

## SPECIAL JOINT GENERAL LAWS SUBCOMMITTEE STUDYING THE VPPA

### VPPA ISSUES IDENTIFIED AT MEETING ON MAY 14, 2013

**NOTE:** Based on comments received at the meeting on May 14, 2013, this document was created to facilitate future discussions of the Special Joint General Laws Subcommittee by organizing the issues raised into the following broad categories of the VPPA, identified under the heading General Issue Category: Applicability/Exemptions, Vendor Eligibility, Cooperative Procurement, Technology/Business Practice Outdated, and Enforcement/Oversight. Certain subcategories also have been identified. Additional categories and subcategories may be added depending on the issue(s) raised. See Appendix A at the end of this document for a complete list of categories and subcategories to date.

SOURCE	COMMENT	GENERAL ISSUE CATEGORY	NOTES
<b>Department of General Services (DGS)</b>	Balkanization of state procurement <ul style="list-style-type: none"> <li>• Increased resource costs and complexity of contracts for agencies and vendors;</li> <li>• Duplication of contracts resulting in less aggregated spending leading to higher prices and increased contract award and administration costs.</li> </ul>	<b>Applicability/Exemptions</b> <i>Subcategory: Nature of public body</i>	
<b>DGS</b>	Confusion for vendors due to multiple and disparate rules resulting in less friendly environment for conducting Commonwealth business.	<b>Applicability/Exemptions</b> <i>Subcategory: Nature of public body</i>	
<b>DGS</b>	Fractured efficiency of cooperative contracting such that one public body cannot use another public body's contract without expending resources to bring it into compliance with laws.	<b>Cooperative Procurement</b>	
<b>DGS</b>	No consequences for violations.	<b>Enforcement/Oversight</b>	

SOURCE	COMMENT	GENERAL ISSUE CATEGORY	NOTES
DGS	Small business set-aside preference should be examined for improvement.	<b>Vendor Eligibility</b> <i>Subcategories: SWAM, Preferences</i>	
DGS	No central procurement oversight, thus making achievement of enterprise cost savings and efficiencies difficult.	<b>Enforcement/Oversight</b>	
<b>Virginia Information Technologies Agency (VITA)</b>	Consider statutory clarifications that produce benefits. <i>(Example: Prequalification of vendors; does the topic pertain to all goods and services or just to construction? (§ 2.2-4317))</i>	<b>Applicability/Exemptions</b> <i>Subcategory: Goods, services, construction</i>	
VITA	Put competitive negotiation on equal footing with competitive sealed bidding.	<b>Applicability/Exemptions</b> <i>Subcategory: Method of procurement</i>	
VITA	Modify cooperative procurement language; current language effectively creates a de facto “statewide” contract, which dilutes competition and leverage.	<b>Cooperative Procurement</b>	
VITA	Provide explicit enforcement authority.	<b>Enforcement/Oversight</b>	
<b>Department of Minority Business Enterprise</b>	Consider changing the definition of small business to more adequately target small businesses. <i>(Current language provides 250 or fewer employees or average gross receipts of \$10 million or less averaged over the previous three years.)</i>	<b>Vendor Eligibility</b> <i>Subcategory: SWAM</i>	

SOURCE	COMMENT	GENERAL ISSUE CATEGORY	NOTES
<b>Level 3 Higher Ed.</b> <i>(University of Virginia)</i>	Maintain current procurement and capital outlay authority provided to Level 3 Public Institutions of Higher Education.	<b>Applicability/Exemptions</b> <i>Subcategory: Nature of public body</i>	
<b>Large Locality</b> <i>(Fairfax Co.)</i>	Change the one-size-fits-all amendments that are made to the VPPA. Large and small localities have different needs.	<b>Applicability/Exemptions</b> <i>Subcategory: Nature of public body</i>	
<b>Large Locality</b> <i>(Fairfax Co.)</i>	Avoid proposed changes that are in conflict with the intent of the VPPA.  <i>(Example: Changes based on (i) an Attorney General Opinion stating that a public body cannot consider factors that are not related to the goods or services being procured, (ii) enforcement of documented worker status, and (iii) preferences)</i>	<b>Applicability/Exemptions</b> <i>Subcategory: Method of procurement</i>  <b>Vendor Eligibility</b> <i>Subcategories: Preferences, Qualification to contract</i>	
<b>Large Locality</b> <i>(Fairfax Co.)</i>	Review the cumulative effect of changes over several sessions. As a whole, these changes have adversely affected readability and created conflicting provisions.	<b>Applicability/Exemptions</b> <i>Subcategory: Readability/Internal consistency</i>	
<b>Large Locality</b> <i>(Fairfax Co.)</i>	Adapt the VPPA to current technology and business practices. Consider using changes made to the Model Procurement Code as a guide.	<b>Technology/Business Practice</b> <b>Outdated</b>	
<b>Small Locality</b> <i>(Gloucester Co.)</i>	Avoid the one-size-fits-all approach; localities have different needs.  <i>(Example: Gloucester County's Purchasing Department must answer to its County Board of Supervisors and the local school board.)</i>	<b>Applicability/Exemptions</b>	

SOURCE	COMMENT	GENERAL ISSUE CATEGORY	NOTES
<b>Small Locality</b> <i>(Gloucester Co.)</i>	Avoid legislative actions directed at all because of the noncompliance of one.	<b>Applicability/Exemptions</b> <i>Subcategory: Nature of public body</i>	
<b>Small Locality</b> <i>(Gloucester Co.)</i>	Avoid legislative actions that do not champion competition at the highest degree (e.g. state preferences and local preferences).	<b>Vendor Eligibility</b> <i>Subcategories: SWAM, Preferences</i>	
<b>Small Locality</b> <i>(Gloucester Co.)</i>	Avoid legislative actions that seek to make the procurement function a regulatory program. <i>(Example: SCC registration and E-Verify requirements)</i>	<b>Vendor Eligibility</b> <i>Subcategory: Qualification to contract</i>	
<b>Small Locality</b> <i>(Gloucester Co.)</i>	Clarify confusion regarding lines of defined authority contained in the VPPA. <i>(Example: Public bodies, state local bodies, and local bodies)</i>	<b>Applicability/Exemptions</b> <i>Subcategory: Nature of public body</i>	
<b>Small Locality</b> <i>(Gloucester Co.)</i>	Review use of population thresholds associated with application of the VPPA.	<b>Applicability/Exemptions</b> <i>Subcategory: Nature of public body</i>	
<b>Small Locality</b> <i>(Gloucester Co.)</i>	Variety of exceptions and exemptions to the Act make it difficult to read, follow, and interpret.	<b>Applicability/Exemptions</b> <i>Subcategory: Readability</i>	
<b>Small Locality</b> <i>(Gloucester Co.)</i>	Methods of procurement have become disjointed and difficult to observe.	<b>Applicability/Exemptions</b> <i>Subcategory: Method of procurement</i>	

**APPENDIX A**  
**GENERAL ISSUE CATEGORIES AND SUBCATEGORIES**

**1. APPLICABILITY/EXEMPTIONS**

- Nature/Identity of public body
- Goods, services, construction
- Method of procurement
- Readability/Internal consistency

**2. VENDOR ELIGIBILITY**

- SWAM
- Preferences
- Qualification to contract (E-Verify, etc.)

**3. COOPERATIVE PROCUREMENT**

**4. ENFORCEMENT/OVERSIGHT**

**5. TECHNOLOGY/BUSINESS PRACTICE OUTDATED**