

**Integrated Government Advisory Committee  
Tuesday, November 16, 2004, 1:30 p.m.  
General Assembly Building, House Room C  
Richmond Virginia**

The Integrated Government Advisory Committee, charged with exploring the issues created or enhanced by the transformation of government in the electronic age, met for the final time on Tuesday, November 16, 2004. At this meeting, the Committee received an update from VITA concerning its procurement contracts, discussed legislative proposals from VITA, and continued discussing the electronic meetings legislative proposal.

***Terms and Conditions of Standardized Contracts***

Kelley Hellams, Executive Policy Analyst, Supply Chain Management with the Virginia Information Technologies Agency (VITA), briefed the Committee on recent work in standardizing procurement contracts. VITA's new approach to procurement is to memorialize the deal with the contract (i.e. "within the four corners of the document") instead of referencing other documents and provisions, such as the request for proposal (RFP).

Supply Chain Management is in the process of finalizing contract templates for hardware with and without maintenance, service, software licensing, and service level agreements. These new templates move into practice a concept that limits mandatory terms and conditions to those required by the Code of Virginia, and all other terms and conditions will be negotiable. VITA has eliminated as a category "must have" terms and conditions. In addition, the deal, parties and pricing will be readily apparent in the contract, as opposed to being lost within hundreds of pages of supporting documentation.

Ms. Hellams indicated that the introducing these contract templates is a significant step towards achieving consistency in contract management. Now, all supply chain management strategic sourcing consultants will have the same starting point regarding contract terms. The contract will no longer be dependent upon the customer or procurement professional. It will be product- and service- driven.

Ms. Hellams provided examples of the new contract terms by setting forth the old and new language regarding warranty services, use of alternative dispute resolution, and confidentiality. These examples demonstrated VITA's attempt to memorialize the deal within the contract to produce more effective contracts. The new contracts focus on using plain and clear language and provide a basis for fact-based negotiation. With the new contracts, one will be able to read the contract and know what is being procured, service level requirements, and the roles and responsibilities of both parties. In addition, the terms are more balanced between the Commonwealth's and supplier's needs. These changes provide the supplier and the Commonwealth with greater predictability by removing the guesswork from contract management and creating more efficient contract administration. The templates incorporate commercially standard contracting language and practices, which is new to state government, but familiar to suppliers.

Introducing the templates is a significant component of moving from traditional procurement to strategic sourcing. The contract is introduced early in the sourcing process and is integral to the sourcing selection. Procurement professionals will use the contract both in evaluating proposals and in identifying and mitigating risks. They will need fewer resources to reach better decisions in a shorter period of time. Including the contract with the RFPs makes contract negotiation part of the sourcing process, thus promoting effective service level agreements, performance-based contracting, and an expectation that the agreements include ongoing cost reduction and performance improvement.

In addition to VITA contracts, Supply Chain Management is responsible for managing statewide and infrastructure-related information technologies (IT) agreements under VITA's authority through agency transitions. Supply Chain Management asked agencies to submit copies of their IT contract items (i.e., any commitment or ongoing obligation) for analysis. Thus far, it has analyzed over 1,100 contract items. Approximately 400 contract items expired prior to the agencies' transition to VITA and the remaining 700 items have been transitioned. Some of the contract items reflect non-contract purchases, the use of which deprives the Commonwealth of the opportunity to leverage buying power and capture other benefits of consolidation. After the transition of large agencies is complete prior to December 31, 2004, Supply Chain Management will be the central repository for nearly all Commonwealth IT contracts. The contract consolidation process illustrates the need for strategic sourcing.

Ms. Hellams also provided the Committee with an updated copy of its long-term and short-term goals matrix developed and discussed over the previous few years. The Committee identified several goals in procurement that it hoped the newly-formed VITA would address. The updated matrix indicated that the administrative goals within VITA's responsibilities are complete or ongoing, such as establishing a single entity and review process and creating a reasonable limitation of liability clause.

