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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Commonwealth Transportation Board
Virginia Administrative Code (VAC) Chapter citation(s)	24 VAC30-130
VAC Chapter title(s)	Rules Governing Prequalification and Classification
Date this document prepared	03/18/2021

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the **Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code**.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

VPPA means the Virginia Public Procurement Act.
CTB means the Commonwealth Transportation Board.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The Commonwealth Transportation Board promulgated this regulation. Section 2.2-4302 of the Virginia Public Procurement Act states that the VPPA "may be implemented by ordinances, resolutions or

regulations consistent with this chapter and with the provisions of other applicable law promulgated by any public body empowered by law to undertake the activities described in this chapter.” Section 2.2-4317 of the VPPA states that “Prospective contractors may be prequalified for particular types of supplies, services, insurance or construction, and consideration of bids or proposals limited to prequalified contractors.... Any prequalification of prospective contractors for construction by a public body shall be pursuant to a prequalification process for construction projects adopted by the public body.” Section 33.2-209 of the *Code of Virginia* states that “The Board shall have the power and duty to let all contracts to be administered by the Department of Transportation or the Department of Rail and Public Transportation for the construction, maintenance, and improvement of the highways comprising systems of state highways and for all activities related to passenger and freight rail and public transportation in excess of \$5 million.” That section further states that “The Board may award contracts for the construction of transportation projects on a design-build basis... pursuant to objective criteria previously adopted by the Board regarding the use of design-build... Such objective criteria shall include requirements for prequalification of contractors and competitive bidding processes.”

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

The CTB has adopted a written policy on what criteria it will consider for the prequalification of contractors, which can act as a guidance document which prospective contractors can follow. Therefore, the regulation is not necessary.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

Although the regulation is clearly written and easily understandable, its purpose can be accomplished through other means, so it is therefore not necessary for the protection of public health, safety and welfare.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The CTB recommends repealing the regulation, and maintaining the underlying policy as a CTB Policy and/or guidance document.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

Although the regulation is not complex and does not overlap or conflict with other law, it is not necessary to be maintained as a regulation. The regulation was last reviewed in 2010.
