



townhall.virginia.gov

Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board for Contractors
Virginia Administrative Code (VAC) Chapter citation(s)	18 VAC 50-22-260
VAC Chapter title(s)	Board for Contractors Regulations
Action title	Amend Prohibited Acts
Date this document prepared	July 29, 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*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The Board for Contractors seeks to amend the Prohibited Acts, specifically, the provisions of 18 VAC 50-22-260 B9 in order to include language that would allow time and material contracts as well as cost-plus contracts. This would allow contractors who utilize these types of contracts to comply with the provisions of the prohibited act which currently requires that the contract contain a statement of the total cost. The amended language would contain language to include specific hourly rate and percentage markups, and caps on the total cost. This will align the contract requirements issued by the Board for Contractors with industry standards.

The goal of this regulatory change is to address all types of currently in use throughout the construction industry to be acceptable.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

There are no acronyms or technical definitions used in this form that are not specifically identified.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

The current regulations do not provide for contracts other than a fixed price contract. This has resulted in licensees trying to adapt their contract to meet the current regulatory standard or to simply ignore the regulations, use a contract that does not comply with the regulations and risk being found in violation.

The Board was approached by several licensees inquiring as to how to write a contract that would be in compliance with the regulations. At a training class, board staff were approached by participants asking that the Board explore the possibility of reviewing the regulations. There have been a large increase in violations for contract, specifically cost plus and time and material contracts. At its June 8, 2021 meeting the Committee of the Board for Contractors recommended that the Board explore the possibility of amending the regulations. At its July 20, 2021 meeting, the Board voted to begin the regulatory review process to include cost plus and time and material contractors to 18 VAC 50-22-260 B9.

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 and 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.

§ 54.1-1102 A of the Code of Virginia provides the Board for Contractors with the authority to promulgate regulations not inconsistent with the statute necessary for the licensure of contractors.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

As the construction industry has evolved, more contractors are moving away from the fixed price contract concept. A significant number of new home builders have shifted to cost-plus contracts and an equally

significant number of trade-related and repair contractors have moved to time and materials contracts. This has been exacerbated by the volatility of the construction materials market. By amending the language to include provisions for different contracts, licensees will be able to utilize all types of contracts available within the industry.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

18 VAC 50-22-260 B9 provides the minimum requirements of a written contract for those engaged in residential contracting as defined in the chapter, with one of those requirements being to provide a statement of the total cost of the contract. The proposed amendment would add specific language to include cost-plus and time and material contracts.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

No viable alternatives have been identified.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete the paragraph below and insert "This NOIRA is not being used to announce a periodic review or a small business impact review."

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Board for Contractors is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Marjorie King c/o Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, Virginia 23233, telephone (804) 367-2785, fax (866) 430-1033, email: contractor@dpor.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of proposed regulations, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.