

**Special Joint General Laws Subcommittee
Studying the Virginia Public Procurement Act**

**Work Group 1
6/19/14 Post Meeting
Submissions**

**Anthony Arnold, P. E.,
Director of Facilities Planning and Construction
Virginia Beach Public Schools**



Work Group 1; agenda; meeting schedule

Tony L. Arnold <Anthony.Arnold@vbschools.com>
To: VPPA Study <vppastudy@dls.virginia.gov>

Mon, Jun 23, 2014 at 9:29 AM

Amigo/Maria, on JOC's I like the idea of a \$500,000 per task order cap and \$5,000,000 total

Thx, see you in Sept, enjoy the rest of your summer

Tony

Anthony L. Arnold, PE

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Herschel V. Keller
Petty, Livingston, Dawson & Richards. P.C.

PETTY,
LIVINGSTON,
DAWSON
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Individual & Corporate Counsel

June 27, 2014

Maria J.K. Everett, Esq.
Senior Attorney
Division of Legislative Services
910 Capitol Street
Richmond, VA 23219

Amigo Wade, Esq.
Senior Attorney
Division of Legislative Services
910 Capitol Street
Richmond, VA 23219

Re: *Joint Legislative Committee Studying the Virginia Public Procurement Act*

Dear Maria and Amigo:

In keeping with your instructions at the end of the June 19th meeting of Workgroup 1, I attach suggested language for amendments to the Virginia Public Procurement Act ("VPPA") to allow for procurement of maintenance via the job order contracting and the cooperative methods of procurement, while disallowing these methods of procurement for construction. As you will see, I created a new definition of maintenance in §2.2-4301 of the Code. In the draft, "maintenance" is distinguished from the existing definition of "construction" by tying a building permit requirement to definition of construction.

For good reason, we feel strongly that construction should not be procured through these methods. Procurement of construction is unlike procurement of any other goods or services. Construction is a different beast altogether. I cite the D.C. Court of Appeals to amplify this point, "Except in the middle of a battlefield, nowhere must men coordinate the movement of other men and all materials in the midst of such chaos and with such limited certainty of present facts and future occurrences as in a huge construction project..." Blake Construction Co. v. C.J. Coakley Co., 431 A.2d 569, 575 (D.C. Ct. App. 1981). No two construction projects are alike. Even if a contractor builds two buildings from the same set of plans, the site conditions, the governmental requirements, the impact of timing on the labor and materials market, would all be different. Accordingly, we feel the taxpayer is best served for all but the exceptional construction project to be procured through competitive sealed bidding.

Please share this letter and these drafts with the Workgroup for discussion. Also, we have some concern about the Workgroup's dialogue to date. Much of the conversation at the first two meetings was dominated by two procurement officials whose message seems to be, "Since we believe we comply with the VPPA, we do not see the need for changes or oversight." That position is not supportive of a compromise outcome that will result in agreeable legislation. I implore you to address this before the next meeting.

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PETTY, LIVINGSTON, DAWSON & RICHARDS, P.C.

Maria J.K. Everett, Esq.

Amigo Wade, Esq.

June 27, 2014

Re: Joint Legislative Committee Studying the Virginia Public Procurement Act

Page 2.

As always, I appreciate the collective experience you bring to this process. If there is anything I can do to assist you, please let me know.

Very truly yours,



Herschel V. Keller

§ 2.2-4301. Definitions.

As used in this chapter:

"Affiliate" means an individual or business that controls, is controlled by, or is under common control with another individual or business. A person controls an entity if the person owns, directly or indirectly, more than 10 percent of the voting securities of the entity. For the purposes of this definition "voting security" means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general partnership interest shall be deemed to be a voting security.

"Best value," as predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to a public body's needs.

"Business" means any type of corporation, partnership, limited liability company, association, or sole proprietorship operated for profit.

"Competitive negotiation" is the method of contractor selection set forth in § 2.2-4302.2.

"Competitive sealed bidding" is the method of contractor selection set forth in § 2.2-4302.1.

"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, when the performance of such work requires a building permit or a Department of General Services annual permit.

"Construction management contract" means a contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.

"Design-build contract" means a contract between a public body and another party in which the party contracting with the public body agrees to both design and build the structure, roadway or other item specified in the contract.

"Employment services organization" means an organization that provides employment services to individuals with disabilities that is an approved Commission on the Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Department for Aging and Rehabilitative Services.

"Goods" means all material, equipment, supplies, printing, and automated data processing hardware and software.

"Informality" means a minor defect or variation of a bid or proposal from the exact requirements of the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

"Job order contracting" means a method of procuring ~~construction services~~maintenance by establishing a book of unit prices and then obtaining a contractor to perform work as needed using the prices, quantities, and specifications in the book as the basis of its pricing. The contractor may be selected through either competitive sealed bidding or competitive negotiation depending on the needs of the public body procuring the construction services. A minimum amount of work may be specified in the contract. The contract term and the project amount shall not exceed the limitations specified in § 2.2-4302.2 or 2.2-4303.

"Maintenance" means building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property, when the performance of such work requires neither a building permit or a Department of General Services Annual Permit.

"Multiphase professional services contract" means a contract for the providing of professional services where the total scope of work of the second or subsequent phase of the contract cannot be specified without the results of the first or prior phase of the contract.

"Nonprofessional services" means any services not specifically identified as professional services in the definition of professional services.

"Potential bidder or offeror," for the purposes of §§ 2.2-4360 and 2.2-4364, means a person who, at the time a public body negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under the contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.

"Professional services" means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering. "Professional services" shall also include the services of an economist procured by the State Corporation Commission.

"Public body" means any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in this chapter. "Public body" shall include any metropolitan planning organization or planning district commission which operates exclusively within the Commonwealth of Virginia.

"Public contract" means an agreement between a public body and a nongovernmental source that is enforceable in a court of law.

"Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance, and who has been prequalified, if required.

"Responsive bidder" means a person who has submitted a bid that conforms in all material respects to the Invitation to Bid.

"Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified goods or nonprofessional services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening.

"Services" means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

§ 2.2-4302.2. Process for competitive negotiation.

A. The process for competitive negotiation shall include the following:

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities, specifications or qualifications that will be required;

2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of proposals by posting on the Department of General Services' central electronic procurement website or other appropriate websites. Additionally, public bodies shall publish in a newspaper of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities. In addition, proposals may be solicited directly from potential contractors. Any additional solicitations shall include certified businesses selected from a list made available by the Department of Small Business and Supplier Diversity; and

3. For goods, nonprofessional services, and insurance, selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole or primary determining factor. After negotiations have been conducted with each offeror so selected, the public body shall select the offeror which, in its opinion, has made the best proposal and provides the best value, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror; or

4. For professional services, the public body shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In addition, offerors shall be informed of any ranking criteria that will be used by the public body in addition to the review of the professional competence of the offeror. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the public body may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. In accordance with § 2.2-4342, proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the public body shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious.

Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the public body can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price.

Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the Request for Proposal, a public body may award contracts to more than one offeror.

Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

B. For multiple projects, a contract for architectural or professional engineering services relating to construction projects, or a contract for job order contracting, may be negotiated by a public body, provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the Request for Proposal, and (iii) the contract is limited to a one-year term or when the cumulative total project fees reach the maximum cost authorized in this subsection, whichever occurs first.

Such contracts may be renewable for four additional one-year terms at the option of the public body. The fair and reasonable prices as negotiated shall be used in determining the cost of each project performed and the sum of all projects performed in a one-year contract term shall not exceed \$500,000, except that for:

1. A state agency, as defined in § 2.2-4347, the sum of all projects performed in a one-year contract term shall not exceed \$1 million as may be determined by the Director of the Department of General Services;

2. Any locality or any authority, sanitation district, metropolitan planning organization or planning district commission with a population in excess of 80,000, or any city within Planning District 8, the sum of all projects performed in a one-year contract term shall not exceed \$5 million and those awarded for any airport as defined in § 5.1-1 and aviation transportation projects, the sum of all such projects shall not exceed \$1.5 million;

3. Architectural and engineering services for rail and public transportation projects by the Director of the Department of Rail and Public Transportation, the sum of all projects in a one-year contract term shall not exceed \$2 million. Such contract may be renewable for two additional one-year terms at the option of the Director;

4. Environmental location, design and inspection work regarding highways and bridges by the Commissioner of Highways, the initial contract term shall be limited to two years or when the cumulative total project fees reach \$5 million, whichever occurs first. Such contract may be renewable for two additional one-year terms at the option of the Commissioner, and the sum of all projects in each one-year contract term shall not exceed \$5 million; and

5. Job order contracting, the sum of all projects performed in a one-year contract term shall not exceed \$2 million.

Competitive negotiations for such contracts may result in awards to more than one offeror provided (i) the Request for Proposal so states and (ii) the public body has established procedures for distributing multiple projects among the selected contractors during the contract term.

C. For any single project, for (i) architectural or professional engineering services relating to construction projects, or (ii) job order contracting, the project fee shall not exceed \$100,000, or for architectural or

engineering services for airports as defined in § 5.1-1 and aviation transportation projects, the project fee of any single project shall not exceed \$500,000, except that for:

1. A state agency as defined in § 2.2-4347, the project fee shall not exceed \$200,000, as may be determined by the Director of the Department of General Services;
2. Any locality or any authority or sanitation district with a population in excess of 80,000, or any city within Planning District 8, the project fee shall not exceed \$2 million; and
3. Job order contracting, the project fee shall not exceed \$400,000.

D. For the purposes of subsections B and C, any unused amounts from the first contract term shall not be carried forward to the additional term.

E. Multiphase professional services contracts satisfactory and advantageous to the completion of large, phased, or long term projects may be negotiated and awarded based on a fair and reasonable price for the first phase only, where the completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to the entering into any such contract, the public body shall (i) state the anticipated intended total scope of the project and (ii) determine in writing that the nature of the work is such that the best interests of the public body require awarding the contract.

§ 2.2-4303. Methods of procurement.

A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, maintenance, or construction, shall be awarded after competitive sealed bidding, or competitive negotiation as provided in this section, unless otherwise authorized by law.

B. Professional services shall be procured by competitive negotiation.

C. Upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, goods, services, or insurance may be procured by competitive negotiation. The writing shall document the basis for this determination.

