, "personal protective equipment" means equipment or supplies worn or employed
 184 to minimize exposure to hazards that cause serious workplace injuries and illnesses and may include items
 185 such as gloves, safety glasses and shoes, earplugs or earmuffs, hard hats, respirators, coveralls, vests, full
 186 body suits, hand sanitizer, plastic shields, or testing kits for the communicable disease of public health threat.

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

195 **§ 23.1-1003. Memoranda of understanding.**

196 A. Each public institution of higher education that meets the state goals set forth in subsection A of
 197 § 23.1-1002 may enter into a memorandum of understanding with the appropriate Cabinet Secretary, as
 198 designated by the Governor, for restructured operational authority in any operational area adopted by the
 199 General Assembly in accordance with law, provided that the authority granted in the memorandum of
 200 understanding is consistent with that institution's ability to manage its operations in the particular area and:

201 1. The institution is certified by the Council pursuant to § 23.1-206 or 23.1-310 for the most recent year
 202 that the Council has completed certification;

203 2. An absolute two-thirds or more of the institution's governing board has voted in the affirmative for a
 204 resolution expressing the sense of the board that the institution is qualified to be, and should be, governed by
 205 memoranda of understanding;

206 3. The institution adopts at least one new measure for each area of operational authority for which a
 207 memorandum of understanding is requested. Each measure shall be developed in consultation with (i) the
 208 appropriate Cabinet Secretary or (ii) the Secretary of Education and the Council if the measure is
 209 education-related. Any education-related measure is subject to the approval of the Council; ~~and~~

210 4. The institution posts on the Department of General Services' central electronic procurement website all
 211 Invitations to Bid, Requests for Proposal, sole source award notices, and emergency award notices to ensure
 212 visibility and access to the Commonwealth's procurement opportunities on one website; *and*

213 5. *The institution expressly agrees to comply with the public works contract requirements set forth in*
 214 *§ 2.2-4302.3.*

215 B. Within 15 days of receipt of a request from a public institution of higher education to enter into a
 216 memorandum of understanding, the Cabinet Secretary receiving the request shall notify the ~~Chairmen~~ *Chairs*
 217 of the House Committee on Appropriations and the Senate Committee on Finance and Appropriations of the
 218 request. The Cabinet Secretary shall determine within 90 calendar days whether to enter into the requested
 219 memorandum of understanding or a modified memorandum of understanding.

220 C. If the Cabinet Secretary enters into a memorandum of understanding with the public institution of
 221 higher education, he shall forward a copy of the governing board's resolution and a copy of the memorandum
 222 of understanding to the ~~Chairmen~~ *Chairs* of the House Committee on Appropriations and the Senate
 223 Committee on Finance and Appropriations. Each initial memorandum of understanding shall remain in effect
 224 for three years. Subsequent memoranda of understanding shall remain in effect for five years.

225 D. If the Cabinet Secretary does not enter into a memorandum of understanding with the public institution
 226 of higher education, he shall notify the ~~Chairmen~~ *Chairs* of the House Committee on Appropriations and the
 227 Senate Committee on Finance and Appropriations of the reasons for denying the institution's request. If an
 228 institution's request is denied, nothing in this section shall prohibit a public institution of higher education
 229 from submitting a future request to enter into a memorandum of understanding pursuant to this section.

230 **2. That the provisions of the first enactment of this act shall become effective on July 1, 2027.**

231 **3. That the Secretary of Labor (the Secretary) shall, starting July 1, 2026, conduct an 18-month**
 232 **evaluation of the appropriateness and financial feasibility of requiring all public bodies of the**
 233 **Commonwealth to require the hiring of apprentices on public works contracts. The Secretary shall**
 234 **determine in his review the current utilization rate of apprentices on public works contracts and the**
 235 **skilled trades most likely to benefit from apprenticeship requirements on public works contracts. All**
 236 **public bodies of the Commonwealth shall assist with the evaluation as needed. The Secretary shall**
 237 **provide to the General Assembly an annual report on its evaluation efforts no later than November 1,**
 238 **2027.**

239 **4. That the Department of General Services and the Department of Labor and Industry, in**
 240 **consultation with relevant stakeholders, shall develop guidelines to assist state public bodies in making**
 241 **the determinations required to issue an authorization pursuant to subsection C of § 2.2-4302.3 of the**
 242 **Code of Virginia, as created by this act. The Department of General Services shall publish such**

243 **guidelines on its website no later than July 1, 2027.**

ENROLLED

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