

**RESOLUTION FOR APPROVAL OF THE CONSTRUCTION PROCUREMENT
APPROVAL PROCEDURES FOR CAPITAL PROJECT DELIVERY**

WHEREAS, effective July 1, 2006, Virginia Polytechnic Institute and State University (Virginia Tech) operates as a Tier III institution in accordance with its Management Agreement and operational policies; and

WHEREAS, under the Management Agreement, Virginia Tech has delegated authority relating to the procurement of goods, services, insurance, and construction; and

WHEREAS, procurement procedures for professional and construction services are identified in documentation adopted by Virginia Tech as approved by the Board of Visitors; and

WHEREAS, the 2016 General Assembly passed legislation regulating the types of construction procurement methods available for public institutions of higher education; and

WHEREAS, the legislation requires Virginia Tech to update its Construction Procurement Approval Procedures for Capital Project Delivery Methods; and

WHEREAS, the legislation also requires that Virginia Tech submit the updates to its Construction Procurement Approval Procedures for Capital Project Delivery to the Department of General Services for review and recommendations; and

WHEREAS, the Department of General Services has reviewed and provided recommendations, which recommendations have been incorporated in Virginia Tech's updated Construction Procurement Approval Procedures for Capital Project Delivery; and

WHEREAS, the university submits for the Board's approval the updated Construction Procurement Approval Procedures for Capital Project Delivery; and

WHEREAS, with the approval of these updated procedures, Virginia Tech confirms that all of the required Board-level policies and procedures are in place to implement the new legislation;

NOW, THEREFORE, BE IT RESOLVED, that the university adopts the proposed Construction Procurement Approval Process for Capital Project Delivery.

RECOMMENDATION:

That the above resolution approving the Construction Procurement Approval Process for Capital Project Delivery be approved.

June 6, 2016

**Virginia Polytechnic Institute and State University
Facilities Procedures**

Construction Procurement Approval Process for Capital Project Delivery

Date:

Revision: X

Purpose:

Pursuant to Subchapter 3 of the Restructuring Act and in accordance with Chapter ~~XXXX-780~~ Item §4-4.01 ~~#1e~~ the following process is provided to Department of General Services for review and will subsequently be provided to the university's Board of Visitors for approval.

Responsible Staff:

University Design and Construction (UDC) – the Facilities Division responsible for the procurement, administration, management and implementation of Major Capital Outlay Projects.

UDC Project Manager (PM) – coordinates with UDC management and project stakeholders to recommend a project delivery method.

UDC Assistant Director of Contracts and Records Management – administers the capital outlay procurement process, reviews delivery method options, and manages contract development, approval, execution and document retention.

Director of University Design and Construction – provides UDC leadership, manages operations, and recommends project delivery methods to meet university goals.

Associate Vice President and Chief Facilities Officer (AVP CFO) – approves project delivery methods and recommends contracts for execution.

Procedure:

Subject to the Management Agreement between the Commonwealth of Virginia and Virginia Polytechnic Institute and State University (Virginia Tech), the university shall have and shall exercise all authority relating to the procurement of goods, services, insurance, and construction. Procurement procedures for professional and construction services are identified in documentation adopted by Virginia Tech as approved by the Board of Visitors.

The construction delivery method for a capital outlay project shall be approved in writing by the Virginia Tech Associate Vice President and Chief Facilities Officer (AVP CFO).

A written recommendation for the project delivery method will be provided to the AVP CFO through the Director of University Design and Construction (UDC) from the UDC Project Manager in consultation with the UDC Assistant Director of Contracts and Records Management. If competitive sealed bidding is not selected, the written recommendation will justify why sealed bidding is not practicable and/or fiscally advantageous to the university. The following critical components will be considered in recommending the appropriate construction delivery method for each project:

- Technical complexity and building use
- Required experience with specialty systems or equipment
- Schedule [schedule](#) challenges, and critical completion dates
- Coordination of phased or fast track construction
- Potential for early packages to expedite overall project completion
- Early procurement of long lead time materials or equipment
- Continuity of university operations and utility systems
- Minimizing disruption to academic and research programs
- Campus security and limited access to restricted areas
- Cost [cost](#) control, and cost efficiencies
- Prequalification for specialty systems, materials or equipment expertise
- Design phase constructability analysis for cost savings and quality control
- Continuous value engineering to achieve budget
- Project staffing requirements
- Risk reduction
- Overall benefits to the university

General Guidelines

The following general guidelines shall apply:

- Use of construction management is typically limited to projects with a construction value of \$10,000,000 or more.
- A construction management contract will be initiated no later than the completion of the project schematic design phase unless prohibited by [authorization of funding delays or authorization](#) restrictions.
- The Request for Qualifications for a design-build or construction management procurement will include language to substantiate the construction delivery method.
- The Request for Qualifications will include criteria for contractor selection.
- The Request for Qualifications evaluation process will result in a short list of two to five offerors to receive the Request for Proposals.
- The Request for Qualifications will be posted for no less than 30 days on eVA, the Commonwealth statewide electronic procurement system. [It will include a justification to support why sealed bidding is not practicable and/or fiscally advantageous. The approved procurement method will be identified in the eVA posting as the "category" for the solicitation.](#)
- As the approving authority for the selection of the appropriate procurement method for capital outlay construction, the AVP CFO may authorize exceptions to these General Guidelines on a project specific basis, [unless conflicting with current law](#).

Reporting

The university will report on selected project delivery methods annually or as needed upon request by the Department of General Services.

References:

- Virginia Tech Management Agreement
- Virginia Tech Construction and Professional Services Manual
- Chapter ~~XXX-780~~ Item ~~§4-4.01-#1e~~

Approval and Revisions:



COMMONWEALTH of VIRGINIA

Department of General Services

Christopher L. Beschler
Director

Joseph F. Damico
Deputy Director

June 1, 2016

1100 Bank Street
Suite 420
Richmond, Virginia 23219
Voice (804) 786-3311
FAX (804) 371-8305

Christopher H. Kiwus, PE, PhD
Associate Vice President and Chief Facilities Officer
Virginia Tech
Sterrett Facilities Complex, Room 112
230 Sterrett Drive
Blacksburg, VA 24061

RE: Review of Construction Procurement Approval Process

Dear Mr. Kiwus:

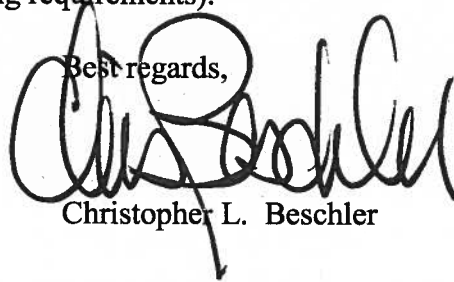
We have received and reviewed the draft of the Virginia Polytechnic Institute and State University (VT) "Construction Procurement Approval Process for Capital Project Delivery" provided to the Department of General Services (DGS) for review and recommendation, as required by HB30 (2016), Item 4-4.01(y). This review specifically provides DGS's recommendations regarding VT's proposed process for selecting the procurement method to be used for its authorized capital projects. DGS's recommendations do not address procedures DGS believes to be appropriate for conducting the procurement pursuant the selected procurement method.

The VT process sets forth the procedures and general guidelines to be used in determining the use of the Construction Management (CM) or Design Build (DB) procurement method for the delivery of authorized capital construction projects. Below are the requirements from the legislation and the corresponding DGS recommendations:

- 1. Consideration of cost, schedule, complexity and building use in selecting procurement process, with cost and project timeline as critical components of the process for selecting CM.** The VT process addresses each of these, indicating that "cost control and cost efficiencies" are critical, and that \$10M is a typical threshold for choosing the CM process. However, DGS recommends that VT more clearly state that "cost" itself is a component of the process for selecting the DB procurement process, and that cost and project timeline are critical components when selecting the CM process, to reflect the language of HB30.
- 2. Initiation of the CM contract no later than the Schematic Phase of design unless prohibited by authorization of funding restrictions.** The VT process includes the requirement that the CM contract will be initiated no later than the completion of the project schematic design "unless prohibited by funding delays or authorization

- restrictions.” Recommend VT update its wording to reflect the deadline “unless prohibited by *authorization of funding restrictions*,” to reflect the language of HB30.
3. **Written justification for CM indicating that sealed bidding not practicable (and statement to be included in RFQ).** The VT process reflects the requirement that there be a written justification as to why sealed bidding is not practicable and/or fiscally advantageous to VT, and that the RFQ substantiate the chosen construction delivery method. Recommend that the VT process be more specific to require that the RFQ include the justification to support why sealed bidding is not practicable and/or fiscally advantageous, to reflect the language of HB30.
 4. **Public posting requirements for CM and DB.** The VT process reflects the requirement that RFQs be posted for no less than 30 days on eVA. HB30 also requires a 30-day posting of authorized capital projects, and that the approved procurement method be included in the posting. Though the solicitation document will state the procurement method being used, DGS recommends that the approved procurement method be identified in the eVA posting as the “category” for the solicitation. The entries available in the eVA drop down for the “category” field will be: “Construction, Construction Management” or “Construction, Design-Build”.
 5. **Exceptions to proposed procedures.** The VT process allows exceptions when approved by the Associate Vice President and Chief Facilities Officer on a project specific basis. Recommend that it be made clear that no exception may be granted for items required by HB30 (such as time for initiating the CM contract, inclusion of the justification in the RFQ, and eVA posting requirements).