Upon a written determination made in advance by (i) the Governor or his designee in the case of a procurement by the Commonwealth or by a department, agency or institution thereof or (ii) the local governing body in the case of a procurement by a political subdivision of the Commonwealth, that competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured through a licensed agent or broker selected in the manner provided for the procurement of

things other than professional services in subdivision 3 b of the definition of "competitive negotiation" in § 2.2-4301. The basis for this determination shall be documented in writing.

D. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:

1. By the Commonwealth, its departments, agencies and institutions on a fixed price design-build basis or construction management basis under § 2.2-4306;
2. By any public body for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property;
3. By any governing body of a locality with a population in excess of 100,000, provided that the locality has the personnel, procedures, and expertise to enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis and shall otherwise be in compliance with the provisions of this section, § 2.2-4308, and other applicable law governing design-build or construction management contracts for public bodies other than the Commonwealth. The procedures of the local governing body shall be consistent with the two-step competitive negotiation process established in § 2.2-4301; or
4. As otherwise provided in § 2.2-4308.

E. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The public body shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the Department of General Services' central electronic procurement website or other appropriate websites, and in addition, public bodies may publish in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

F. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The public body shall issue a written notice

stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the Department of General Services' central electronic procurement website or other appropriate websites, and in addition, public bodies may publish in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

G. A public body may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts for goods and services other than professional services if the aggregate or the sum of all phases is not expected to exceed \$100,000; however, such small purchase procedures shall provide for competition wherever practicable. For local public bodies, such purchase procedures may allow for single or term contracts for professional services without requiring competitive negotiation, provided the aggregate or the sum of all phases is not expected to exceed \$60,000.

For state public bodies, purchases under this subsection that are expected to exceed \$30,000 shall require the (i) written informal solicitation of a minimum of four bidders or offerors and (ii) posting of a public notice on the Department of General Services' central electronic procurement website or other appropriate websites. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

H. A state public body may establish purchase procedures, if adopted in writing, not requiring competitive negotiation for single or term contracts for professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; however such small purchase procedures shall provide for competition wherever practicable.

I. Upon a determination made in advance by a public body and set forth in writing that the purchase of goods, products or commodities from a public auction sale is in the best interests of the public, such items may be purchased at the auction, including online public auctions. Purchase of information technology and telecommunications goods and nonprofessional services from a public auction sale shall be permitted by any authority, department, agency, or institution of the Commonwealth if approved by the Chief Information Officer of the Commonwealth. The writing shall document the basis for this determination. However, bulk purchases of commodities used in road and highway construction and maintenance, and aggregates shall not be made by online public auctions.

J. The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning. However, bulk purchases of commodities used in road and highway construction and maintenance, and aggregates shall not be made by reverse auctioning.

§ 2.2-4304. Cooperative procurement.

A. Any public body may participate in, sponsor, conduct, or administer a cooperative procurement agreement on behalf of or in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, the District of Columbia, or the U.S. General Services Administration; for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods and services.

~~Except for: (i) architectural services, (ii) engineering services, and (iii) construction services, Aa public body may purchase from another public body's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies, except for:~~

~~1. Contracts for architectural or engineering services; or~~

~~2. Construction in excess of \$200,000 by a local public body from the contract of another local public body that is more than a straight line distance of 75 miles from the territorial limits of the local public body procuring the construction. The installation of artificial turf or other athletic surfaces shall not be subject to the limitations prescribed in this subdivision. Nothing in this subdivision shall be construed to prohibit sole source or emergency procurements awarded pursuant to subsections E and F of § 2.2-4303.~~

In instances where any authority, department, agency, or institution of the Commonwealth desires to purchase information technology and telecommunications goods and services from another public body's contract and the procurement was conducted on behalf of other public bodies, such purchase shall be permitted if approved by the Chief Information Officer of the Commonwealth. Any public body that enters into a cooperative procurement agreement with a county, city, or town whose governing body has adopted alternative policies and procedures pursuant to subdivisions A 9 and A 10 of § 2.2-4343 shall comply with the alternative policies and procedures adopted by the governing body of such county, city, or town.

B. Subject to the provisions of §§ 2.2-1110, 2.2-1111, 2.2-1120 and 2.2-2012, any authority, department, agency, or institution of the Commonwealth may participate in, sponsor, conduct, or administer a cooperative procurement arrangement on behalf of or in conjunction with public bodies, private health or educational institutions or with public agencies or institutions of the several states, territories of the United States, or the District of Columbia, for the purpose of combining requirements to effect cost savings or reduce administrative expense in any acquisition of goods and services, other than professional services. A public body may purchase from any authority, department, agency or institution

of the Commonwealth's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies. In such instances, deviation from the procurement procedures set forth in this chapter and the administrative policies and procedures established to implement this chapter shall be permitted, if approved by the Director of the Division of Purchases and Supply.

Pursuant to § 2.2-2012, such approval is not required if the procurement arrangement is for telecommunications and information technology goods and services of every description. In instances where the procurement arrangement is for telecommunications and information technology goods and services, such arrangement shall be permitted if approved by the Chief Information Officer of the Commonwealth. However, such acquisitions shall be procured competitively.

Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.

C. As authorized by the United States Congress and consistent with applicable federal regulations, and provided the terms of the contract permit such purchases:

1. Any authority, department, agency, or institution of the Commonwealth may purchase goods and nonprofessional services, other than telecommunications and information technology, from a U.S. General Services Administration contract or a contract awarded by any other agency of the U.S. government, upon approval of the director of the Division of Purchases and Supply of the Department of General Services;

2. Any authority, department, agency, or institution of the Commonwealth may purchase telecommunications and information technology goods and nonprofessional services from a U.S. General Services Administration contract or a contract awarded by any other agency of the U.S. government, upon approval of the Chief Information Officer of the Commonwealth; and

3. Any county, city, town, or school board may purchase goods and nonprofessional services from a U.S. General Services Administration contract or a contract awarded by any other agency of the U.S. government.

**Bert Jones, Associate Vice Chancellor
Facilities Management Services
Virginia Community College System**

Post Meeting Reminder; 6/19/2014

Bert Jones <bjones@vccs.edu>
To: VPPA Study <vppastudy@dls.virginia.gov>

Wed, Jul 2, 2014 at 1:36 PM

Good Afternoon, Line references the **Job Order Contracting Discussion Draft** that we worked on last time.

I think the definition of JOC in line 47 should be expanded to include “incidental Architectural or Engineering services related to the work”.

With a \$400,000 limit per work order, I don't see the need for additional tiers or other limits 400k just is not that big.

I would advocate for a 4 million dollar cap or no cap in line 202

I looked up construction in the dictionary and it says: : the act or process of building something (such as a house or road). That is basically what ours says we are just a little wordier to add clarity. I thought about breaking apart vertical and horizontal construction but don't think that would add any value to the process. All that said, I suggest we leave it as is in line 22

Capital Project is defined in the Act. And gets modified on occasion, maybe we should reference the act here in Section 4-4.00

Public Body as defined starting on line 63, Seems like it covers it.

Moving into a different area, For general construction instead of what we currently have:

D. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:

1. By the Commonwealth, its departments, agencies and institutions on a fixed price design-build basis or construction management basis under § 2.2-4306;
2. By any public body for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property;
3. By any governing body of a locality with a population in excess of 100,000, provided that the locality has the personnel, procedures, and expertise to enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis and shall otherwise be in compliance with the provisions of this section, § 2.2-4308, and other applicable law governing design-build or construction management contracts for public bodies other than the Commonwealth. The procedures of the local governing body shall be consistent with the two-step competitive negotiation process established in § 2.2-4301; or
4. As otherwise provided in § 2.2-4308.

I would like to suggest the following:

Construction may be procured by any of the following methods as determined by the Public Body:

1. Competitive Sealed bidding
2. Construction Management at Risk
3. Design Build
4. Best Value
5. Cooperative Procurement
6. Job Order Contracting
7. Sole Source
8. Emergency Procurements

These processes are all defined in the section but may need to be cleaned up

I would not be opposed to a procurement review board similar to the Technical Review Board for appeals of Building Official Rulings that currently exists. It should be made up of folks that understand the process and the nuances of the differences in the types of construction procurement types and are themselves procurement experts in construction. The Board would have to have a preset time to react to a request for review so as not to impede the procurement at hand and I would suggest that it be allowed that the process be allowed to proceed while the Board meets to keep things moving.

Cooperative Procurements

The VASCUPP contracts which include construction and are used extensively by the VASCUPP schools are very important and give the colleges and universities the flexibility to have these available so they can react in a timely manner when issues arise or when the need for speed is critical. I do not at all support

the language as submitted to not allow construction to be procured under cooperative contracts. If this is a good place for a higher ed exemption that would work but I think not allowing this to happen is a complete disservice to the agencies and localities that rely on these type of contracts to be able to meet the needs of their constituents.

Hope these help and Happy 4th of July to ALL.

Bert

From: awade@dls.virginia.gov [mailto:awade@dls.virginia.gov] **On Behalf Of** VPPA Study

Sent: Thursday, June 26, 2014 2:38 PM

Subject: Post Meeting Reminder; 6/19/2014

At the June 19, 2014, meeting of the work group it was decided, among other things, that the discussion draft for job order contracting (JOC) be reworked. As a part of the redrafting process, work group members are asked to provide suggestions and/or proposed language for a definition of "JOC" and for the limits or tiering of limits regarding the use of JOC. In addition, suggestions are requested for definitions of construction, public body, and capital project. All submissions must be received by 5:00 p.m. on July 3, 2014.

[Quoted text hidden]

Matthew Benka
Coalition for Procurement Reform



July 3, 2014

Maria Everett, Senior Attorney
Amigo Wade, Senior Attorney
Virginia Division of Legislative Services
General Assembly Building, 2nd Floor
201 North 9th Street
Richmond, Virginia 23219

Dear Maria and Amigo:

Thank you for the opportunity to submit written comments to the working group of the Special General Laws Joint Subcommittee Studying the Virginia Public Procurement Act.

On behalf of my client the Coalition for Procurement Reform (CPR) we submit the following eleven recommendations.

