



DEPARTMENT OF  
GENERAL SERVICES

DIVISION OF ENGINEERING AND BUILDINGS

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## DEB Notice 082514

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### Clarification of Level 1 and 2 Authorities

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1. Purpose: To clarify authority for construction procurement associated with Level 1 and 2 institutions of higher education.
2. Definitions:
  - a. Construction means building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property. (Virginia Public Procurement Act)
  - b. Capital project means the acquisition of any interest in land including improvements on the acquired land at the time of acquisition, new construction, and improvements or renovations; the term shall not include any capital lease. (Chapter 824 of the 2008 Acts of Assembly, amending the Restructured Higher Education Financial and Administrative Operations Act).

(Note that “construction” and “capital projects” are very similar in their broad descriptions.)
  - c. Construction and capital projects funded with non-general funds. This includes projects which may be funded by “auxiliary” funds or other types of non-general funds (i.e., parking decks and student dormitories). Sources of non-general funds include tuition and fees and those generated from room/board, food service operations, etc.
  - d. CPSM. The *Commonwealth of Virginia Construction and Professional Services Manual*, as authored by DGS/DEB/BCOM.
3. As a general rule, the Virginia Public Procurement Act, the Secretary of Administration (SOA) Procedures for Construction Management and Design Build, and the CPSM govern construction/capital outlay procurement. Key exceptions for Level 1 and 2 institutions follow:
  - a. Where a Level 2 institution of higher education has an approved Memorandum of Understanding (MOU) with the SOA granting operational authority for capital projects and has adopted policies that govern capital outlay procedures.

It is important to note that an approved MOU authorizing operational authority for procurement does not provide for construction/capital project procurement authority.

VCCS and CNU are the Level 2 institutions with a currently approved MOU for capital projects/construction.

- b. Where a Level 1 or 2 institution has a signed MOU with the SOA regarding participation in the non-general fund decentralization program as defined in Va. Code § 2.2-1132(C).

In these situations, the institution may enter into contracts for specific construction projects without the preliminary review and approval of DEB/BCOM provided such institutions are in compliance with the VPPA and utilize the general terms and conditions provided in the DGS/DEB/BCOM CPSM. In short, the decentralization program provides for more latitude on the “what to build” on projects fully funded with non-general fund related sources, but not on the “how to procure.” As an exception on the “how to procure,” the authority for institutions participating in the non-general fund decentralization program includes the authority to approve the use of alternate delivery methods (i.e., CM and Design Build) and enter into contracts without the preliminary review and approval of DEB/BCOM. It is, however, important to note that the VPPA, SOA procedures, and CPSM procedures still govern the remainder of the “how to procure.” This exception does not apply to projects funded either partially or fully with “general fund related sources,” described in DPB’s May 2014 “Instructions for Preparing Capital Project Requests” as tax-supported debt such as bonds issued from the VPBA or VCBA.

Note that the authority for capital projects/construction under the Restructuring Act (paragraph 3a above) is much broader and separate from the authority provided under the decentralization program (paragraph 3b above).