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Exempt Action: Final Regulation Agency Background Document

Agency name	Commonwealth Transportation Board
Virginia Administrative Code (VAC) Chapter citation(s)	24 VAC30-130
VAC Chapter title(s)	Rules Governing Prequalification and Classification
Action title	Repeal
Final agency action date	
Date this document prepared	

Although a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, 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 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 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.”

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, which incorporates the policy by reference, is not necessary.

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, internal staff review, petition for rulemaking, periodic review, or board decision). “Mandate” is defined as “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 Commonwealth Transportation Board conducted a periodic review of this regulation, and based on that review, determined that the regulation should be repealed.

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.

The Commonwealth Transportation Board voted on *****, 2021 to repeal 24VAC30-130, Rules Governing Prequalification and Classification.