

**NUMBER:** 1623

**TITLE:** Administration of Capital Outlay Non-General Fund Construction Projects Under Level II Delegated Authority

**APPROVED:** September 9, 2005; Revised June 14, 2012

I. Background

The 2005 General Assembly session passed HB 2866 and SB 1327 to establish the Restructured Higher Education Financial and Administrative Operations Act. This Act allows public institutions of higher education restructured financial and operational authority as described in subdivisions A1 through A13 of Section 23-38.88 of the Act.

Pursuant to §23-38.88, *Eligibility for Restructured Financial and Administrative Operational Authority*, subdivision A3 states that "public institutions of higher education that have in effect a signed memorandum of understanding with the Secretary of Administration regarding participation in the non-general fund decentralization program as set forth in the appropriation act....to enter into contracts for specific construction projects without the preliminary review and approval of the Division of Engineering and Buildings of the Department of General Services, provided such institutions are in compliance with the requirements of the Virginia Public Procurement Act and utilize the general terms and conditions for those forms of procurement approved by the Division and the Office of the Attorney General."

The 2008 General Assembly session enacted, and the Governor approved, Chapters 824 and 829 of the Acts of Assembly of Virginia. These are two identical Acts that amended and re-enacted §23-38.90 of the *Code of Virginia* providing that:

"Effective July 1, 2008, any public institution of higher education may enter into a memorandum of understanding with the appropriate Cabinet Secretary or Secretaries, as designed by the Governor, for additional operational authority in any operational area adopted by the General Assembly in accordance with law provided that the authority granted in the memorandum of understanding is consistent with the institution's ability to manage its operations in the particular areas or areas."

To promulgate expanded operational authority in the area of procurement, Old Dominion University entered into a memorandum of understanding (MOU) with the Secretary of Administration in July, 2009, which was renewed in April, 2012, for a term of five years, with automatic renewals of five-year terms thereafter. Among other powers, this MOU grants the University additional operational authority in the area of procurement as authorized by Chapters 824 and 829. The legislation required that the University adopt the "Rules Governing Procurement of Goods, Services, Insurance and Construction by a Public Institution of Higher Education of the Commonwealth of Virginia" (the "Rules") contained in Attachment I of §3.0 in lieu of the Virginia Public Procurement Act (VPPA).

Pursuant to §23-38.90, specifically under §3.0 IV.5.E., Implementation, the University is exempt from use and oversight of many Commonwealth policies and agencies, including specific sections of the Virginia Public Procurement Act (VPPA), Department of Blind and Vision Impaired (VIB), and the Division of Purchases and Supplies of the Virginia Department of General Services (DPS/DGS). Additionally, and more specifically related to this policy, pursuant to the same section of §3.0 IV.5.E., Implementation, the University is also exempt from the oversight of the Division of Engineering and Buildings of the Virginia Department of General Services, as follows:

*any other state statutes, rules, regulations, or requirements relating to the procurement of goods, services, insurance and construction, including but not limited to Article 3 (§2.2-1109, et seq.) of Chapter 11 of Title 2.2, regarding the duties, responsibilities, and authority of the Division of Purchases and Supply of the Virginia Department of General Services, and Article 4 (§2.2-1129 et seq.) of Chapter 11 of Title 2.2, regarding the review and the oversight by the Division of Engineering and Buildings of the Virginia Department of General Services of contracts for the construction of the Institution's capital projects and construction-related professional services."*

## II. Board of Visitors Policy

Having signed Memoranda of Understanding (MOU) with the Secretary of Administration concerning the administration of capital outlay construction contracts under the Non-general Fund Decentralization Program, and an additional MOU for Level II delegated authority, it is the policy of the Board of Visitors that the University administers such contracts in accordance with those MOUs and any properly approved amendments thereto. It is also the Board's policy that the administration of non-general fund capital outlay projects adheres to the requirements of the "Rules", the Purchasing Manual for Institutions of Higher Education and Their Vendors (the Higher Ed Manual) and incorporates the procurement forms and terms and conditions approved by the Commonwealth's Attorney General.

The Vice President for Administration and Finance shall have the authority to approve the use of alternative delivery methods for non-general fund projects.

## III. Authority

The Vice President for Administration and Finance or the Vice President's designee shall be responsible for interpretation, implementation and compliance of this policy. The Vice President for Administration and Finance may delegate this authority by letter.

## IV. Definitions

- A. Alternate Project Delivery Methods - Design-Build and Construction Management services as defined herein and in §4 of the "Rules".
- B. BCOM - The Commonwealth's Bureau of Capital Outlay Management, an entity of the DGS reporting to DEB.

- C. Construction - Building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.
- D. Construction Management - Services provided under a contract with the Owner, which generally include coordinating and administering construction contracts for the benefit of the Owner, but may also include, if provided in the contract, furnishing construction services to the Owner.
- E. CPSM - The Commonwealth's Construction and Personal Services Manual issued by BCOM
- F. DEB - The Commonwealth's Division of Engineering and Buildings which reports to DGS.
- G. DGS - The Commonwealth's Department of General Services which reports to the Secretary of Administration.
- H. Design-Build - Services under a contract with the Owner in which the party contracting with the public body agrees to both design and build the structure, roadway or other item specified in the contract.
- I. Professional Services - As used in these procedures, the services of licensed architects, engineers and other professionals as defined in the "Rules".