Best regards,



Christopher L. Beschler

Enclosure

C: The Honorable Nancy Rodrigues, Secretary of Administration
Joe Damico, DGS Deputy Director
Ed Gully, Director, DGS Division of Engineering and Buildings

VIRGINIA STATE BUDGET

2016 Session

Budget Bill - HB30 (Chapter 780)

Bill Order » Part 4: General Provisions » Item 4-4.01

Item 4-4.01

§ 4-4.00 CAPITAL PROJECTS

§ 4-4.01 GENERAL

a. Definition:

1. Unless defined otherwise, when used in this section, "capital project" or "project" means acquisition of property and new construction and improvements related to state-owned property, plant or equipment (including plans therefor), as the terms "acquisition", "new construction", and "improvements" are defined in the instructions for the preparation of the Executive Budget. "Capital project" or "project" shall also mean any improvements to property leased for use by a state agency, and not owned by the state, when such improvements are financed by public funds, except as hereinafter provided in subdivisions 3 and 4 of this subsection.
2. The provisions of this section are applicable equally to acquisition of property and plant by purchase, gift, or any other means, including the acquisition of property through a lease/purchase contract, regardless of the method of financing or the source of funds. Acquisition of property by lease shall be subject to § 4-3.03 of this act.
3. The provisions of this section shall not apply to property or equipment acquired by lease or improvements to leased property and equipment when the improvements are provided by the lessor pursuant to the terms of the lease and upon expiration of the lease remain the property of the lessor.
4. The provisions of this section shall not apply to property leased by state agencies for the purposes described in §§ [2.2-1151 C](#) and [33.2-1010](#), Code of Virginia.

b. Notwithstanding any other provisions of law, requests for appropriations for capital projects shall be subject to the following:

1. The agency shall submit a capital project proposal for all requested capital projects. Such proposals shall be submitted to the Director, Department of Planning and Budget, for review and approval in accordance with guidelines prescribed by the director. Projects shall be developed to meet agency functional and space requirements within a cost range comparable to similar public and private sector projects.
2. Except for institutions of higher education governed by Chapters 933 and 943 of the 2006 Acts of Assembly, Chapters 594 and 616 of the 2008 Acts of Assembly and Chapters 675 and 685 of the 2009 Acts of Assembly, financings for capital projects shall comply, where applicable, with the Treasury Board Guidelines issued pursuant to § [2.2-2416](#), Code of Virginia, and any subsequent amendments thereto.
3. As part of any request for appropriations for an armory, the Department of Military Affairs shall obtain a written commitment from the host locality to share in the operating expense of the armory.

c. Each agency head shall provide annually to the Director, Department of Planning and Budget, a report on the use

of the maintenance reserve appropriation of the agency in Part 2 of this act. In the use of its maintenance reserve appropriation, an agency shall give first priority to the repair or replacement of roof on buildings under control of the agency. The agency head shall certify in the agency's annual maintenance reserve report that to the best of his or her knowledge, all necessary roof repairs have been accomplished or are in the process of being accomplished. Such roof repairs and replacements shall be in accord with the technical requirements of the Commonwealth's Construction and Professional Services Manual.

d. The Department of Planning and Budget shall review its approach to capital outlay planning and budgeting from time to time and make available via electronic means a report of any proposed change to the Chairmen of the House Appropriations and Senate Finance Committees and the public prior to its implementation. Such report shall include an analysis of the impact of the suggested change on affected agencies and institutions.

e. Nothing in §§ 2-0 and 4-4.00 of this act shall be deemed to override the provisions of §§ [2.2-1132](#) and [62.1-132.6](#), Code of Virginia, amended by Chapter 488, 1997 Acts of Assembly, relating to Virginia Port Authority capital projects and procurement activities.

f. Legislative Approval: It is the intent of the General Assembly that, with the exceptions noted in this paragraph and paragraph m, all capital projects to be undertaken by agencies of the Commonwealth, including institutions of higher education, shall be pursuant to approvals by the General Assembly as provided in the Six-Year Capital Outlay Plan established pursuant to § [2.2-1515](#), et seq., Code of Virginia. Otherwise, the consideration of capital projects shall be limited to:

1. Supplementing projects which have been bid and determined to have insufficient funding to be placed under contract, and
2. Projects declared by the Governor or the General Assembly to be of an emergency nature, which may avoid an increase in cost or otherwise result in a measurable benefit to the state, and/or which are required for the continued use of existing facilities.
3. This paragraph does not prohibit the initiation of projects authorized by § 4-4.01 m hereof, or projects included under the central appropriations for capital project expenses in this act.

g. Preliminary Requirements: In regard to each capital project for which appropriation or reappropriation is made pursuant to this act, or which is hereafter considered by the Governor for inclusion in the Executive Budget, or which is offered as a gift or is considered for purchase, the Governor is hereby required: (1) to determine the urgency of its need, as compared with the need for other capital projects as herein authorized, or hereafter considered; (2) to determine whether the proposed plans and specifications for each capital project are suitable and adequate, and whether they involve expenditures which are excessive for the purposes intended; (3) to determine whether labor, materials, and other requirements, if any, needed for the acquisition or construction of such project can and will be obtained at reasonable cost; and (4) to determine whether or not the project conforms to a site or master plan approved by the agency head or board of visitors of an institution of higher education for a program approved by the General Assembly.

h. Initiation Generally:

1. No architectural or engineering planning for, or construction of, or purchase of any capital project shall be commenced or revised without the prior written approval of the Governor or his designee.
2. The requirements of § [10.1-1190](#), Code of Virginia, shall be met prior to the release of funds for a major state project, provided, however, that the Governor or his designee is authorized to release from any appropriation for a major state project made pursuant to this act such sum or sums as may be necessary to pay for the preparation of the environmental impact report required by § [10.1-1188](#), Code of Virginia.

3. The Governor, at his discretion, or his designee may release from any capital project appropriation or reappropriation made pursuant to this act such sum (or sums) as may be necessary to pay for the preparation of plans and specifications by architects and engineers, provided that the estimated cost of the construction covered by such drawings and specifications does not exceed the appropriation therefor; provided, further, however, that the architectural and engineering fees paid on completion of the preliminary design for any such project may be based on such estimated costs as may be approved by the Governor in writing, where it is shown to the satisfaction of the Governor that higher costs of labor or material, or both, or other unforeseen conditions, have made the appropriation inadequate for the completion of the project for which the appropriation was made, and where in the judgment of the Governor such changed conditions justify the payment of architectural or engineering fees based on costs exceeding the appropriation.

4. Architectural or engineering contracts shall not be awarded in perpetuity for capital projects at any state institution, agency or activity.

i. Capital Projects Financed with Bonds: Capital projects proposed to be financed with (i) 9 (c) general obligation bonds or (ii) 9(d) obligations where debt service is expected to be paid from project revenues or revenues of the agency or institution, shall be reviewed as follows:

1. By August 15 of each year, requests for inclusion in the Executive Budget of capital projects to be financed with 9(c) general obligation bonds shall be submitted to the State Treasurer for evaluation of financial feasibility. Submission shall be in accordance with the instructions prescribed by the State Treasurer. The State Treasurer shall distribute copies of financial feasibility studies to the Director, Department of Planning and Budget, the Secretary for the submitting agency or institution, the Chairmen of the House Appropriations and Senate Finance Committees, and the Director, State Council of Higher Education for Virginia, if the project is requested by an institution of higher education.

2. By August 15 of each year, institutions shall also prepare and submit copies of financial feasibility studies to the State Council of Higher Education for Virginia for 9(d) obligations where debt service is expected to be paid from project revenues or revenues of the institution. The State Council of Higher Education for Virginia shall identify the impact of all projects requested by the institutions of higher education, and as described in § 4-4.01 j.1. of this act, on the current and projected cost to students in institutions of higher education and the impact of the project on the institution's need for student financial assistance. The State Council of Higher Education for Virginia shall report such information to the Secretary of Finance and the Chairmen of the House Appropriations and Senate Finance Committees no later than October 1 of each year.

