

## FY 2020 Procurement Laws FAQs

### New Procurement Laws Effective 07/15/2019

1. **§2.2-2009(H)** (“Additional Duties of the CIO relating to security of government information”) was added to §2.2-20009 of the *Code of Virginia*. §2.2-2009(H) requires that the CIO to promptly notify all public bodies of any hardware, software, or services that have been prohibited pursuant to Chapter 55.3 (§2.2-5514). (See below.)
2. **Chapter 55.3** consisting of **§2.2-5514** (“Prohibition on the use of certain products and services”) was added to the *Code of Virginia*. §2.2-5514 states that no “public body” (as defined in therein) may use, whether directly or through work or on behalf of another public body, any hardware, software, or services that have been prohibited by the U.S. Department of Homeland Security for use on federal systems.
3. **§2.2-2012.1** (“Major information technology project procurement; terms and conditions”) was added to the *Code of Virginia*. §2.2-2012.1 requires that, in any contract for a major information technology project, terms and conditions relating to the indemnification obligations and liability of a contractor to be reasonable and to not exceed in aggregate twice the value of the contract. The bill also provides that there shall be no limitation on the liability of a contractor for (i) any intentional or willful misconduct, fraud, or recklessness of a supplier or any employee of a supplier or (ii) claims for bodily injury, including death, and damage to real property or tangible personal property resulting from the negligence of a supplier or any employee of a supplier. If the CIO believes that a major information technology project presents an exceptional risk to the Commonwealth, he shall conduct a risk assessment prior to the issuance of a Request for Proposal. The Secretary of Administration shall review and may approve any recommended maximum alternative limitation of liability recommended by the CIO to be included in any Request for Proposal issued for the project. The CIO shall annually publish a list of all approvals granted under this subsection pertaining to any Request for Proposal issued in the previous 12-month period.
4. **§2.2-4303.01** (“High-risk contracts; definition; review”) was added to the *Code of Virginia*. §2.2-4301.01 defines “high risk contracts” as any public contract with a state public body for the procurement of goods, services, insurance, or construction that is anticipated to either (i) cost in excess of \$10 million over the initial term of the contract or (ii) cost in excess of \$5 million over the initial term of the contract and meet at least one of the following criteria: (a) the goods, services, insurance, or construction that is the subject of the contract is being procured by two or more state public bodies; (b) the anticipated term of the initial contract, excluding renewals, is greater than five years; or (c) the state public body procuring the goods, services, insurance, or construction has not procured similar goods, services, insurance, or construction within the last five years. Any IT solicitation or contract that meets the definition of “high risk contract” must be reviewed by VITA and the Office of the Attorney General. Employees designated as primary administrators of high-risk contracts are required to complete a training program on effective contract administration created by DGS and VITA pursuant to requirements of the bill prior to commencing high-risk contract administration duties. Some provisions of the law have delayed effective dates for implementation of the high-risk contract training and review processes.

**§2.2-4303.01** further requires that any state public body “high risk contract” must include distinct and measurable performance metrics, as well as clear enforcement provisions – including penalties or incentives – to be used in the event that contract performance metrics or other provisions are not met. These performance metrics must be included in the public body’s solicitation and contract award documents. VITA will ensure that the solicitation and award documents contain distinct and measurable performance metrics and clear enforcement provisions as part of its review obligations under §2.2-4303.01.

5. **§2.2-4302.2(2)** (“Process for competitive negotiation”) of the *Code of Virginia* has been amended to delete the requirement that public bodies publish notice of Request for Proposals in a newspaper of general circulation in the area in which a contract is to be performed. Local public bodies shall post notice of RFPs on eVA if such local public body elects not to publish notice of the RFP in a newspaper of general circulation in the area in which the contract is to be performed.
6. **Executive Order 35 (2019)** (“Advancing Equity for Small-, Women-, Minority-, and Service Disabled Veteran-Owned Businesses in State Contracting”) rescinds and replaces Executive Order 20 (2014). The EO35 directs all executive branch agencies and institutions of higher education with statutory procurement authority to work in conjunction with the Department of Small Business and Supplier Diversity (DSBSD) to review and implement policies and procedures that enhance the public contracting opportunities of small businesses, small businesses owned by women, minorities, and service-disabled veterans, and micro businesses.