Cooperative Procurement

1. We are strongly opposed to the continued use of cooperative procurement for construction. The original intent of cooperative procurement was to support the joint purchase of pencils, paper, desks and other individual items which have little difference in price based on location. Construction however is unique by its very nature with very similar or exact buildings costing significantly different prices based on location.

The elimination of cooperative procurement for construction will:

- A. Ensure that local contractors are able to bid on and be made aware of local capital construction projects.
- B. Recognize that capital projects are unique, and there are limited, if any, fiscal benefits for construction through cooperative procurement.
- C. Ensure that cooperative procurement continues to be used for material purchases.
- D. Promote openness and fiscal responsibility in the public procurement process.

Job Order Contracting

2. Establish a definition for JOC as "Maintenance Services," not construction or construction services. The definition must reflect the intent of the law to support maintenance and repair, not construction.
3. There cannot be any piggybacking or cooperative procurements within JOC.
4. Monetary limits are necessary to prohibit excessive use of JOC. We recommend retaining the current statutory project limits with an annual cap of \$1 million per governmental entity.
5. Time limits must be associated with JOC; we believe the maximum renewal period should be two years.
6. Ensure there is oversight and reporting when it comes to all limits and this law in general.
7. Annual expenditures cannot exceed statutory limits; unused amounts cannot be carried forward.
8. JOC should not be used for architect and engineering services.

Other

9. We support the concept that all procuring officers must submit a conflict of interest statement and/or a financial disclosure statement to the Commonwealth of Virginia.
10. We support the concept that every procuring entity must submit documentation on any material, services, or monetary benefits they receive as a result of contracting under any procuring scenario.
11. We support a requirement for the issuance of a justification statement on all construction projects not procured through the Commonwealth standard IFB or RFP process.

Thank you for your thoughtfulness and leadership on these issues, it is much appreciated. If you have any questions, please feel free to contact me at any time at (804) 240-7984.

Sincerely,



Matt Benka

CC: Scott Shufflebarger, Coalition for Procurement Reform

Theodore Floyd Adams, III
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The Gordian Group

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July 3, 2014

Maria Everett, Senior Attorney
Amigo Wade, Senior Attorney
Virginia Division of Legislative Services
General Assembly Building, 2nd Floor
201 North 9th Street
Richmond, Virginia 23219

Dear Maria and Amigo:

Thank you for the opportunity to submit written comments to the working group of the Special General Laws Joint Subcommittee Studying the Virginia Public Procurement Act.

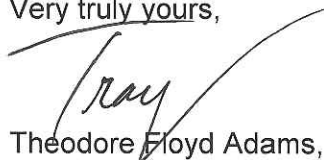
On behalf of my client, The Gordian Group, I am submitting the attached proposed amendments to the Code sections that have been the focus of the working group's efforts. These amendments address issues related to job order contracting and cooperative purchasing.

First, the definition of job order contracting is amended in order to address concerns about the use of job order contracting for new construction projects, and to ensure local pricing is established, on which local contractors may base their bids or proposals as may be relevant. The amendments also address the question of monetary limitations on the use of job order contracting. A third area of amendment relates to the use of cooperative procurement in the context of job order contracting.

Finally, the amendments make it clear that job order contracting will, by its nature, often include the procurement of ancillary professional services that may be required for a construction project.

Should you have any questions about these proposed amendments please do not hesitate to contact me.

Very truly yours,



Theodore Floyd Adams, III

TO: Maria Everett, Senior Attorney
Amigo Wade, Senior Attorney
Virginia Division of Legislative Services

FROM: Theodore F. Adams, III
McGuireWoods Consulting

DATE: July 3, 2014

RE: Virginia Procurement Law – Proposed Amendments (in response to working group feedback and draft documents)

**Title 2.2 – Administration of Government
Chapter 43 - Virginia Public Procurement Act**

§ 2.2-4301. Definitions.

As used in this chapter:

"Affiliate" means an individual or business that controls, is controlled by, or is under common control with another individual or business. A person controls an entity if the person owns, directly or indirectly, more than 10 percent of the voting securities of the entity. For the purposes of this definition "voting security" means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general partnership interest shall be deemed to be a voting security.

"Best value," as predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to a public body's needs.

"Business" means any type of corporation, partnership, limited liability company, association, or sole proprietorship operated for profit.

"Competitive negotiation" is a method of contractor selection that includes the following elements:

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposal and containing or

incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications that will be required of the contractor.

2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of proposals by posting on the Department of General Services' central electronic procurement website or other appropriate websites. Additionally, public bodies shall publish in a newspaper of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities. In addition, proposals may be solicited directly from potential contractors.

3. a. Procurement of professional services. The public body shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In addition, offerors shall be informed of any ranking criteria that will be used by the public body in addition to the review of the professional competence of the offeror. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the public body may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the public body shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the public body can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the Request for Proposal, a public body may award contracts to more than one offeror.

Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

A contract for architectural or professional engineering services relating to construction projects may be negotiated by a public body, for multiple projects provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the Request for

Proposal, and (iii) the contract term is limited to one year or when the cumulative total project fees reach the maximum cost authorized in this paragraph, whichever occurs first. For state public bodies, such contract, except those awarded for environmental, location, design and inspection work regarding highways and bridges by the Commissioner of Highways may be renewable for four additional one-year terms at the option of the public body. For local public bodies, including metropolitan planning organizations or planning district commissions, such contract may be renewable for four additional one-year terms at the option of the public body. Under such contract, the fair and reasonable prices, as negotiated, shall be used in determining the cost of each project performed, (a) except for those awarded for environmental, location, design and inspection work regarding highways and bridges by the Commissioner of Highways, the sum of all projects performed in one contract term shall not exceed \$500,000 or, in the case of a state agency, as defined in § 2.2-4347, such greater amount as may be determined by the Director of the Department of General Services, not to exceed \$1 million, except that in any locality or any authority, sanitation district, metropolitan planning organization or planning district commission with a population in excess of 80,000, or any city within Planning District 8, the sum of all such projects shall not exceed \$5 million and those awarded for any airport as defined in § 5.1-1 and aviation transportation projects, the sum of all such projects shall not exceed \$1.5 million, and (b) except for those awarded for environmental, location, design and inspection work regarding highways and bridges by the Commissioner of Highways or for architectural and engineering services for rail and public transportation projects by the Director of the Department of Rail and Public Transportation, the project fee of any single project shall not exceed \$100,000, or for architectural or engineering services for airports as defined in § 5.1-1 and aviation transportation projects, the project fee of any single project shall not exceed \$500,000, or, in the case of a state agency, such greater amount as may be determined by the Director of the Department of General Services not to exceed \$200,000, except that in any locality or any authority or sanitation district with a population in excess of 80,000, or any city within Planning District 8, such fee shall not exceed \$2 million. Any unused amounts from the first contract term shall not be carried forward to the additional term. Competitive negotiations for such contracts may result in awards to more than one offeror provided (1) the Request for Proposal so states and (2) the public body has established procedures for distributing multiple projects among the selected contractors during the contract term. Notwithstanding any other provision in this section, for contracts for environmental location, design and inspection work regarding highways and bridges by the Commissioner of Highways, the initial contract term shall be limited to two years or when the cumulative total project fees reach \$5 million, whichever occurs first. Such contract may be renewable for two additional one-year terms at the option of the Commissioner, and the sum of all projects in each one-year term shall not exceed \$5 million. For architectural and engineering services for rail and public transportation projects by the Director of the Department of Rail and Public Transportation, the sum of all projects in one contract term shall not exceed \$2 million and such contract may be renewable for two additional one-year terms at the option of the Commissioner.

Multiphase professional services contracts satisfactory and advantageous to the Department of Transportation for environmental, location, design and inspection work regarding highways and bridges may be negotiated and awarded based on a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases.

Multiphase professional services contracts satisfactory and advantageous to a local public body, including metropolitan planning organizations and planning district commissions, for environmental, location, design and inspection work regarding construction of infrastructure projects may be negotiated and awarded based on qualifications at a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to the procurement of any such contract, the local public body shall state the anticipated intended total scope of the project and determine in writing that the nature of the work is such that the best interests of such public body require awarding the contract.

b. Procurement of other than professional services. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the public body shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

"Competitive sealed bidding" is a method of contractor selection, other than for professional services, which includes the following elements:

1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the public body has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. When it is impractical to prepare initially a purchase description to support an award based on prices, an Invitation to Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

2. (Effective until January 1, 2014) Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by posting on the Department of General Services' central electronic procurement website or other appropriate websites. In addition, public bodies may publish in a newspaper of general circulation. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities. In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall include businesses selected from a list made available by the Department of Minority Business Enterprise.

2. (Effective January 1, 2014) Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by posting on the Department of General Services' central electronic procurement website or other appropriate websites. In addition, public bodies may publish in a newspaper of general circulation. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities. In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall include businesses selected from a list made available by the Department of Small Business and Supplier Diversity.

3. Public opening and announcement of all bids received.

4. Evaluation of bids based upon the requirements set forth in the invitation, which may include special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.

5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.

"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.

"Construction management contract" means a contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.

"Design-build contract" means a contract between a public body and another party in which the party contracting with the public body agrees to both design and build the structure, roadway or other item specified in the contract.

"Employment services organization" means an organization that provides employment services to individuals with disabilities that is an approved Commission on the Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Department for Aging and Rehabilitative Services.

"Goods" means all material, equipment, supplies, printing, and automated data processing hardware and software.

"Informality" means a minor defect or variation of a bid or proposal from the exact requirements of the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

"Job Order Contract" means an indefinite quantity, indefinite delivery, multi-task contract, under which contractors submit a coefficient or coefficients to be applied to a set of pre-established unit prices calculated using local prevailing wage rates, local material costs and local equipment costs for tasks that may be performed under the contract. Job order contracting may be used for any tasks other than new capital construction. (Effective July 1, 2014) "Job order contracting" means a method of procuring construction services by establishing a book of unit prices and then obtaining a contractor to perform work as needed using the prices, quantities, and specifications in the book as the basis of its pricing. The contractor may be selected through either competitive sealed bidding or competitive negotiation depending on the needs of the public body procuring the construction services. A minimum amount of work may be specified in the contract. The contract term and the project amount shall not exceed the limitations specified in § 2.2-4302.2 or 2.2-4303.