3. Prior to the issuance of debt for 9(c) general obligation projects, when more than one year has elapsed since the review of financial feasibility specified in § 4-4.01 j 1 above, an updated feasibility study shall be prepared by the agency and reviewed by the State Treasurer prior to requesting the Governor's Opinion of Financial Feasibility required under Article X, Section 9 (c), of the Constitution of Virginia.

j. Transfers to supplement capital projects from nongeneral funds may be made under the conditions set forth in §§ 4-1.03 a, 4-1.04 a.3, and 4-4.01 m of this act.

k.1. Change in Size and Scope: Unless otherwise provided by law, the scope, which is the function or intended use, of any capital project may not be substantively changed, nor its size increased or decreased by more than five percent in size beyond the plans and justification which were the basis for the appropriation or reappropriation in this act or for the Governor's authorization pursuant to § 4-4.01 m of this act. However, this prohibition is not applicable to changes in size and scope required because of circumstances determined by the Governor to be an emergency, or requirements imposed by the federal government when such capital project is for armories or other defense-related installations and is funded in whole or in part by federal funds. Furthermore, this prohibition shall not apply to minor increases, beyond five percent, in square footage determined by the Director, Department of

General Services, to be reasonable and appropriate based on a written justification submitted by the agency stating the reason for the increase, with the provision that such increase will not increase the cost of the project beyond the amount appropriated; nor to decreases in size beyond five percent to offset unbudgeted costs when such costs are determined by the Director, Department of Planning and Budget, to be reasonable based on a written justification submitted by the agency specifying the amount and nature of the unbudgeted costs and the types of actions that will be taken to decrease the size of the project. The written justification shall also include a certification, signed by the agency head, that the resulting project will be consistent with the original programmatic intent of the appropriations.

2. If space planning, energy conservation, and environmental standards guides for any type of construction have been approved by the Governor or the General Assembly, the Governor shall require capital projects to conform to such planning guides.

1. Projects Not Included In This Act:

1. Authorization by Governor:

a) The Governor may authorize initiation of, planning for, construction of or acquisition of a nongeneral fund capital project not specifically included in this act or provided for a program approved by the General Assembly through appropriations, under one or more of the following conditions:

1) The project is required to meet an emergency situation.

2) The project is to be operated as an auxiliary enterprise or sponsored program in an institution of higher education and will be fully funded by revenues of auxiliary enterprises or sponsored programs.

3) The project is to be operated as an educational and general program in an institution of higher education and will be fully funded by nongeneral fund revenues of educational and general programs or from private gifts and indirect cost recoveries.

4) The project consists of plant or property which has become available or has been received as a gift.

5) The project has been recommended for funding by the Tobacco Indemnification and Community Revitalization Commission or the Virginia Tobacco Settlement Foundation.

b) The foregoing conditions are subject to the following criteria:

1) Funds are available within the appropriations made by this act (including those subject to §§ 4-1.03 a, 4-1.04 a.3, and 4-2.03) without adverse effect on other projects or programs, or from unappropriated nongeneral fund revenues or balances.

2) In the Governor's opinion such action may avoid an increase in cost or otherwise result in a measurable benefit to the state.

3) The authorization includes a detailed description of the project, the project need, the total project cost, the estimated operating costs, and the fund sources for the project and its operating costs.

4) The Chairmen of the House Appropriations and Senate Finance Committees shall be notified by the Governor prior to the authorization of any capital project under the provisions of this subsection.

5) Permanent funding for any project initiated under this section shall only be from nongeneral fund sources.

2. Authorization by Director, Department of Planning and Budget:

a) The Director, Department of Planning and Budget, may authorize initiation of a capital project not included in this act, if the General Assembly has enacted legislation to fund the project from bonds of the Virginia Public Building Authority, Virginia College Building Authority, or from reserves created by refunding of bonds issued by those Authorities.

3. Delegated authorization by Boards of Visitors, Public Institutions of Higher Education:

a) In accordance with § 4-5.06 of this act, the board of visitors of any public institution of higher education that: i) has met the eligibility criteria set forth in Chapters 933 and 945 of the 2005 Acts of Assembly for additional operational and administrative autonomy, including having entered into a memorandum of understanding with the Secretary of Administration for delegated authority of nongeneral fund capital outlay projects, and ii) has received a sum sufficient nongeneral fund appropriation for emergency projects as set out in Part 2: Capital Project Expenses of this act, may authorize the initiation of any capital project that is not specifically set forth in this act provided that the project meets at least one of the conditions and criteria identified in § 4-4.01 m 1 of this act.

b) At least 30 days prior to the initiation of a project under this provision, the board of visitors must notify the Governor and Chairmen of the House Appropriations and Senate Finance Committees and must provide a life-cycle budget analysis of the project. Such analysis shall be in a form to be prescribed by the Auditor of Public Accounts.

c) The Commonwealth of Virginia shall have no general fund obligation for the construction, operation, insurance, routine maintenance, or long-term maintenance of any project authorized by the board of visitors of a public institution of higher education in accordance with this provision.

m. Acquisition, maintenance, and operation of buildings and nonbuilding facilities in colleges and universities shall be subject to the following policies:

1. The anticipated program use of the building or nonbuilding facility should determine the funding source for expenditures for acquisition, construction, maintenance, operation, and repairs.

