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SENATE BILL NO. 1036

Offered January 9, 2019

Prefiled October 31, 2018

A BILL to amend and reenact §§ 2.2-1604, 2.2-1605, 2.2-4310, 2.2-4310.3, and 2.2-4343 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 16.1 of Title 2.2 an article numbered 4, consisting of sections numbered 2.2-1618 through 2.2-1623, relating to the Department of Small Business and Supplier Diversity; small business procurement enhancement program.

Patrons—Lucas and Dance; Delegates: Bagby, Hayes, James, Kory, Lindsey and Simon

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-1604, 2.2-1605, 2.2-4310, 2.2-4310.3, and 2.2-4343 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 16.1 of Title 2.2 an article numbered 4, consisting of sections numbered 2.2-1618 through 2.2-1623, as follows:

§ 2.2-1604. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Certification" means the process by which (i) a business is determined to be a small, women-owned, or minority-owned business or (ii) an employment services organization, for the purpose of reporting small, women-owned, and minority-owned business and employment services organization participation in state contracts and purchases pursuant to §§ 2.2-1608 and 2.2-1610.

"Department" means the Department of Small Business and Supplier Diversity or any division of the Department to which the Director has delegated or assigned duties and responsibilities.

"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.

"Historically black colleges and university" includes any college or university that was established prior to 1964; whose principal mission was, and is, the education of black Americans; and that is accredited by a nationally recognized accrediting agency or association determined by the Secretary of Education.

"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:

1. "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.

2. "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.

3. "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.

4. "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, 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.

"Small business" means a business that is at least 51 percent independently owned and controlled by one or more individuals who are U.S. citizens or legal resident aliens and, together with affiliates, has

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59 250 or fewer employees or average annual gross receipts of \$10 million or less averaged over the
 60 previous three years. One or more of the individual owners shall control both the management and daily
 61 business operations of the small business holds a valid certification issued by the Department pursuant
 62 to Article 4 (§ 2.2-1618 et seq.).

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

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

70 **§ 2.2-1605. Powers and duties of Department.**

71 A. The Department shall have the following powers and duties:

72 1. Coordinate as consistent with prevailing law the plans, programs, and operations of the state
 73 government that affect or may contribute to the establishment, preservation, and strengthening of small,
 74 women-owned, and minority-owned businesses;

75 2. Promote the mobilization of activities and resources of state and local governments, businesses and
 76 trade associations, baccalaureate institutions of higher education, foundations, professional organizations,
 77 and volunteer and other groups towards the growth of small businesses and businesses owned by women
 78 and minorities, and facilitate the coordination of the efforts of these groups with those of state
 79 departments and agencies;

80 3. Establish a center for the development, collection, summarization, and dissemination of
 81 information that will be helpful to persons and organizations throughout the nation in undertaking or
 82 promoting procurement from small, women-owned, and minority-owned businesses;

83 4. Consistent with prevailing law and availability of funds, and according to the Director's discretion,
 84 provide technical and management assistance to small, women-owned, and minority-owned businesses
 85 and defray all or part of the costs of pilot or demonstration projects that are designed to overcome the
 86 special problems of small, women-owned, and minority-owned businesses;

87 5. Advise the Small Business Financing Authority on the management and administration of the
 88 Small, Women-owned, and Minority-owned Business Loan Fund created pursuant to § 2.2-2311.1;

89 6. *Implement the Small Business Procurement Enhancement Program established by Article 4*
 90 *(§ 2.2-1618 et seq.).*

91 7. Implement any remediation or enhancement measure for small, women-owned, or minority-owned
 92 businesses as may be authorized by the Governor pursuant to subsection C of § 2.2-4310 and develop
 93 regulations, consistent with prevailing law, for program implementation. Such regulations shall be
 94 developed in consultation with the state agencies with procurement responsibility and promulgated by
 95 those agencies in accordance with applicable law; and

96 ~~7.~~ 8. Receive and coordinate, with the appropriate state agency, the investigation of complaints that a
 97 business certified pursuant to this chapter has failed to comply with its subcontracting plan under
 98 subsection D of § 2.2-4310. If the Department determines that a business certified pursuant to this
 99 chapter has failed to comply with the subcontracting plan, the business shall provide a written
 100 explanation.