"Multiphase professional services contract" means a contract for the providing of professional services where the total scope of work of the second or subsequent phase of the contract cannot be specified without the results of the first or prior phase of the contract.

"New capital construction" means the construction of a new public building, structure or infrastructure facility, and shall not include demolition, alteration, addition, renovation, maintenance, repair, equipment acquisition or improvements to a public building, structure or infrastructure facility or any ancillary new construction required to properly complete any demolition, alteration, addition, renovation, maintenance, repair, equipment acquisition or improvements.

"Nonprofessional services" means any services not specifically identified as professional services in the definition of professional services.

"Potential bidder or offeror" for the purposes of §§ 2.2-4360 and 2.2-4364 means a person who, at the time a public body negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under the contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.

"Professional services" means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering.

"Professional services" shall also include the services of an economist procured by the State Corporation Commission.

"Public body" means any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in this chapter. "Public body" shall include any

metropolitan planning organization or planning district commission which operates exclusively within the Commonwealth of Virginia.

"Public contract" means an agreement between a public body and a nongovernmental source that is enforceable in a court of law.

"Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance, and who has been prequalified, if required.

"Responsive bidder" means a person who has submitted a bid that conforms in all material respects to the Invitation to Bid.

"Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified goods or nonprofessional services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening.

"Services" means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

§ 2.2-4302.2. (Effective July 1, 2014) Process for competitive negotiation.

A. The process for competitive negotiation shall include the following:

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities, specifications or qualifications that will be required;
2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of proposals by posting on the Department of General Services' central electronic procurement website or other appropriate websites. Additionally, public bodies shall publish in a newspaper of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities. In addition, proposals may be solicited directly from potential contractors. Any additional solicitations shall include certified businesses selected from a list made available by the Department of Small Business and Supplier Diversity; and
3. For goods, nonprofessional services, and insurance, selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole or primary determining factor. After negotiations have been conducted with each offeror so selected, the public body shall select the offeror which, in its opinion, has made the best proposal and provides the best value, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror; or
4. For professional services, the public body shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In addition, offerors shall be informed of any ranking criteria that will be used by the public body in addition to the review of the professional competence of the offeror. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the public body may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. In accordance with § 2.2-4342,

proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the public body shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious.

Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the public body can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price.

Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the Request for Proposal, a public body may award contracts to more than one offeror.

Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

B. For multiple projects, a contract for architectural or professional engineering services relating to construction projects, ~~or a contract for job order contracting~~, may be negotiated by a public body, provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the Request for Proposal, and (iii) the contract is limited to a one-year term or when the cumulative total project fees reach the maximum cost authorized in this subsection, whichever occurs first.

Such contracts may be renewable for four additional one-year terms at the option of the public body. The fair and reasonable prices as negotiated shall be used in determining the cost of each project performed and the sum of all projects performed in a one-year contract term shall not exceed \$500,000, except that for:

1. A state agency, as defined in § 2.2-4347, the sum of all projects performed in a one-year contract term shall not exceed \$1 million as may be determined by the Director of the Department of General Services;
2. Any locality or any authority, sanitation district, metropolitan planning organization or planning district commission with a population in excess of 80,000, or any city within Planning District 8, the sum of all projects performed in a one-year contract term shall not exceed \$5 million and those awarded for any airport as defined in § 5.1-1 and aviation transportation projects, the sum of all such projects shall not exceed \$1.5 million;
3. Architectural and engineering services for rail and public transportation projects by the Director of the Department of Rail and Public Transportation, the sum of all projects in a one-year contract term shall not exceed \$2 million. Such contract may be renewable for two additional one-year terms at the option of the Director;

4. Environmental location, design and inspection work regarding highways and bridges by the Commissioner of Highways, the initial contract term shall be limited to two years or when the cumulative total project fees reach \$5 million, whichever occurs first. Such contract may be renewable for two additional one-year terms at the option of the Commissioner, and the sum of all projects in each one-year contract term shall not exceed \$5 million; and

~~5. Job order contracting, the sum of all projects performed in a one-year contract term shall not exceed \$2 million.~~

Competitive negotiations for such contracts may result in awards to more than one offeror provided (i) the Request for Proposal so states and (ii) the public body has established procedures for distributing multiple projects among the selected contractors during the contract term.

C. For any single project, for (i) architectural or professional engineering services relating to construction projects, or (ii) ~~job order contracting~~, the project fee shall not exceed \$100,000, or for architectural or engineering services for airports as defined in § 5.1-1 and aviation transportation projects, the project fee of any single project shall not exceed \$500,000, except that for:

1. A state agency as defined in § 2.2-4347, the project fee shall not exceed \$200,000, as may be determined by the Director of the Department of General Services;

2. Any locality or any authority or sanitation district with a population in excess of 80,000, or any city within Planning District 8, the project fee shall not exceed \$2 million; and

~~3. Job order contracting, the project fee shall not exceed \$400,000.~~

D. For the purposes of subsections B and C, any unused amounts from the first contract term shall not be carried forward to the additional term.

E. Multiphase professional services contracts satisfactory and advantageous to the completion of large, phased, or long term projects may be negotiated and awarded based on a fair and reasonable price for the first phase only, where the completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to the entering into any such contract, the public body shall (i) state the anticipated intended total scope of the project and (ii) determine in writing that the nature of the work is such that the best interests of the public body require awarding the contract.

§ 2.2-4303. (Effective July 1, 2014) Methods of procurement.

A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or competitive negotiation as provided in this section, unless otherwise authorized by law.

B. Professional services shall be procured by competitive negotiation.

C. Upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, goods, services, or insurance may be procured by competitive negotiation. The writing shall document the basis for this determination.

Upon a written determination made in advance by (i) the Governor or his designee in the case of a procurement by the Commonwealth or by a department, agency or institution thereof or (ii) the local governing body in the case of a procurement by a political subdivision of the Commonwealth, that competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured through a licensed agent or broker selected in the manner provided for the procurement of things other than professional services set forth in § 2.2-4302.2. The basis for this determination shall be documented in writing.

D. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:

1. By the Commonwealth, its departments, agencies and institutions on a fixed price design-build basis or construction management basis under § 2.2-4306;
2. By any public body for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property;
3. By any governing body of a locality with a population in excess of 100,000, provided that the locality has the personnel, procedures, and expertise to enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis and shall otherwise be in compliance with the provisions of this section, § 2.2-4308, and other applicable law governing design-build or construction management contracts for public bodies other than the Commonwealth. The procedures of the local governing body shall be consistent with the two-step competitive negotiation process established in § 2.2-4302.2; or
4. As otherwise provided in § 2.2-4308.

E. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without

competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The public body shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the Department of General Services' central electronic procurement website or other appropriate websites, and in addition, public bodies may publish in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

F. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The public body shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the Department of General Services' central electronic procurement website or other appropriate websites, and in addition, public bodies may publish in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

G. A public body may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts for goods and services other than professional services if the aggregate or the sum of all phases is not expected to exceed \$100,000; however, such small purchase procedures shall provide for competition wherever practicable. For local public bodies, such purchase procedures may allow for single or term contracts for professional services without requiring competitive negotiation, provided the aggregate or the sum of all phases is not expected to exceed \$60,000.

For state public bodies, purchases under this subsection that are expected to exceed \$30,000 shall require the (i) written informal solicitation of a minimum of four bidders or offerors and (ii) posting of a public notice on the Department of General Services' central electronic procurement website or other appropriate websites. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

H. A state public body may establish purchase procedures, if adopted in writing, not requiring competitive negotiation for single or term contracts for professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; however such small purchase procedures shall provide for competition wherever practicable.

I. Upon a determination made in advance by a public body and set forth in writing that the purchase of goods, products or commodities from a public auction sale is in the best interests of the public, such items may be purchased at the auction, including online public auctions. Purchase of information technology and telecommunications goods and nonprofessional services from a public auction sale shall be permitted by any authority, department, agency, or institution of the Commonwealth if approved by the Chief Information Officer of the Commonwealth. The writing shall document the basis for this determination. However, bulk purchases of commodities used in road and highway construction and maintenance, and aggregates shall not be made by online public auctions.

J. The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning. However, bulk purchases of commodities used in road and highway construction and maintenance, and aggregates shall not be made by reverse auctioning.

§ 2.2-4303.1 Job Order Contracting

A. Job order contracts shall be awarded through competitive sealed bidding or competitive negotiation, depending on the needs of the public body procuring the construction services, and may be awarded to multiple bidders provided the public body has established procedures for distributing the projects among the contractors during the contract term. Public bodies may establish multiple job order contracts. Each contract shall be limited as set forth in Paragraph C.

B. Notwithstanding the provisions of this chapter, job order contracting may be used to procure professional services ancillary to a construction project.

C. Job order contracts shall be limited to a one-year term and may be renewable for four additional one-year terms. The sum of all individual job orders performed during a one-year contract term shall not exceed \$20 million unless approved pursuant to the provisions of subsection D. A single job order under a job order contract shall not exceed \$1,500,000, unless approved pursuant to the provisions of subsection D.

D. The limitations on job order contracts and individual job orders set-forth in Paragraph C may be exceeded with the written approval, in the case of contracts with the Commonwealth, of the Director of the Department of General Services and in the case of contracts with all other public bodies, the chief executive officer.

E. The limitations on job order contracts and individual job orders set-forth in Paragraph C shall be adjusted annually based on the Consumer Price Index as calculated by the Bureau of Labor Statistics

§ 2.2-4304. Cooperative procurement.

A. Any public body may participate in, sponsor, conduct, or administer a cooperative procurement agreement on behalf of or in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, the District of Columbia, or the U.S. General Services Administration, for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods and services.

A public body may purchase from another public body's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies, except for:

1. Contracts for architectural or engineering services; or
2. ~~Construction in excess of \$200,000 by a local public body from the contract of another local public body that is more than a straight line distance of 75 miles from the territorial limits of the location specified in the contract. The installation of artificial turf or other athletic surfaces shall not be subject to the limitations prescribed in this subdivision. Nothing in this subdivision shall be construed to prohibit sole source or emergency procurements awarded pursuant to subsections E and F of § 2.2-4303; or.~~
3. New capital construction (as defined in 2.2-4301.)