2. Expenditures for land acquisition, site preparation beyond five feet from a building, and the construction of additional outdoor lighting, sidewalks, outdoor athletic and recreational facilities, and parking lots in the Virginia Community College System shall be made only from appropriated federal funds, Trust and Agency funds, including local government allocations or appropriations, or the proceeds of indebtedness authorized by the General Assembly.

3. The general policy of the Commonwealth shall be that parking services are to be operated as an auxiliary enterprise by all colleges and universities. Institutions should develop sufficient reserves for ongoing maintenance and replacement of parking facilities.

4. Except as provided in paragraph 2 above, expenditures for maintenance, replacement, and repair of outdoor lighting, sidewalks, and other infrastructure facilities may be made from any appropriated funds.

5. Expenditures for operations, maintenance, and repair of athletic, recreational, and public service facilities, both indoor and outdoor, should be from nongeneral funds. However, this condition shall not apply to any indoor recreational facility existing on a community college campus as of July 1, 1988.

6.a.1. At institutions of higher education that have met the eligibility criteria for additional operational and administrative authority as set forth in Chapters 933 and 945 of the 2005 Acts of Assembly or Chapters 824 and 829 of the 2008 Acts of Assembly, any repair, renovation, or new construction project costing up to \$2,000,000 shall be exempt from the capital outlay review and approval process. For purposes of this paragraph, projects shall not

include any subset of a series of projects, which in combination would exceed the \$2,000,000 maximum.

2. All institutions of higher education shall be exempt from the capital review and approval process for repair, renovation, or new construction projects costing up to \$2,000,000.

b. Blanket authorizations funded entirely by nongeneral funds may be used for 1) renovation and infrastructure projects costing up to \$2,000,000 and 2) the planning of nongeneral fund new construction and renovation projects through bidding, with bid award made after receipt of a construction authorization. The Director, Department of Planning and Budget, may provide exemptions to the threshold.

7. It is the policy of the Commonwealth that the institutions of higher education shall treat the maintenance of their facilities as a priority for the allocation of resources. No appropriations shall be transferred from the "Operation and Maintenance of Plant" subprogram except for closely and definitely related purposes, as approved by the Director, Department of Planning and Budget, or his designee. A report providing the rationale for each approved transfer shall be made to the Chairmen of the House Appropriations and Senate Finance Committees.

n. Legislative Intent and Reporting: Appropriations for capital projects shall be deemed to have been made for purposes which require their expenditure, or being placed under contract for expenditure, during the current biennium. Agencies to which such appropriations are made in this act or any other act are required to report progress as specified by the Governor. If, in the opinion of the Governor, these reports do not indicate satisfactory progress, he is authorized to take such actions as in his judgment may be necessary to meet legislative intent as herein defined. Reporting on the progress of capital projects shall be in accordance with § 4-8.00, Reporting Requirements.

o. No expenditure from a general fund appropriation in this act shall be made to expand or enhance a capital outlay project beyond that anticipated when the project was initially approved by the General Assembly except to comply with requirements imposed by the federal government when such capital project is for armories or other defense-related installations and is funded in whole or in part by federal funds. General fund appropriations in excess of those necessary to complete the project shall not be reallocated to expand or enhance the project, or be reallocated to a different project. The prohibitions in this subsection shall not apply to transfers from projects for which reappropriations have been authorized.

p. Local or private funds to be used for the acquisition, construction or improvement of capital projects for state agency use as owner or lessee shall be deposited into the state treasury for appropriation prior to their expenditure for such projects.

q. State-owned Registered Historic Landmarks: To guarantee that the historical and/or architectural integrity of any state-owned properties listed on the Virginia Landmarks Register and the knowledge to be gained from archaeological sites will not be adversely affected because of inappropriate changes, the heads of those agencies in charge of such properties are directed to submit all plans for significant alterations, remodeling, redecoration, restoration or repairs that may basically alter the appearance of the structure, landscaping, or demolition to the Department of Historic Resources. Such plans shall be reviewed within thirty days and the comments of that department shall be submitted to the Governor through the Department of General Services for use in making a final determination.

r.1. The Governor may authorize the conveyance of any interest in property or improvements thereon held by the Commonwealth to the educational or real estate foundation of any institution of higher education where he finds that such property was acquired with local or private funds or by gift or grant to or for the use of the institution, and not with funds appropriated to the institution by the General Assembly. Any approved conveyance shall be exempt from § 2.2-1156, Code of Virginia, and any other statute concerning conveyance, transfer or sale of state property. If the foundation conveys any interest in the property or any improvements thereon, such conveyance shall likewise be exempt from compliance with any statute concerning disposition of state property. Any income or

proceeds from the conveyance of any interest in the property shall be deemed to be local or private funds and may be used by the foundation for any foundation purpose.