101 B. In addition, the Department shall serve as the liaison between the Commonwealth's existing
 102 businesses and state government in order to promote the development of Virginia's economy. To that
 103 end, the Department shall:

104 1. Encourage the training or retraining of individuals for specific employment opportunities at new or
 105 expanding business facilities in the Commonwealth;

106 2. Develop and implement programs to assist small businesses in the Commonwealth in order to
 107 promote their growth and the creation and retention of jobs for Virginians;

108 3. Establish an industry program that is the principal point of communication between basic
 109 employers in the Commonwealth and the state government that will address issues of significance to
 110 business;

111 4. Make available to existing businesses, in conjunction and cooperation with localities, chambers of
 112 commerce, and other public and private groups, basic information and pertinent factors of interest and
 113 concern to such businesses;

114 5. Develop statistical reports on job creation and the general economic conditions in the
 115 Commonwealth; and

116 6. Administer the Small Business Jobs Grant Fund Program described in Article 2 (§ 2.2-1611 et
 117 seq.).

118 C. All agencies of the Commonwealth shall assist the Department upon request and furnish such
 119 information and assistance as the Department may require in the discharge of its duties.

Small Business Procurement Enhancement Program.

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§ 2.2-1618. Definitions.

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

"Prime contractor" means the contractor that has full legal responsibility for completion of a contract with a public body. A prime contractor may employ or manage one or more subcontractors to carry out specific parts of the contract.

"Program" means the small business procurement enhancement program.

"Small business set-aside" means the reserving of a procurement exclusively for participation by small business concerns.

"State agency" means any authority, board, department, instrumentality, institution, agency, or other unit of state government, including public institutions of higher education.

§ 2.2-1619. Small business procurement enhancement program established; designation of small business procurement enhancement liaison.

A. It shall be the policy of the Commonwealth, to the greatest extent possible, to facilitate the participation of small businesses in state procurement. To that end, the small business procurement enhancement program is hereby established. The goal of the Program shall be the achievement of 42 percent of small business utilization in all discretionary spending by state agencies in procurement orders, prime contracts, and subcontracts. The Department shall be responsible for implementing the Program.

B. The Program shall include a small business set-aside for competition among all small businesses meeting the qualification criteria established in § 2.2-1620 for state agency purchases up to \$100,000 for goods and nonprofessional services and up to \$50,000 for professional services when the price quoted is fair and reasonable.

C. Each state agency subject to the provisions of this article shall designate an existing employee as a small business procurement enhancement liaison whose responsibility shall be to ensure participation in the Program by small businesses and serve as an advocate for small businesses that hold active contracts with such state agency.

§ 2.2-1620. Qualification criteria for participation in the Program.

A. In order to participate in the Program, a business must (i) be independently owned and controlled by one or more individuals who are U.S. citizens or legal resident aliens, (ii) not be dominant in its field of business operation, and (iii) meet one of the following business operation criteria for total employees or gross receipts:

1. Wholesale operations. The business has 50 or fewer employees or annual gross receipts of \$4 million or less, each to be averaged over the previous three years.

2. Manufacturing operations. The business has 100 or fewer employees or annual gross receipts of \$2 million or less, each to be averaged over the previous three years.

3. Retail operations. The business has 30 or fewer employees or annual gross receipts of \$3 million or less, each to be averaged over the previous three years.

4. Service operations. The business has 100 or fewer employees or annual gross receipts of \$15 million or less, each to be averaged over the previous three years.

5. Construction operations. The business has 50 or fewer employees or annual gross receipts of \$7 million or less, each to be averaged over the previous three years.

6. Architectural and engineering operations. The business has 100 or fewer employees or annual gross receipts of \$4.5 million or less, each to be averaged over the previous three years.

B. In the case of any business that has not existed for a period of three years, the employment and gross receipts average shall be the average for each year or part of a year during which the business has been operational.

§ 2.2-1621. Small, woman-owned, and minority-owned business procurement plan required for certain proposals or bids.