In instances where any authority, department, agency, or institution of the Commonwealth desires to purchase information technology and telecommunications goods and services from another public body's contract and the procurement was conducted on behalf of other public bodies, such purchase shall be permitted if approved by the Chief Information Officer of the Commonwealth. Any public body that enters into a cooperative procurement agreement with a county, city, or town whose governing body has adopted alternative policies and procedures pursuant to subdivisions A 9 and A 10 of § 2.2-4343 shall comply with the alternative policies and procedures adopted by the governing body of such county, city, or town.

B. Subject to the provisions of §§ 2.2-1110, 2.2-1111, 2.2-1120 and 2.2-2012, any authority, department, agency, or institution of the Commonwealth may participate in, sponsor, conduct, or administer a cooperative procurement arrangement on behalf of or in conjunction with public bodies, private health or educational institutions or with public agencies or institutions of the several states, territories of the United States, or the District of Columbia, for the purpose of combining requirements to effect cost savings or reduce administrative expense in any acquisition of goods and services, other than professional services. A public body may purchase from any authority, department, agency or institution of the Commonwealth's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies. In such instances, deviation from the procurement procedures set forth in this chapter and the administrative policies and procedures established to implement this chapter shall be permitted, if approved by the Director of the Division of Purchases and Supply.

Pursuant to § 2.2-2012, such approval is not required if the procurement arrangement is for telecommunications and information technology goods and services of every description. In instances where the procurement arrangement is for telecommunications and information technology goods and services, such arrangement shall be permitted if approved by the Chief Information Officer of the Commonwealth. However, such acquisitions shall be procured competitively.

Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.

C. As authorized by the United States Congress and consistent with applicable federal regulations, and provided the terms of the contract permit such purchases:

1. Any authority, department, agency, or institution of the Commonwealth may purchase goods and nonprofessional services, other than telecommunications and information technology, from a U.S. General Services Administration contract or a contract awarded by any other agency of the U.S. government, upon approval of the director of the Division of Purchases and Supply of the Department of General Services;
2. Any authority, department, agency, or institution of the Commonwealth may purchase telecommunications and information technology goods and nonprofessional services from a U.S. General Services Administration contract or a contract awarded by any other agency of the U.S. government, upon approval of the Chief Information Officer of the Commonwealth; and
3. Any county, city, town, or school board may purchase goods and nonprofessional services from a U.S. General Services Administration contract or a contract awarded by any other agency of the U.S. government.

Julie Whitlock
Virginia Department of General Services

Post Meeting Reminder; 6/19/2014

Whitlock, Julie (DGS) <Julie.Whitlock@dgs.virginia.gov>

Thu, Jul 3, 2014 at 1:44 PM

To: VPPA Study <vppastudy@dls.virginia.gov>

Cc: "Damico, Joe (DGS)" <Joe.Damico@dgs.virginia.gov>, "Gully, Ed (DGS)" <Ed.Gully@dgs.virginia.gov>, "Sliwoski, Richard (DGS)" <Richard.Sliwoski@dgs.virginia.gov>, "Owens, Steve" <SOwens@oag.state.va.us>

Amigo and Maria –

Attached is DGS's suggested A&E and JOC legislation. Limits would be:

- For A/E, no tiers. All projects limited to \$200k, with a \$1M annual limit

- For JOC, all job orders limited to \$500k. For large localities and statewide contracts, the term/annual limit would be \$50M. For contracts let by small localities and individual agencies, the term/annual limit would be \$10M.

Also attached is a change to the cooperative purchasing statute, naming DGS as the cooperative procurement source for construction and A/E.

As for definitions, I think "public body" is pretty commonly understood, so we are not suggesting a definition for that. Below are suggested definitions for construction and capital outlay construction project. The VPPA does not use "capital" (except in relation to an exemption for the Port Authority), so we suggest this definition be added over in the DGS statutes, perhaps around 2.2-1132. There may also be a need for a greater holistic scrub, as these phrases show up in multiple places (ie, capital outlay section, 2.2.1502; VPPA; and higher ed)):

"Construction" means furnishing labor, and furnishing and installing materials and equipment for a building, structure or highway; demolition; and drainage, dredging, excavation, grading or similar work upon real property. "Construction" includes building, altering, repairing, renovating, improving, or demolishing any structure.

"Capital Outlay Construction Project" means a construction project that exceeds the monetary, size or other threshold definition in the appropriation act applicable at the time funds were legislatively authorized.

Enjoy your 4th,

Julie

Julie M. Whitlock

Policy, Legislative & FOIA Analyst

Dept. of General Services

(804) 786-3311


(804) 225-1670 (direct)

From: awade@dls.virginia.gov [mailto:awade@dls.virginia.gov] **On Behalf Of** VPPA Study
Sent: Thursday, June 26, 2014 2:38 PM
Subject: Post Meeting Reminder; 6/19/2014

At the June 19, 2014, meeting of the work group it was decided, among other things, that the discussion draft for job order contracting (JOC) be reworked. As a part of the redrafting process, work group members are asked to provide suggestions and/or proposed language for a definition of "JOC" and for the limits or tiering of limits regarding the use of JOC. In addition, suggestions are requested for definitions of construction, public body, and capital project. All submissions must be received by 5:00 p.m. on July 3, 2014.

[Quoted text hidden]

2 attachments

 **cooperative bill_DGS_Jul3.docx**
13K

 **JOC bill_DGS_Jul3.docx**
21K

§ 2.2-4301. (Effective July 1, 2014) Definitions.

"Job order contracting" means a method of *procuring construction and ancillary professional services through an indefinite delivery, indefinite quantity term contract, using job orders as needed for individual, complete and useable projects, where the project price is based on a book of pre-established unit prices and a price "multiplier" or "coefficient" selected through either competitive sealed bidding or competitive negation. The price book may include unit prices for professional services, which can be purchased when these services are ancillary and directly related to a project.*

§ 2.2-4302.2. (Effective July 1, 2014) Process for competitive negotiation.

[delete paragraphs B-D and move into new section, 2.2-4303.2]

2.2-4303.2 Architectural and professional engineering term contracting; limitations.

[language moved from 2.2-4302.2]

~~B~~A. A contract for architectural or professional engineering services relating to multiple construction projects may be negotiated by a public body, provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the Request for Proposal, and (iii) the contract is limited to a one-year term or when the cumulative total project fees reach the maximum cost authorized in this subsection, whichever occurs first.

Such contracts may be renewable for four additional one-year terms at the option of the public body. The fair and reasonable prices as negotiated shall be used in determining the cost of each project performed. [break here]

B. The sum of all project fees performed in a one-year contract term shall not exceed \$500,000 \$1 million, except for the following.

1. Architectural and engineering services for rail and public transportation projects by the Director of the Department of Rail and Public Transportation, the sum of all projects in a one-year contract term shall not exceed \$2 million. Such contract may be renewable for two additional one-year terms at the option of the Director; and

2. Environmental location, design and inspection work regarding highways and bridges by the Commissioner of Highways, the initial contract term shall be limited to two years or when the cumulative total project fees reach \$5 million, whichever occurs first. Such contract may be renewable for two additional one-year terms at the option of the Commissioner, and the sum of all projects in each one-year contract term shall not exceed \$5 million

~~Competitive negotiations for such contracts may result in awards to more than one offeror provided (i) the Request for Proposal so states and (ii) the public body has established procedures for distributing multiple projects among the selected contractors during the contract term.~~

C. ~~[sentence moved from above]~~ *Competitive negotiations for ~~such~~ architectural or professional engineering services contracts for multiple projects may result in awards to more than one offeror provided (i) the Request for Proposal so states and (ii) the public body has established procedures for distributing multiple projects among the selected contractors during the contract term.* ~~For architectural or professional engineering services relating to performed under a multiple construction projects contract,~~ The fee for any single project shall not exceed \$2400,000, or for architectural or engineering services for airports as defined in § 5.1-1 and aviation transportation projects, the project fee of any single project shall not exceed \$500,000.

The limitations imposed upon single project fees pursuant to this subsection shall not apply to environmental, location, design, and inspection work regarding highways and bridges by the Commissioner of Highways or architectural and engineering services for rail and public transportation project by the Director of the Department of Rail and Public Transportations.

D. For the purposes of subsections B and C, any unused amounts from the first contract term shall not be carried forward to the additional term.

2.2-4303.1 Job order contracting; limitations and modifications.

A. Contractors may be selected for job order contracts through either competitive sealed bidding or competitive negotiation ~~depending on the needs of the public body procuring the construction services~~. A minimum amount of work may be specified in the contract. The contract term and the project, or job order amount shall not exceed the limitations specified in this section.

B. Job order contracts shall be limited to a one-year term or when the cumulative total job order fees reach the maximum authorized in this subsection, whichever occurs first. Such contracts may be renewable for four additional one-year terms at the option of the public body. The fair and reasonable prices as negotiated shall be used in determining the cost of each job performed.

Job order contracts may be awarded to multiple bidders or offerors, provided (i) the Request for Proposal so states and (ii) the public body has established procedures for distributing the projects among the contractors during the contract term.

C. *Individual job orders shall not exceed \$500,000.*

D. *The cumulative amount of all job orders under any contract shall not exceed the following limits during any term of the contract:*

(i) *For a contract procured by the Department of General Services or a local government entity where the population of the locality is over 200,000, the cumulative amount shall not exceed \$50,000,000.*

(ii) *For a contract procured by an agency other than the Department of General Services, or by a local government entity where the population of the locality is not greater than 200,000, the cumulative amount shall not exceed \$10,000,000.*

E. Any unused amounts from one contract term shall not be carried forward to any additional term.

F. *The execution of a given job order shall result in a complete and usable amount of construction which will stand-alone without additional action or funding. Project "splitting" (ie, the use of multiple job orders to complete a renovation of an entire building or to incrementally complete construction which results in the addition of square footage) is prohibited.*

G. *Professional services which are ancillary and directly related to a project may be ordered via the job order contract.*

H. *A job order for a single project may include provisions for modification during performance, but may not be increased by more than ten percent of the amount of the job order or \$50,000, whichever is greater, without the advance written approval of the Governor or his designee, in the case of state agencies, or the governing body, in the case of political subdivisions. In no event may the amount of any job order, without adequate consideration, be increased for any purpose, including, but not limited to, relief of a job order contractor from the consequences of an error in its cost estimate.*

§ 2.2-4304. Cooperative procurement.