2. This section shall not apply to public institutions of higher education governed by Chapters 933 and 943 of the 2006 Acts of Assembly, Chapters 594 and 616 of the 2008 Acts of Assembly, Chapters 824 and 829 of the 2008 Acts of Assembly, and Chapters 675 and 685 of the 2009 Acts of Assembly.

s.1. Facility Lease Agreements Involving Institutions of Higher Education: In the case of any lease agreement involving state-owned property controlled by an institution of higher education, where the lease has been entered into consistent with the provisions of § 2.2-1155, Code of Virginia, the Governor may amend, adjust or waive any project review and reporting procedures of Executive agencies as may reasonably be required to promote the property improvement goals for which the lease agreement was developed.

2. This section shall not apply to public institutions of higher education governed by Chapters 933 and 943 of the 2006 Acts of Assembly, Chapters 594 and 616 of the 2008 Acts of Assembly, Chapters 824 and 829 of the 2008 Acts of Assembly, and Chapters 675 and 685 of the 2009 Acts of Assembly.

t. Energy-efficiency Projects: Improvements to state-owned properties for the purpose of energy-efficiency shall be treated as follows:

1. Such improvements shall be considered an operating expense, provided that:

a) the scope of the project meets or exceeds the applicable energy-efficiency standards set forth in the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE), the Illuminating Engineering Society (IES) standard 90.1-1989 and is limited to measures listed in guidelines issued by the Department of General Services;

b) the project is financed consistent with the provisions of § 2.2-2417, Code of Virginia, which requires Treasury Board approval and is executed through a nonprofessional services contract with a vendor approved by the Department of General Services;

c) the scope of work has been reviewed and recommended by the Department of Mines, Minerals and Energy;

d) the total cost does not exceed \$3,000,000; and

e) if the total cost exceeds \$3,000,000, but does not exceed \$7,000,000, the energy savings from the project offset the total cost of the project, including debt service and interest payments.

2. If (a) the total cost of the improvement exceeds \$7,000,000 or (b) the total cost exceeds \$3,000,000, but does not exceed \$7,000,000, and the energy savings from the project do not fully offset the total cost of the project, including debt services and interest payments, the improvement shall be considered a capital expense regardless of the type of improvement and the following conditions must be met:

a) the scope of the project meets or exceeds the applicable energy-efficiency standards set forth in the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE), the Illuminating Engineering Society (IES) standard 90.1-1989 and is limited to measures listed in guidelines issued by the Department of General Services;

b) the project is financed consistent with the provisions of § 2.2-2417, Code of Virginia, which requires Treasury Board approval and is executed through a nonprofessional services contract with a vendor approved by the Department of General Services;

- c) the scope of work has been reviewed and recommended by the Department of Mines, Minerals and Energy;
- d) the project has been reviewed by the Department of Planning and Budget; and
- e) the project has been approved by the Governor.

3. If the total project exceeds \$250,000, the agency director will submit written notification to the Director, Department of Planning and Budget, verifying that the project meets all of the conditions in subparagraph 1 above.

The provisions of §§ 2.0 and 4-4.01 of this act and the provisions of § 2.2-1132, Code of Virginia, shall not apply to energy conservation projects that qualify as capital expenses.

4. As used in this paragraph, “improvement” does not include (a) constructing, enlarging, altering, repairing or demolishing a building or structure, (b) changing the use of a building either within the same use group or to a different use group when the new use requires greater degrees of structural strength, fire protection, exit facilities or sanitary provisions, or (c) removing or disturbing any asbestos-containing materials during demolition, alteration, renovation of or additions to building or structures, If the projected scope of an energy-efficiency project includes any of these elements, it shall be subject to the capital outlay process as set out in this section.