State agencies shall require each prime contractor to include in each proposal or bid a small, woman-owned, and minority-owned business (SWaM) procurement plan detailing intended subcontractor participation of such businesses. Each prime contractor awarded a contract shall comply with the SWaM procurement plan. Whenever the actual subcontractor participation does not meet the level included in the SWaM procurement plan, the prime contractor shall provide a written explanation that shall be made a part of the contract file. The record of a prime contractor's compliance with SWaM procurement plan requirements shall be considered in the prospective award of a contract or renewal of an existing contract. The Department shall (i) develop guidelines providing a uniform methodology for evaluating and monitoring SWaM procurement plans and (ii) implement processes for producing reliable data on the utilization of SWaM subcontractors by prime contractors.

§ 2.2-1622. Department to lead implementation of small business enhancement initiatives.

The Department, in conjunction with the Department of General Services, the Virginia Information

182 *Technologies Agency, the Department of Transportation, and public institutions of higher education that*
183 *have executed a valid management agreement under the Restructured Higher Education Financial and*
184 *Administrative Operations Act (§ 23.1-1000 et seq.), shall implement initiatives to enhance the*
185 *development of small businesses and microbusinesses in the Commonwealth, including (i) provision of*
186 *information regarding access to capital, including contract financing and bonding support and other*
187 *opportunities for economic development; (ii) management and technical assistance programs; (iii)*
188 *partnerships and outreach with local business groups and other organizations to develop a diverse*
189 *vendor base; and (iv) statewide mentor and joint venture programs.*

190 **§ 2.2-1623. Report.**

191 *On or before November 30 of each year, the Director shall report to the Governor and the General*
192 *Assembly on the implementation and effectiveness of the Program.*

193 **§ 2.2-4310. Discrimination prohibited; participation of small, women-owned, minority-owned,**
194 **and service disabled veteran-owned businesses and employment services organizations.**

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

201 B. All public bodies shall establish programs consistent with this chapter to facilitate the participation
202 of small businesses, businesses owned by women, minorities, and service disabled veterans, and
203 employment services organizations in procurement transactions. The programs established shall be in
204 writing and shall comply with *the small business procurement enhancement program established*
205 *pursuant to Article 4 (§ 2.2-1618 et seq.) of Chapter 16.1 and the provisions of any enhancement or*
206 *remedial measures authorized by the Governor pursuant to subsection C or, where applicable, by the*
207 *chief executive of a local governing body pursuant to § 15.2-965.1, and shall include specific plans to*
208 *achieve any goals established therein. State agencies shall submit annual progress reports on (i) small,*
209 *women-owned, and minority-owned business procurement, (ii) service disabled veteran-owned business*
210 *procurement, and (iii) employment services organization procurement to the Department of Small*
211 *Business and Supplier Diversity in a form specified by the Department of Small Business and Supplier*
212 *Diversity. Contracts and subcontracts awarded to employment services organizations and service disabled*
213 *veteran-owned businesses shall be credited toward the small business, women-owned, and*
214 *minority-owned business contracting and subcontracting goals of state agencies and contractors. The*
215 *Department of Small Business and Supplier Diversity shall make information on service disabled*
216 *veteran-owned procurement available to the Department of Veterans Services upon request.*

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

228 D. In awarding a contract for services to a small, women-owned, or minority-owned business that is
229 certified in accordance with § 2.2-1606, or to a business identified by a public body as a service
230 disabled veteran-owned business where the award is being made pursuant to an enhancement or remedial
231 program as provided in subsection C, the public body shall include in every such contract of more than
232 \$10,000 the following:

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

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

240 F. As used in this section:

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

244 Services.

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

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

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

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

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

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

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

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

279 "Small business" means a business, ~~independently owned and controlled by one or more individuals~~
280 ~~who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees,~~
281 ~~or annual gross receipts of \$10 million or less averaged over the previous three years. One or more of~~
282 ~~the individual owners shall control both the management and daily business operations of the small~~
283 ~~business that holds a valid certification issued by the Department of Small Business and Supplier~~
284 ~~Diversity pursuant to Article 4 (§ 2.2-1618 et seq.) of Chapter 16.1.~~

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

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

292 **§ 2.2-4310.3. Fiscal data pertaining to certain enhancement or remedial measures.**

293 The Department of General Services shall make available a dashboard of purchase order reports from
294 the Commonwealth's statewide electronic procurement system known as eVA. The dashboard shall
295 include aggregated data showing (i) current fiscal year purchase orders, (ii) purchase orders from *the*
296 *small business procurement enhancement program established pursuant to Article 4 (§ 2.2-1618 et seq.)*
297 *of Chapter 16.1* in the previous fiscal year, and (iii) other relevant data derived from any enhancement
298 or remedial measure implemented by the Governor pursuant to subsection C of § 2.2-4310.