A. Any public body may participate in, sponsor, conduct, or administer a cooperative procurement agreement on behalf of or in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, the District of Columbia, or the U.S. General Services Administration, for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods and services.

A public body may purchase from another public body's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies, except for:

1. Contracts for architectural or engineering services, other than those procured by the Department of General Services; or
2. Contracts for cConstruction, other than those procured by the Department of General Services in excess of \$200,000 by a local public body from the contract of another local public body that is more than a straight line distance of 75 miles from the territorial limits of the local public body procuring the construction. The installation of artificial turf or other athletic surfaces shall not be subject to the limitations prescribed in this subdivision. Nothing in this subdivision shall be construed to prohibit sole source or emergency procurements awarded pursuant to subsections E and F of § [2.2-4303](#).

In instances where any authority, department, agency, or institution of the Commonwealth desires to purchase information technology and telecommunications goods and services from another public body's contract and the procurement was conducted on behalf of other public bodies, such purchase shall be permitted if approved by the Chief Information Officer of the Commonwealth. Any public body that enters into a cooperative procurement agreement with a county, city, or town whose governing body has adopted alternative policies and procedures pursuant to subdivisions A 9 and A 10 of § [2.2-4343](#) shall comply with the alternative policies and procedures adopted by the governing body of such county, city, or town.

**Thomas Julian, Jr., P.E.,
Centennial Contractors Enterprises, Inc.**

VPPA Working Group Draft Legislation

Julian, Thomas <tjulian@cce-inc.com>

Thu, Jul 3, 2014 at 3:08 PM

To: VPPAStudy@dls.virginia.gov

Cc: "Bailey, Mark" <m Bailey@cce-inc.com>, "O'Neill, Mike" <mao@cce-inc.com>

Centennial Contractors Enterprises, Inc. ("Centennial") respectfully offers the attached suggested language, and the accompanying comments below, for your consideration.

Since its first contract at the Pentagon in 1991, Centennial has placed over two billion dollars in renovations under JOC programs with federal, state, and local government agencies. In that time, Centennial has worked with agencies across the Country and across many legislative scenarios. Our experience has helped us identify the defining characteristics of successful JOC programs for all stakeholders. I have used that knowledge to make the recommendations below and incorporated into the attached document.

As you know, JOC is a method for procuring construction that uses long-term, indefinite delivery, indefinite quantity (IDIQ) contracts, delivered on an on-call basis through firm, fixed price delivery orders based on pre-established unit prices. When used by the

government, JOC contractors competitively bid against each other for the framework contract, often based on which contractor would provide the best value to the purchaser.

Agencies use JOC for minor construction, renovation, small new construction and infrastructure upgrades. JOC helps owners who need to complete multiple small and medium sized projects simultaneously, quickly, and easily. The size of the contract impacts the cost effectiveness of JOC. The larger the contract, the greater number of projects are performed by the contractor's staff, thus reducing the indirect cost per project to the tax payer. In addition, subcontractors can offer more competitive pricing when there is a consistent flow of work through the contract. Material discounts are greater on the larger volume of work under a JOC contract. All of these savings to the tax-payers are realized when the JOC contractor develops its coefficient for the competitive bid.

To perform the work, the contractor usually reaches out to local businesses because it is impractical for the JOC contractor to keep the necessary number and variety of skilled tradesmen on its own staff. Instead, the JOC contractor relies on a diversified subcontractor

base within the owner's community. This helps the JOC contractor keep its costs low and predictable, and lets the owner's funds stay in the community and circulate through its local economies.

Flexibility is an inherent quality to a JOC program. The ability to respond quickly to a variety of projects is the hallmark of a quality JOC contractor. As such, Centennial believes in limiting the restrictions on JOC to the greatest extent possible. While there may always be procurement officials and contractors that look to exploit these limited restrictions, I do not believe this legislation should be so restrictive that it eliminates or reduces the value a JOC program may bring to an agency's purchasing program. From there, educated and qualified

procurement professionals can assess what brings the greatest value to their Agency. Our recommendations support that opinion.

Job Order Contracting Discussion Draft

In the definition of JOC starting on page 2 (§ 2.2-4301), line 39, I recommend two changes. The first change aligns with the Working Group's general consensus that Job Order Contracting is a means for procuring construction and not construction services. I endorse this position, as the deliverable under a JOC program is a completed construction project, not the services for obtaining or placing the construction project. In this manner, JOC differs from other "construction services" like construction management. I also recommend inserting the word "substantially" before the phrase "based on a book of pre-established unit prices." I recommend the definition recognize that regardless of the Unit Price Book selected by the procuring agency, it is impossible to have a unit price for each and every possible construction element that can exist in a given project or set of projects. By incorporating the word "substantially," the intent that a coefficient be applied to pre-established prices remains – yet the procuring agency would have flexibility if a portion of the construction under the JOC cannot be found in the pre-established unit prices.

On page 8, line 196 (§ 2.2-4303.1), I recommend the language relating to the minimum amount of work be revised from "may" to "shall." I recommend this change to avoid the contract between the agency owner and the contractor from failing for lack of consideration. By specifying a minimum dollar value (even as low as \$5,000) for procurement under the contract, the agency owner is giving consideration to the contractor to enter into the JOC. The failure to give consideration could result in the JOC being treated as a mere "Agreement to Agree" and not as a binding contract.

On page 8, line 199 (§ 2.2-4303.1), I recommend replacing the phrase "cumulative total project fees" with "cumulative total sum of all projects performed." This change eliminates any confusion about what constitutes a project fee versus the sum of all projects performed. This change also parallels the language in the second paragraph under § 2.2-4303.1(B).

On page 8, line 202 (§ 2.2-4303.1), I recommend increasing the one-year contract limit from \$2million to \$5million. This increase provides the procuring agencies with the flexibility they desire, and provides JOC contractors with some efficiencies of scale that provide cost savings that are passed along to the agencies.

On page 8, line 205 (§ 2.2-4303.1), I recommend increasing the single task order limit from \$400,000 to \$1,000,000. This increase provides the procuring agencies with flexibility. This increase also reflects the ever-escalating costs of construction, and should provide the procurement officials with flexibility – without the need for the General Assembly to revisit this threshold – for the next few years. As an aside, the federal government's JOCs may require higher levels of approval if the cost of the task order exceeds \$750,000. Often, the state agencies and municipalities within Virginia do not have the layers of bureaucracy present within the federal government, so it would be difficult to draft language that requires additional layers of approvals for increasing task order costs. Instead, the \$1,000,000 limit contemplates both the future needs of purchasing agents and a trust in those agents to manage their spending appropriately.

Respectfully,

Thomas W. Julian Jr., P.E.

Attorney-at-Law

Corporate Counsel

Risk Manager

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Job Order Contracting Discussion Draft - Tom Julian Comments.docx

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Job Order Contracting - Discussion Draft

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 2.2-4301, 2.2-4302.2, and 2.2-4337 of the Code of Virginia and to
2 amend the Code of Virginia by adding a section numbered 2.2-4303.1, relating to the Virginia
3 Public Procurement Act; job order contracting.

4 **Be it enacted by the General Assembly of Virginia:**

5 **1. That §§ 2.2-4301, 2.2-4302.2, and 2.2-4337 of the Code of Virginia are amended and reenacted**
6 **and that the Code of Virginia is amended by adding a section numbered 2.2-4303.1 as follows:**

7 **§ 2.2-4301. (Effective July 1, 2014) Definitions.**

8 As used in this chapter:

9 "Affiliate" means an individual or business that controls, is controlled by, or is under common
10 control with another individual or business. A person controls an entity if the person owns, directly or
11 indirectly, more than 10 percent of the voting securities of the entity. For the purposes of this definition
12 "voting security" means a security that (i) confers upon the holder the right to vote for the election of
13 members of the board of directors or similar governing body of the business or (ii) is convertible into, or
14 entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general
15 partnership interest shall be deemed to be a voting security.

16 "Best value," as predetermined in the solicitation, means the overall combination of quality,
17 price, and various elements of required services that in total are optimal relative to a public body's needs.

18 "Business" means any type of corporation, partnership, limited liability company, association, or
19 sole proprietorship operated for profit.

20 "Competitive negotiation" is the method of contractor selection set forth in § 2.2-4302.2.

21 "Competitive sealed bidding" is the method of contractor selection set forth in § 2.2-4302.1.

22 "Construction" means building, altering, repairing, improving or demolishing any structure,
23 building or highway, and any draining, dredging, excavation, grading or similar work upon real
24 property.

Job Order Contracting - Discussion Draft

25 "Construction management contract" means a contract in which a party is retained by the owner
26 to coordinate and administer contracts for construction services for the benefit of the owner, and may
27 also include, if provided in the contract, the furnishing of construction services to the owner.

28 "Design-build contract" means a contract between a public body and another party in which the
29 party contracting with the public body agrees to both design and build the structure, roadway or other
30 item specified in the contract.

31 "Employment services organization" means an organization that provides employment services
32 to individuals with disabilities that is an approved Commission on the Accreditation of Rehabilitation
33 Facilities (CARF) accredited vendor of the Department for Aging and Rehabilitative Services.

34 "Goods" means all material, equipment, supplies, printing, and automated data processing
35 hardware and software.

36 "Informality" means a minor defect or variation of a bid or proposal from the exact requirements
37 of the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or
38 delivery schedule for the goods, services or construction being procured.

39 "Job order contracting" means a method of procuring construction ~~services by establishing a~~
40 ~~book of unit prices and then obtaining a contractor to perform work as needed using the prices,~~
41 ~~quantities, and specifications in the book as the basis of its pricing. The contractor may be selected~~
42 ~~through either competitive sealed bidding or competitive negotiation depending on the needs of the~~
43 ~~public body procuring the construction services. A minimum amount of work may be specified in the~~
44 ~~contract. The contract term and the project amount shall not exceed the limitations specified in § 2.2-~~
45 ~~4302.2 or 2.2-4303 through an indefinite delivery, indefinite quantity term contract, using task orders as~~
46 ~~needed for individual projects, where the task order price is substantially based on a book of~~
47 ~~pre-established unit prices.~~

48 "Multiphase professional services contract" means a contract for the providing of professional
49 services where the total scope of work of the second or subsequent phase of the contract cannot be
50 specified without the results of the first or prior phase of the contract.

