



May 24, 2013

The Honorable S. Chris Jones  
Virginia House of Delegates  
P O Box 5059  
Suffolk, VA 23435

Dear Delegate Jones:

Thank you for Chairing the Special Joint General Laws Subcommittee Studying the Virginia Public Procurement Act. We certainly agree that a comprehensive study of this much amended act is needed.

At the May 14 meeting you suggested that interested parties forward comments/suggestions relating to areas of the law which, we believe, merit study. We appreciate the opportunity to do so.

Of particular interest to members of the Associated General Contractors of Virginia is the use of construction management at risk by some public bodies in the Commonwealth. We are concerned that, as utilized, qualifications criteria for some of these projects are being drafted in a manner which may preclude some qualified firms from competing for these projects. Likewise, we feel there are areas where increased transparency in the construction management at risk procurement process is needed.

In this regard, last year a committee of the association developed a list of what we believe are some best practices which should be considered for all construction management at risk projects by public bodies in the Commonwealth, and a copy of these best practice recommendations is attached for consideration by the subcommittee.

AGC looks forward to working with you and other members of the Study Subcommittee in these discussions on Virginia's Public Procurement Act.

Best regards.

Sincerely,

Jack Dyer  
Chairman of the Board

cc: Maria J. K. Everett  
Amigo Wade ✓

## **Best Practices for Procurement of Construction Management at Risk** **(as approved by the Board of Directors of the Associated General Contractors of Virginia)**

The following comments are provided in an effort to improve procurement procedures relating to construction management at risk. They should not be construed as favoring construction management at risk over other procurement methods. AGC's overall aim is to promote open and competitive public procurement through an open, transparent procurement process for all participants which complies with the requirements of the Commonwealth's public procurement act.

### **Current law in the Commonwealth states:**

*Section 2.2-4308. Design-build or construction management contracts for public bodies other than the Commonwealth; eligibility requirements; award of contract; records to be kept.*

*A. While the competitive sealed bidding process remains the preferred method of construction procurement for public bodies in the Commonwealth, any public body other than the Commonwealth may enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis provided the public body complies with the requirements of this section and has implemented procedures consistent with the procedures adopted by the Secretary of Administration for utilizing design-build or construction management contracts.*

*Prior to making a determination as to the use of design-build or construction management for a specific construction project, the public body shall have in its employ or under contract a licensed architect or engineer with professional competence appropriate to the project who shall advise the public body regarding the use of design-build or construction management for that project and who shall assist the public body with the preparation of the Request for Proposal and the evaluation of such proposals.*

*Prior to issuing a Request for Proposal for any design-build or construction management contract for a specific construction project, the public body shall:*

- 1. Have adopted, by ordinance or resolution, written procedures governing the selection, evaluation and award of design-build and construction management contracts. Such procedures shall be consistent with those described in this chapter for the procurement of nonprofessional services through competitive negotiation. Such procedures shall also require Requests for Proposals to include and define the criteria of such construction project in areas such as site plans; floor plans; exterior elevations; basic building envelope materials; fire protection information plans; structural, mechanical (HVAC), and electrical systems; and special telecommunications; and may define such other requirements as the public body determines appropriate for that particular construction project. Such procedures for:
  - a. Design-build construction projects shall include a two-step competitive negotiation process consistent with the standards established by the Division of Engineering and Buildings of the Department of General Services for state agencies.**