299 **§ 2.2-4343. Exemption from operation of chapter for certain transactions.**

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

301 1. The Virginia Port Authority in the exercise of any of its powers in accordance with Chapter 10
302 (§ 62.1-128 et seq.) of Title 62.1, provided the Authority implements, by policy or regulation adopted by
303 the Board of Commissioners, procedures to ensure fairness and competitiveness in the procurement of
304 goods and services and in the administration of its capital outlay program. This exemption shall be

305 applicable only so long as such policies and procedures meeting the requirements remain in effect.

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

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

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

315 5. The College of William and Mary in Virginia, Virginia Commonwealth University, the University
316 of Virginia, and Virginia Polytechnic Institute and State University in the selection of services related to
317 the management and investment of their endowment funds, endowment income, gifts, all other
318 nongeneral fund reserves and balances, or local funds of or held by the respective public institution of
319 higher education pursuant to § 23.1-2210, 23.1-2306, 23.1-2604, or 23.1-2803. However, selection of
320 these services shall be governed by the Uniform Prudent Management of Institutional Funds Act (§
321 64.2-1100 et seq.) as required by §§ 23.1-2210, 23.1-2306, 23.1-2604, and 23.1-2803.

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

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

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

333 9. Any town with a population of less than 3,500, except as stipulated in the provisions of
334 §§ 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
335 2.2-4377 and Chapter 43.1 (§ 2.2-4378 et seq.).

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

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

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

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

354 12. Notwithstanding the exemptions set forth in subdivisions 9 through 11, the provisions of
355 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
356 through 2.2-4338, 2.2-4342, 2.2-4343.1, and 2.2-4367 through 2.2-4377, and Chapter 43.1 (§ 2.2-4378 et
357 seq.) shall apply to all counties, cities, and school divisions, and to all towns having a population greater
358 than 3,500 in the Commonwealth.

359 The method for procurement of professional services through competitive negotiation set forth in
360 §§ 2.2-4303.1 and 2.2-4303.2 shall also apply to all counties, cities and school divisions, and to all
361 towns having a population greater than 3,500, where the cost of the professional service is expected to
362 exceed \$60,000 in the aggregate or for the sum of all phases of a contract or project. A school board
363 that makes purchases through its public school foundation or purchases educational technology through
364 its educational technology foundation, either as may be established pursuant to § 22.1-212.2:2 shall be
365 exempt from the provisions of this chapter, except, relative to such purchases, the school board shall
366 comply with the provisions of §§ 2.2-4311 and 2.2-4367 through 2.2-4377.

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

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

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

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

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

387 18. The University of Virginia Medical Center to the extent provided by subdivision A 3 of
 388 § 23.1-2213.

389 19. The purchase of goods and services by a local governing body or any authority, board,
 390 department, instrumentality, institution, agency, or other unit of state government when such purchases
 391 are made (i) under the *small business procurement enhancement program established pursuant to Article*
 392 *4 (§ 2.2-1618 et seq.) of Chapter 16.1*, (ii) under a remedial plan established by the Governor pursuant
 393 to subsection C of § 2.2-4310, or (iii) by a chief administrative officer of a county, city, or town
 394 pursuant to § 15.2-965.1.

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

397 21. [Expired].

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

402 23. The Virginia Industries for the Blind when procuring components, materials, supplies, or services
 403 for use in commodities and services furnished to the federal government in connection with its operation
 404 as an AbilityOne Program-qualified nonprofit agency for the blind under the Javits-Wagner-O'Day Act,
 405 41 U.S.C. §§ 8501-8506, provided that the procurement is accomplished using procedures that ensure
 406 that funds are used as efficiently as practicable. Such procedures shall require documentation of the
 407 basis for awarding contracts. Notwithstanding the provisions of § 2.2-1117, no public body shall be
 408 required to purchase such components, materials, supplies, services, or commodities.

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