Job Order Contracting - Discussion Draft

51 "Nonprofessional services" means any services not specifically identified as professional
52 services in the definition of professional services.

53 "Potential bidder or offeror," for the purposes of §§ 2.2-4360 and 2.2-4364, means a person who,
54 at the time a public body negotiates and awards or proposes to award a contract, is engaged in the sale or
55 lease of goods, or the sale of services, insurance or construction, of the type to be procured under the
56 contract, and who at such time is eligible and qualified in all respects to perform that contract, and who
57 would have been eligible and qualified to submit a bid or proposal had the contract been procured
58 through competitive sealed bidding or competitive negotiation.

59 "Professional services" means work performed by an independent contractor within the scope of
60 the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law,
61 dentistry, medicine, optometry, pharmacy or professional engineering. "Professional services" shall also
62 include the services of an economist procured by the State Corporation Commission.

63 "Public body" means any legislative, executive or judicial body, agency, office, department,
64 authority, post, commission, committee, institution, board or political subdivision created by law to
65 exercise some sovereign power or to perform some governmental duty, and empowered by law to
66 undertake the activities described in this chapter. "Public body" shall include any metropolitan planning
67 organization or planning district commission which operates exclusively within the Commonwealth of
68 Virginia.

69 "Public contract" means an agreement between a public body and a nongovernmental source that
70 is enforceable in a court of law.

71 "Responsible bidder" or "offeror" means a person who has the capability, in all respects, to
72 perform fully the contract requirements and the moral and business integrity and reliability that will
73 assure good faith performance, and who has been prequalified, if required.

74 "Responsive bidder" means a person who has submitted a bid that conforms in all material
75 respects to the Invitation to Bid.

76 "Reverse auctioning" means a procurement method wherein bidders are invited to bid on
77 specified goods or nonprofessional services through real-time electronic bidding, with the award being

Job Order Contracting - Discussion Draft

78 made to the lowest responsive and responsible bidder. During the bidding process, bidders' prices are
79 revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time
80 period established for bid opening.

81 "Services" means any work performed by an independent contractor wherein the service
82 rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment,
83 materials and supplies.

§ 2.2-4302.2. (Effective July 1, 2014) Process for competitive negotiation.

85 A. The process for competitive negotiation shall include the following:

86 1. Issuance of a written Request for Proposal indicating in general terms that which is sought to
87 be procured, specifying the factors that will be used in evaluating the proposal and containing or
88 incorporating by reference the other applicable contractual terms and conditions, including any unique
89 capabilities, specifications or qualifications that will be required;

90 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of
91 proposals by posting on the Department of General Services' central electronic procurement website or
92 other appropriate websites. Additionally, public bodies shall publish in a newspaper of general
93 circulation in the area in which the contract is to be performed so as to provide reasonable notice to the
94 maximum number of offerors that can be reasonably anticipated to submit proposals in response to the
95 particular request. Posting on the Department of General Services' central electronic procurement
96 website shall be required of any state public body. Local public bodies are encouraged to utilize the
97 Department of General Services' central electronic procurement website to provide the public with
98 centralized visibility and access to the Commonwealth's procurement opportunities. In addition,
99 proposals may be solicited directly from potential contractors. Any additional solicitations shall include
100 certified businesses selected from a list made available by the Department of Small Business and
101 Supplier Diversity; and

102 3. For goods, nonprofessional services, and insurance, selection shall be made of two or more
103 offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of
104 the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal.

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105 Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but
106 need not be the sole or primary determining factor. After negotiations have been conducted with each
107 offeror so selected, the public body shall select the offeror which, in its opinion, has made the best
108 proposal and provides the best value, and shall award the contract to that offeror. When the terms and
109 conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more
110 than one offeror. Should the public body determine in writing and in its sole discretion that only one
111 offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under
112 consideration, a contract may be negotiated and awarded to that offeror; or

113 4. For professional services, the public body shall engage in individual discussions with two or
114 more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with
115 emphasis on professional competence, to provide the required services. Repetitive informal interviews
116 shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and
117 performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In
118 addition, offerors shall be informed of any ranking criteria that will be used by the public body in
119 addition to the review of the professional competence of the offeror. The Request for Proposal shall not,
120 however, request that offerors furnish estimates of man-hours or cost for services. At the discussion
121 stage, the public body may discuss nonbinding estimates of total project costs, including, but not limited
122 to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. In accordance
123 with § 2.2-4342, proprietary information from competing offerors shall not be disclosed to the public or
124 to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation
125 factors published in the Request for Proposal and all information developed in the selection process to
126 this point, the public body shall select in the order of preference two or more offerors whose
127 professional qualifications and proposed services are deemed most meritorious.

128 Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract
129 satisfactory and advantageous to the public body can be negotiated at a price considered fair and
130 reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first

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131 shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until
132 such a contract can be negotiated at a fair and reasonable price.

133 Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in
134 the Request for Proposal, a public body may award contracts to more than one offeror.

135 Should the public body determine in writing and in its sole discretion that only one offeror is
136 fully qualified or that one offeror is clearly more highly qualified and suitable than the others under
137 consideration, a contract may be negotiated and awarded to that offeror.

138 B. ~~For multiple projects, a~~ A contract for architectural or professional engineering services
139 relating to multiple construction projects, ~~or a contract for job order contracting,~~ may be negotiated by a
140 public body, provided (i) the projects require similar experience and expertise, (ii) the nature of the
141 projects is clearly identified in the Request for Proposal, and (iii) the contract is limited to a one-year
142 term or when the cumulative total project fees reach the maximum cost authorized in this subsection,
143 whichever occurs first.

144 Such contracts may be renewable for four additional one-year terms at the option of the public
145 body. The fair and reasonable prices as negotiated shall be used in determining the cost of each project
146 performed and the sum of all projects performed in a one-year contract term shall not exceed \$500,000,
147 except that for:

148 1. A state agency, as defined in § 2.2-4347, the sum of all projects performed in a one-year
149 contract term shall not exceed \$1 million as may be determined by the Director of the Department of
150 General Services;

151 2. Any locality or any authority, sanitation district, metropolitan planning organization or
152 planning district commission with a population in excess of 80,000, or any city within Planning District
153 8, the sum of all projects performed in a one-year contract term shall not exceed \$5 million and those
154 awarded for any airport as defined in § 5.1-1 and aviation transportation projects, the sum of all such
155 projects shall not exceed \$1.5 million;

156 3. Architectural and engineering services for rail and public transportation projects by the
157 Director of the Department of Rail and Public Transportation, the sum of all projects in a one-year

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158 contract term shall not exceed \$2 million. Such contract may be renewable for two additional one-year
159 terms at the option of the Director; ~~and~~

160 4. Environmental location, design and inspection work regarding highways and bridges by the
161 Commissioner of Highways, the initial contract term shall be limited to two years or when the
162 cumulative total project fees reach \$5 million, whichever occurs first. Such contract may be renewable
163 for two additional one-year terms at the option of the Commissioner, and the sum of all projects in each
164 one-year contract term shall not exceed \$5 million; ~~and~~

165 ~~5. Job order contracting, the sum of all projects performed in a one year contract term shall not~~
166 ~~exceed \$2 million.~~

167 Competitive negotiations for such contracts may result in awards to more than one offeror
168 provided (i) the Request for Proposal so states and (ii) the public body has established procedures for
169 distributing multiple projects among the selected contractors during the contract term.

170 C. For ~~any single project, for (i)~~ architectural or professional engineering services relating to a
171 multiple construction projects, or (ii) job order contracting project contract, the ~~project~~ fee for any single
172 project shall not exceed \$100,000, or for architectural or engineering services for airports as defined in §
173 5.1-1 and aviation transportation projects, the project fee of any single project shall not exceed
174 \$500,000, except that for:

175 1. A state agency as defined in § 2.2-4347, ~~the project-such~~ fee shall not exceed \$200,000, as
176 may be determined by the Director of the Department of General Services; ~~and~~

177 2. Any locality or any authority or sanitation district with a population in excess of 80,000, or
178 any city within Planning District 8, ~~the project-such~~ fee shall not exceed \$2 million; ~~and~~

179 ~~3. Job order contracting, the project fee shall not exceed \$400,000.~~

180 The limitations imposed upon single project fees pursuant to this subsection shall not apply to
181 environmental, location, design, and inspection work regarding highways and bridges by the
182 Commissioner of Highways or architectural and engineering services for rail and public transportation
183 projects by the Director of the Department of Rail and Public Transportation.

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184 D. For the purposes of subsections B and C, any unused amounts from the first contract term
185 shall not be carried forward to the additional term.

186 E. Multiphase professional services contracts satisfactory and advantageous to the completion of
187 large, phased, or long term projects may be negotiated and awarded based on a fair and reasonable price
188 for the first phase only, where the completion of the earlier phases is necessary to provide information
189 critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to the entering into
190 any such contract, the public body shall (i) state the anticipated intended total scope of the project and
191 (ii) determine in writing that the nature of the work is such that the best interests of the public body
192 require awarding the contract.

193 § 2.2-4303.1. Job order contracting; limitations.

194 A. Contractors may be selected for job order contracts through either competitive sealed bidding
195 or competitive negotiation depending on the needs of the public body procuring the construction
196 services. A minimum amount of work may shall be specified in the contract. The contract term
197 and the project amount shall not exceed the limitations specified in this section.

198 B. Job order contracts shall be limited to a one-year term or when the cumulative total
199 sum of all projects fees performed reach the maximum cost authorized in this section, whichever
200 occurs first. Such contracts may be renewable for four additional one-year terms at the option of the
201 public body. The fair and reasonable prices as negotiated shall be used in determining the cost of each
202 project performed and the sum of all projects performed in a one-year contract term shall not exceed \$2
203 5 million.

204 Job order contracts may be awarded to multiple bidders or offerors, provided (i) the Request for
205 Proposal so states and (ii) the public body has established procedures for distributing the projects among
206 the contractors during the contract term.