5. The Director, Department of Planning and Budget, shall notify the Chairmen of the House Appropriations and Senate Finance Committees upon the initiation of any energy-efficiency projects under the provisions of this paragraph.

u. No expenditures shall be authorized for the purchase of fee simple title to any real property to be used for a correctional facility or for the actual construction of a correctional facility provided for in this act, or by reference hereto, that involves acquisition or new construction of youth or adult correctional facilities on real property which was not owned by the Commonwealth on January 1, 1995, until the governing body of the county, city or town wherein the project is to be located has adopted a resolution supporting the location of such project within the boundaries of the affected jurisdiction. The foregoing does not prohibit expenditures for site studies, real estate options, correctional facility design and related expenditures.

v. Except for institutions of higher education governed by Chapters 933 and 943 of the 2006 Acts of Assembly, Chapters 594 and 616 of the 2008 Acts of Assembly, and Chapters 675 and 685 of the 2009 Acts of Assembly, any alternative financing agreement entered into between a state agency or institution of higher education and a private entity or affiliated foundation must be reviewed and approved by the Treasury Board.

w. Prior to requesting authorization for new dormitory capital projects, institutions of higher education shall conduct a cost study to determine whether an alternative financing arrangement or public-private transaction would provide a more effective option for the construction of the proposed facility. This study shall be submitted to the Department of Planning and Budget as part of the budget development process and shall be evaluated by the Governor prior to submitting his proposed budget.

x. Construction or improvement projects of the Department of Military Affairs are not exempt from the capital outlay review process when the state procurement process is utilized, except for those projects with both an estimated cost of \$3,000,000 or less and are 100 percent federally reimbursed. The Department of Military Affairs shall submit by July 30 of each year to the Department of Planning and Budget a list of such projects that were funded pursuant to this exemption in the previous fiscal year and any projects that would be eligible for such funding in future fiscal years.

y. While the competitive sealed bid process is the preferred method of construction procurement for public bodies, institutions of higher education and state agencies considering the use of Design Build or Construction Management procurement methods for capital projects shall proceed as follows:

1. Institutions of higher education governed under Chapters 933 and 943 of the 2006 Acts of Assembly, Chapters 594, 616, 824 and 829 of the 2008 Acts of Assembly, Chapters 675 and 685 of the 2009 Acts of Assembly, operating under a memorandum of understanding pursuant to § 23-38.90, and those operating under a pilot program under § 4-9.02 shall:

- a) Develop a process for determining the selected procurement method which, at a minimum, must consider cost, schedule, complexity, and building use;
- b) Submit the process for determining the procurement method to the Department of General Services for review and recommendations;
- c) Submit for approval, the process for determining the procurement method with the Department of General Services recommendations, to the Board of Visitors.

2. All other institutions of higher education and state agencies shall submit procurement method requests to the Director, Department of General Services for review and approval.

3. Processes for considering Construction Management procurement method shall include, among other processes as determined by the owning institution of higher education or state agency, the following requirements:

- a) Cost and project timeline are critical components of the selection process;
- b) Construction Management contract will be initiated no later than the Schematic Phase of design unless prohibited by authorization of funding restrictions; and,
- c) A written justification that sealed bidding is not practicable and/or fiscally advantageous and such written justification shall be stated in the Request for Qualifications used to procure the Construction Management services.

4. All state entities, including institutions of higher education governed under Chapters 933 and 943 of the 2006 Acts of Assembly, Chapters 594, 616, 824 and 829 of the 2008 Acts of Assembly, Chapters 675 and 685 of the 2009 Acts of Assembly, operating under a memorandum of understanding pursuant to § 23-38.90, and those operating under a pilot program under § 4-9.02 shall report annually, on November 1st of each year, to the Director, Department of General Services on completed capital projects, beginning with those authorized for construction under Chapter 665 of the 2015 Virginia Acts of Assembly, to include at a minimum procurement method, project budget, actual project costs, expected timeline, actual completion time and any post-project issues. The Department of General Services shall consolidate received report data and submit the consolidated data to the Governor and Chairmen of the House Appropriations and Senate Finance Committees no later than December 1st of each year.

5. The Auditor of Public Accounts shall, as part of its annual audit plan, determine that institutions of higher education governed under Chapters 933 and 943 of the 2006 Acts of Assembly, Chapters 594, 616, 824 and 829 of the 2008 Acts of Assembly, Chapters 675 and 685 of the 2009 Acts of Assembly, operating under a memorandum of understanding pursuant to § 23-38.90 and those operating under a pilot program under § 4-9.02 complied with their internal review process in the selection of procurement method.

6. All state entities, including institutions of higher education governed under Chapters 933 and 943 of the 2006 Acts of Assembly, Chapters 594, 616, 824 and 829 of the 2008 Acts of Assembly, Chapters 675 and 685 of the 2009 Acts of Assembly, operating under a memorandum of understanding pursuant to § 23-38.90 and those operating under a pilot program under § 4-9.02 shall post approved capital projects, beginning with those authorized for construction under Chapter 665 of the 2015 Virginia Acts of Assembly, and approved procurement methods and

advertise for project delivery services no less than 30 days publicly on the Commonwealth's statewide electronic procurement system and program, eVA.