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## Final Regulation Agency Background Document

<b>Agency name</b>	Board for Contractors
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	18 VAC50-22
<b>VAC Chapter title(s)</b>	Board for Contractors Regulations
<b>Action title</b>	Amendment of Prohibited Acts
<b>Date this document prepared</b>	February 13, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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 this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

The Board for Contractors Regulations outline the standards of practice and conduct for licensed contractors. These standards include minimum requirements for contracts for those that are engaged in residential contracting.

The Board for Contractors (“the Board”) is amending provisions of its “Prohibited Acts” to permit the use of 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 regulation which currently require that a residential contract contain a statement of the total cost of the contract. The amended provisions contain language to include specific hourly rate and percentage markups, and caps on the total cost. This will align the residential contract requirements issued by the Board with industry standards.

## Acronyms and Definitions

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

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There are no acronyms or technical terms used in this report.

## Statement of Final Agency Action

*Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

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On September 19, 2023, the Board adopted the final amendment to the Board for Contractors Regulations.

## Mandate and Impetus

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.*

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There are no changes to the previously reported information.

## 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.*

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The agency is the Board for Contractors. Chapter 11 of Title 54.1 of the Code of Virginia enumerates the legal authority for the Board to administer the licensure program for contractor firms.

Section 54.1-1102 of the Code of Virginia states, in part:

- B. The Board shall promulgate regulations not inconsistent with statute necessary for the licensure of contractors ... and for the relicensure of contractors ... after license or certificate suspension or revocation.

In addition, § 54.1-201 of the Code of Virginia provides, in part:

- A. The powers and duties of regulatory boards shall be as follows:
  - 1. To establish the qualifications of applicants for certification or licensure by any such board, provided that all qualifications shall be necessary to ensure either competence or integrity to engage in such profession or occupation.

5. To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board. The regulations shall not be in conflict with the purposes and intent of this chapter or of Chapters 1 (§ 54.1-100 et seq.) and 3 (§ 54.1-300 et seq.) of this title.

## Purpose

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety, or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.*

The Board's regulation establishes the minimum standards for contracts that are to be used by contractors who engage in residential contracting. One of these standards is that a contract contain a statement of the total cost of the contract; a fixed price contract. The purpose of this requirement is to ensure that a consumer is aware of the total amount of funds required to receive a completed project from the contractor.

A cost-plus contract provides for payment of all construction costs for a project, plus a fee for the contractor's overhead and profit. A time and materials contract provides for payment of all labor and material costs on a project, along with the contractor's markup.

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 contractors have moved to time and materials contracts. This has been exacerbated by the volatility of the construction materials market.

The current regulation does not permit the use of cost-plus or time and materials contracts for residential contracting. A contractor that uses such a contract for a residential project would be non-compliant with the regulation, and potentially subject to regulatory discipline by the Board.

Currently, there are no regulatory requirements associated with cost-plus or time and materials contracts so the details contained in such contracts may be limited, incomplete, and ultimately misleading. This has led to consumers consummating contracts without having a true and accurate picture of the costs associated with the work to be performed.

By amending the regulation to include language that permits not only fixed price contracts, but also cost-plus and time and materials contracts, licensees are able to continue using a variety of contract types but are still bound by the regulation as it was intended.

This change will (i) provide regulants who engage in residential contracting with the flexibility to use these types of contracts; and (ii) ensure protection of the health, safety, and welfare of citizens by incorporating these types of contracts, readily used throughout the industry today, into the existing regulatory scheme and making such contracts subject to regulatory standards.

## Substance

*Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.*

1. Section -260, specifically subdivision B 9, is amended to include both cost-plus and time and materials contracts as permitted contract types for residential contracting. This change reduces the restrictiveness of the current regulation, which requires fixed price contracts for residential contracting.

### Issues

*Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.*

This regulatory change provides flexibility to contractors that engage in residential contracting by permitting the use of cost-plus and time and materials contracts, which are common in the contracting industry, rather than requiring residential contracts to be fixed price.

This regulatory change will require that both cost-plus as well as time and material contracts contain specific information notifying the consumer of the type of contract being presented. This notification serves as an advantage to the consumer as the information required to be presented prior to consummation of a contractual relationship will better equip a consumer to make an informed decision regarding the contractual terms.

There are no disadvantages to the public or the Commonwealth that have been identified.

### Requirements More Restrictive than Federal

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.*

There are no applicable federal requirements.

### Agencies, Localities, and Other Entities Particularly Affected

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.*

Other State Agencies Particularly Affected

No other state agencies will be particularly affected.

Localities Particularly Affected

No other localities will be particularly affected.

Other Entities Particularly Affected

No other entities will be particularly affected.

**Public Comment**

*Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency’s response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.*

No comments were received during the public comment period.

**Detail of Changes Made Since the Previous Stage**

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
N/A	N/A	N/A	N/A	N/A

**Detail of All Changes Proposed in this Regulatory Action**

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.*

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of updated requirements
22-260	N/A	This section establishes the regulation’s prohibited acts.  Subdivision B 9 of the section establishes the minimum terms for a contract for residential	*Subdivision B 9 b is revised to provide that a contract contain a statement regarding the total cost of the project with regard to the type of contract being specified.

		<p>contracting work. Subdivision B 9 b requires that the contract contain:</p> <ul style="list-style-type: none"> <li>• A statement of the total cost of the contract.</li> <li>• The amounts and schedule for progress payments.</li> <li>• A specific statement on the amount of the down payment.</li> </ul>	<p>*A standard total value project must have a statement of the total cost of the project.</p> <p>*A cost-plus contract must have a statement identifying the type of cost-plus contract, fee, or percentage, and a cap at which the total dollar amount cannot exceed.</p> <p>*A time and materials contract must contain a fixed price for labor that includes wages, overhead, general and administrative costs, and cost of materials.</p> <p>*Existing provisions requiring that a contract state the amounts and schedule for progress payments and a specific statement on the amount of the down payment are relocated to a new subdivision B 9 c.</p> <p>This change adds two types of contracts widely used in the industry: cost-plus and time and materials contracts. This change will allow for continued use of these types of contracts by regulants while also establishing standards in conjunction with their use.</p> <p>The change will result in greater regulatory compliance as regulants will no longer face potential violations associated with using contracts that do not have required provisions.</p> <p>Stylistic changes are made to subdivisions B 8, B 9, B 21, and B 31 to replace the words “he” and “his” with gender neutral terms.</p> <p>These changes are stylistic and not likely to have a significant impact. The changes may help make the regulation clearer.</p>
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