206 C. A single task order under a job order contract shall not exceed \$400,0001 million.

207 D. Any unused amounts from one contract term shall not be carried forward to any additional
208 term.

209 **§ 2.2-4337. Performance and payment bonds.**

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210 A. Except as provided in subsection H, upon the award of any (i) public construction contract
211 exceeding \$500,000 awarded to any prime contractor; (ii) construction contract exceeding \$500,000
212 awarded to any prime contractor requiring the performance of labor or the furnishing of materials for
213 buildings, structures or other improvements to real property owned or leased by a public body; (iii)
214 construction contract exceeding \$500,000 in which the performance of labor or the furnishing of
215 materials will be paid with public funds; or (iv) transportation-related projects exceeding \$350,000 that
216 are partially or wholly funded by the Commonwealth, the contractor shall furnish to the public body the
217 following bonds:

218 1. A performance bond in the sum of the contract amount conditioned upon the faithful
219 performance of the contract in strict conformity with the plans, specifications and conditions of the
220 contract. For transportation-related projects authorized under § 33.1-12, such bond shall be in a form and
221 amount satisfactory to the public body.

222 2. A payment bond in the sum of the contract amount. The bond shall be for the protection of
223 claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the
224 contract was awarded, or to any subcontractors, in furtherance of the work provided for in the contract,
225 and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or
226 performed in the furtherance of the work. For transportation-related projects authorized under § 33.1-12
227 and partially or wholly funded by the Commonwealth, such bond shall be in a form and amount
228 satisfactory to the public body.

229 "Labor or materials" shall include public utility services and reasonable rentals of equipment, but
230 only for periods when the equipment rented is actually used at the site.

231 B. For nontransportation-related construction contracts in excess of \$100,000 but less than
232 \$500,000, where the bid bond requirements are waived, prospective contractors shall be prequalified for
233 each individual project in accordance with § 2.2-4317.

234 C. Each of the bonds shall be executed by one or more surety companies selected by the
235 contractor that are authorized to do business in Virginia.

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236 D. If the public body is the Commonwealth, or any agency or institution thereof, the bonds shall
237 be payable to the Commonwealth of Virginia, naming also the agency or institution thereof. Bonds
238 required for the contracts of other public bodies shall be payable to such public body.

239 E. Each of the bonds shall be filed with the public body that awarded the contract, or a
240 designated office or official thereof.

241 F. Nothing in this section shall preclude a public body from requiring payment or performance
242 bonds for construction contracts below \$500,000 for nontransportation-related projects or \$350,000 for
243 transportation-related projects authorized under § 33.1-12 and partially or wholly funded by the
244 Commonwealth.

245 G. Nothing in this section shall preclude the contractor from requiring each subcontractor to
246 furnish a payment bond with surety thereon in the sum of the full amount of the contract with such
247 subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are
248 directly with the subcontractor for performing labor and furnishing materials in the prosecution of the
249 work provided for in the subcontract.

250 H. The performance and payment bond requirements of subsection A for transportation-related
251 projects that are valued in excess of \$250,000 but less than \$350,000 may only be waived by a public
252 body if the bidder provides evidence, satisfactory to the public body, that a surety company has declined
253 an application from the contractor for a performance or payment bond.

254 I. Where a job order contract is used, the provisions of this section shall apply to each
255 individual project or task order; but shall not apply to the overall job order contract term contract.

256 #

**Patrick Cushing
Williams Mullen**

*Virginia Society of the American Institute of Architects
American Council of Engineering Companies Virginia*

WILLIAMS MULLEN

Direct Dial: 804.420.6541
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July 3, 2014

Maria Everett, Senior Attorney
Amigo Wade, Senior Attorney
Virginia Division of Legislative Services
General Assembly Building, 2nd Floor
201 North 9th Street
Richmond, Virginia 23219

Dear Maria and Amigo:

Listed below are the responses to your request for comments regarding various definitions within the Virginia Public Procurement Act. On behalf of the Virginia Society of the American Institute of Architects and the American Council of Engineering Companies of Virginia we thank you for this opportunity.

Definition of Construction Services

The term “construction services” is used within the definition of job order contracting (line 39) as well as in the new Section 2.2-4303.1. “Construction services” is not defined in the VPPA. In the context of determining how a public body procures goods and services, the VPPA uses very specific terms of art: “professional services”, “nonprofessional services”, and “construction”. The use of “construction services” strays from these terms of art. On lines 39 and 195-196, following the word “construction”, strike the word “services”. Staff should also review lines 26 and 27 and consider striking the word “services” after “construction”.

Definition of Construction

The definition of construction should clarify that “architectural and engineering services” are not included in the definition of “construction”.

JOC Limits

When JOC was first authorized in Virginia, it was marketed to the General Laws committee and the vendor community as a contract vehicle intended to be used to replace “light bulbs” and “doors”. Both VSAIA and ACECVA followed the legislation closely and did not oppose the creation of the JOC because of the assurances we were provided at the time. After the last workgroup meeting and confusion regarding the definition of JOC, we strongly recommend that clarifications be made to ensure JOC is not used to procure architectural and engineering services. If this is accomplished we have no comment on changes to the JOC limits.

WILLIAMS MULLEN

July 3, 2014
Page 2

Cooperative Procurement

Architectural and Engineering services are currently exempt from procurement through cooperative procurement. We support this existing exemption and would adamantly oppose any effort to change the code to authorize the use of cooperative procurement for architectural and engineering services.

Definition of Public Body

As long as the appropriate clarifications are made to ensure JOC is not used to procure architectural and engineering services AND as long as the prohibition on the use of cooperative procurement stays in place for architectural and engineering services, we have no comment on any changes to the definition of "public body". Should the definition of "public body" be amended, the workgroup should consider the implications of having multiple definitions within the VPPA and ensure public and quasi-public bodies in Virginia do not find a way to circumvent the VPPA.

Definition of Capital Project

For purposes of the JOC draft, we strongly support the need for clarifications to ensure JOC is not used to procure architectural and engineering services. If that clarification is made, we have no comment on the definition of capital project.

Sincerely,



Patrick Cushing

Cc: Nancy Israel
Duncan Abernathy
Reggie Jones
Chris Stone

Hunter Merrill, 2nd Vice President
Virginia Association of Roofing Professionals

VARP Position on Cooperative Procurement

Virginia Association of Roofing Professionals <mail@varoofingprofessionals.org> Thu, Jul 3, 2014 at 3:51 PM
To: "MEverett@dls.virginia.gov" <MEverett@dls.virginia.gov>, "awade@dls.virginia.gov" <awade@dls.virginia.gov>
Cc: Hunter Merrill <hunter@mntroof.com>, Karl Seamster <kseamster@katchmark.com>, Joe Vieni <jvieni@roofservicescorp.com>, Trace Carson <trace@catapult-inc.com>

TO: Special General Laws Joint Subcommittee Studying the Virginia Public Procurement Act

Maria Everett, Senior Attorney

Amigo Wade, Senior Attorney

The Virginia Association of Roofing Professionals' position on cooperative procurement is that the use of cooperative procurement should be eliminated from all forms of construction projects.

Hunter Merrill, Chair, VARP Government Affairs Committee

Cc: Karl Seamster, VARP President

Joe Vieni, VARP 1st Vice President

Trace Carson, VARP Executive Director

**Jeff Southard, Executive Vice President
Virginia Transportation Construction Alliance**

Post Meeting Reminder; 6/19/2014

Jeff Southard <jeff@vtca.org>

Mon, Jun 30, 2014 at 3:00 PM

To: "awade@dls.virginia.gov" <awade@dls.virginia.gov>, "VPPAStudy@dls.virginia.gov" <VPPAStudy@dls.virginia.gov>

Cooperative Procurement:

I am strongly opposed to the continued use of cooperative procurement for construction. The original intent of cooperative procurement was to support the joint purchase of individual items that have little difference in price based on location. Construction services, because of their unique nature, do not fit within the intent of cooperative procurement. The elimination of cooperative procurement for construction services ensures openness and fiscal responsibility in the procurement process as all local contractors will be able to bid on capital construction projects.

Job Order Contracting:

There should be a definition for JOC to include maintenance services not construction or construction services. The definition should reflect the original intent of the law to support maintenance and repair not capital construction. In addition, we should include language that prohibits linking or "piggy backing" cooperative procurement with JOC; and monetary and time limits that prohibit excessive use/abuse of JOC. I support the current \$1 million cap and believe that a two year time limit for renewals is sufficient. JOC should not be used for the procurement of professional services.

Other:

Procurement officers should have to submit conflict of interest/financial disclosure statements to the Commonwealth. Similarly, entities using JOC or Cooperative Procurement should have to report any financial or programmatic benefit they receive from participating in such a procurement. In addition there needs to be an appeal process where potential abuses of procurement procedures can be resolved.

Jeffrey C. Southard

Executive Vice President

Virginia Transportation Construction Alliance

620 Moorefield Park Drive

**William Hefty, Jeff Gore
Hefty and Wiley PC**

*Virginia Association of Counties
Virginia Municipal League
Virginia Association of Governmental Purchasing*

Virginia Public Procurement Act Joint General Laws Study Committee
Comments on pending issues before work groups 1 and 2
Submitted on behalf of:

Virginia Association of Counties
Virginia Municipal League
Virginia Association of Governmental Purchasing

July 3, 2014

Work Group 1:

Cooperative Procurement

- We oppose removing construction entirely from cooperative procurement.
- We support instead, setting a reasonable dollar limit (\$1 million) for construction projects that can be procured cooperatively.
- We do not support creating a new “tiered” system that would establish different rules for entities based on size, population or budget
- We support removing the current distance limitation on cooperative construction procurement
- We support adding “insurance” to services that may be procured cooperatively
- We support amending current law to clarify that construction falls under the small purchase procedures as well

Job Order Contracting

- We support increasing current statutory limits from \$2M to \$10M for total contract and from \$400k to \$500k for single task orders.
- We support maintaining both competitive sealed bidding and competitive negotiation under JOC
- We support amendments to clarify that JOC cannot be used for A&E services if those services are not procured through competitive negotiation
- We do not think there is a need to exclude a subset of “construction” (e.g. new capital construction) from JOC, since time and dollar limits are already in place

Architectural and Engineering term contracts

- We support increasing the dollar limits on overall contract and on each project for each tiered classification of public entity.