### *VITA Legislative Proposals*

Diane Horvath, Policy and Planning Manager at VITA, presented the Committee with five legislative proposals. She indicated that the agency had not asked the Administration to include these proposals in its package for the 2005 Session. However, it still considered these items ripe for consideration.

The first proposal related to eliminating a preference in the Virginia Public Procurement Act (VPPA) for competitive sealed bidding. Currently to use competitive negotiation, the Code of Virginia (§ 2.2-4303) requires a public body to document, in writing, that competitive sealed bidding is either not practicable or not fiscally advantageous. VITA supports eliminating the written finding and leaving the choice of procurement methodology to the procurement professionals. VITA related that the Department of General Services also supports this change.

The second proposal would amend a public bodies' authorization to purchase IT goods and services through online public auctions or cooperative procurement arrangements. The General Assembly authorized public bodies to procure goods and services from public auctions and cooperative arrangements. VITA's proposal would require a public body to seek approval from

the Chief Information Officer (CIO) before pursuing these approaches when procuring IT goods and services. Public bodies already must seek approval from the CIO for procurement of IT goods and services from other methods, including using the federal General Services Agency's schedules. This proposal would require the approval process for all IT procurements, regardless of the method used.

The third proposal concerned using alternative dispute resolution (ADR). VITA is committed to using ADR as a valid and recognized mechanism to resolve procurement protests, and has successfully used mediation to resolve at least one procurement protest. VITA asked for clear legislative authorization to conduct a three-year pilot project where the agency could promulgate administrative rules requiring vendors to exhaust ADR remedies before filing a protest in court. VITA would collect data about the pilot project to help determine if a more permanent change to the VPPA is warranted. VITA suggests that such a pilot project be authorized for three years.

The fourth proposal addressed a meeting exemption under the Virginia Freedom of Information Act (FOIA). Currently, FOIA provides an exemption for certain proprietary records relating to the Public-Private Education Facilities and Infrastructure Act (PPEA) and the Public-Private Transportation Act (PPTA). It also contains a meetings exemption for discussing the exempt proprietary records that relate to the PPTA. This proposal would amend the meetings exemption to include discussion of the exempt PPEA records, to provide consistency between the existing records and meetings exemptions, as well as between the PPTA and PPEA.

The final proposal requested the codifying, or extending until July 1, 2007, the Act of Assembly implementing electronic meetings. Currently, the Information Technology Investment Board, the Virginia Geographic Information Network Advisory Board and the Wireless E-911 Services Board use these provisions. The Committee already began examining this issue.

The Committee did not endorse any of the proposals, but instead recommended them for further review. Regarding the ADR pilot project, Delegate Nixon cautioned that any legislation should include a provision that would allow a protestor to proceed directly to court if pursuing ADR would cause an undue burden, such as financial hardship.

### *Electronic Communications Meetings*

Finally, Lisa Wallmeyer, JCOTS Staff Attorney, updated the Committee on the electronic meetings proposal discussed at a prior meeting. A subcommittee of the Freedom of Information Advisory Council was considering similar legislation. JCOTS staff met with the subcommittee to discuss the two proposals.

The FOIA Subcommittee's proposal contained some provisions identical to the JCOTS Advisory Committee proposal, such as shortening the notice required for electronic meetings to seven working days and eliminating the provisions allowing a public body to hold only 25 percent of its meetings annually using electronic communications. The FOIA proposal also included provisions requiring posting the notice on the Internet, including a contact phone number in case of technical difficulties, and requiring the public bodies to hold at least one physical meeting a year (in lieu of the 25 percent limitation). The FOIA Subcommittee agreed to recommend most

of JCOTS' proposals to the FOIA Council. However, the proposals differed in two provisions - (i) whether to require that a quorum be assembled in one physical location or allowing it to be dispersed across locations in Virginia that are open to the public, and (ii) whether all remote sites must be open to the public. The FOIA draft required a physically assembled quorum with all remote sites open to the public; the JCOTS draft allowed a disperse quorum and did not require that all remote sites be open.

The Committee incorporated all of the FOIA Council's proposals that did not conflict with its initial draft. However, it retained the disputed provisions, and suggested that JCOTS continue discussing them.