

**WORKGROUP NO. 1**  
**CONSTRUCTION AND DESIGN PROFESSIONAL SERVICES**  
**SCOPE OF WORK**  
**2014**

	<b>GENERAL ISSUE CATEGORY</b>	<b>SOURCE</b>	<b>COMMENT</b>	<b>NOTES</b>
1.	<b>Applicability/Exemptions</b> <i>Subcategory: Method of procurement</i>	<b>VITA</b>	Put competitive negotiation on equal footing with competitive sealed bidding.	
2.	<b>Applicability/Exemptions</b> <i>Subcategory: Nature of public body</i>	<b>Level 3 Higher Ed.</b> <i>(University of Virginia)</i>	Maintain current procurement and capital outlay authority provided to Level 3 Public Institutions of Higher Education.	
3.	<b>Applicability/Exemptions</b> <i>Subcategory: Method of procurement</i>	<b>Large Locality</b> <i>(Fairfax Co.)</i>	Avoid proposed changes that are in conflict with the intent of the VPPA.  <i>(Example: Changes based on (i) an Attorney General Opinion stating that a public body cannot consider factors that are not related to the goods or services being procured, (ii) enforcement of documented worker status, and (iii) preferences)</i>	
4.	<b>Applicability/Exemptions</b> <i>Subcategory: Readability/Internal consistency</i>	<b>Large Locality</b> <i>(Fairfax Co.)</i>	Review the cumulative effect of changes over several sessions. As a whole, these changes have adversely affected readability and created conflicting provisions.	

	<b>GENERAL ISSUE CATEGORY</b>	<b>SOURCE</b>	<b>COMMENT</b>	<b>NOTES</b>
5.	<b>Applicability/Exemptions</b> <i>Subcategory: Nature of public body</i>	<b>Small Locality</b> <i>(Gloucester Co.)</i>	Review use of population thresholds associated with application of the VPPA.	
6.	<b>Applicability/Exemptions</b> <i>Subcategory: Readability</i>	<b>Small Locality</b> <i>(Gloucester Co.)</i>	Variety of exceptions and exemptions to the Act make it difficult to read, follow, and interpret.	
7.	<b>Applicability/Exemptions</b> <i>Subcategory: Method of procurement</i>	<b>Design Professionals</b> <i>(VSAIA, ACEC)</i>	Public bodies would benefit from clarification regarding the use of term contracts. In particular how the selected professions are used after the term contract has been established.	
8.	<b>Applicability/Exemptions</b> <i>Subcategory: Method of procurement</i>	<b>Design Professionals</b> <i>(VSAIA, ACEC)</i>	All decisions concerning procurement of professional services should be contingent upon first identifying those most qualified to provide the required services without regard to price.	
9.	<b>Applicability/Exemptions</b> <i>Subcategory: Method of procurement</i>	<b>Design Professionals</b> <i>(VSAIA, ACEC)</i>	The VPPA should clarify that public bodies may not ask for scope and fee proposals from multiple firms holding current term contracts with the public body.  <i>(Public bodies should be required to negotiate first with the firm determined to be the most qualified for a specific task from among the group of term contract holders, and then go to the second qualified firm, if, and only if the most qualified firm declines the opportunities or the parties are unable to agree on a mutually-acceptable fee.)</i>	

	<b>GENERAL ISSUE CATEGORY</b>	<b>SOURCE</b>	<b>COMMENT</b>	<b>NOTES</b>
10.	<b>Applicability/Exemptions</b> <i>Subcategory: Definitions</i>	<b>Dan Cook,</b> <i>(The Gordian Group)</i>	The definition of JOC programs that is included in the VPPA should encompass all types of indefinite quantity contracts and not be limited to describing JOC programs.	
11.	<b>Applicability/Exemptions</b> <i>Subcategory: Readability</i>	<b>Dan Cook,</b> <i>(The Gordian Group)</i>	The VPPA is unclear regarding whether performance and payment bonds are required for JOC contracts; this should be clarified.	
12.	<b>Applicability/Exemptions</b> <i>Subcategory: Method of procurement</i>	<b>Tonya Matthews</b> <i>(TMG Constr. Co.)</i>	Instead of the \$2 million hard cap on JOC programs consider a cap connected to the percentage of the public body's total portfolio.	
13.	<b>Applicability/Exemptions</b> <i>Subcategory: Method of procurement</i>	<b>Tonya Matthews</b> <i>(TMG Constr. Co.)</i>	Requiring a public body to adopt JOC contracting procedures prior to allowing such contracts or exempting a public body that has adopted such procedures.  <i>(This approach is similar to the approach currently taken in the VPPA authorizing public bodies to use construction management and design-build methods.)</i>	
14.	<b>Applicability/Exemptions</b> <i>Subcategory: Goods, services, construction</i>	<b>Michael O'Neill, Sr.</b> <i>(Centennial Contr. Enterprises, Inc.)</i>	The limit for JOC programs should be increased from \$2 million to at least \$5 million.	

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15.	<b>Applicability/Exemptions</b> <i>Subcategory: Method of procurement</i>	<b>Michael O'Neill, Sr.</b> <i>(Centennial Contr. Enterprises, Inc.)</i>	The language relating to project fee included in the version of § 2.2-4303.2 that will become effective on July 1, 2014, may inhibit the implementation of JOC programs because it does not fit the manner in which JOC contracts are negotiated and awarded.  <i>(JOC contracts are awarded to a contractor in the form of a firm, fixed-price construction contract for each specific project based on a compilation of the sum of all individual tasks from a unit price book multiplied by the bid coefficient. Under this process, a project fee is not used by the JOC contractor in the development of each individual project price or submitted with the initial JOC contract.)</i>	
16.	<b>Applicability/Exemptions</b> <i>Subcategory: Method of procurement</i>	<b>Michael Filipowicz</b> <i>(HITT Contracting)</i>	A statewide cap of \$2 million is not appropriate for the wide variety of contracts that JOC programs encompass; consider flexible and adaptable controls and guidelines for using this procurement method.	
17.	<b>Applicability/Exemptions</b> <i>Subcategory: Method of procurement</i>	<b>Hershel Keller</b> <i>(Petty, Livingston &amp; Richards, P.C.)</i>	Should require competitive sealed bidding if the project is expected to be less than \$10 million.	
18.	<b>Applicability/Exemptions</b> <i>Subcategory: Method of procurement</i>	<b>Hershel Keller</b> <i>(Petty, Livingston &amp; Richards, P.C.)</i>	The use of the construction management method of project delivery should be restricted to only those projects for which the method is necessary due to the need for real time value engineering or constructability analysis.	

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19.	<b>Applicability/Exemptions</b> <i>Subcategory: Goods, services , construction</i>	<b>Hershel Keller</b> <i>(Petty, Livingston &amp; Richards, P.C.)</i>	The exemption from the VPPA for public institutions of higher education granted Level III or II status should be removed for construction projects not expected to exceed \$10 million in total cost.	
20.	<b>Applicability/Exemptions</b> <i>Subcategory: Method of procurement</i>	<b>Jack Dyer</b> <i>Gulfseaboard Constr.</i>	The VPPA should be strengthened to make the use of alternative procurement processes an exception, in particular for projects that are not expected to exceed \$20 million in total costs.	
21.	<b>Applicability/Exemptions</b> <i>Subcategory: Method of procurement</i>	<b>Bill Lindsey</b> <i>(VA Association of Governmental Purchasing-VAGP)</i>	The threshold for job order contracting should be raised to \$10 million. There appears to be broad agreement from all parties that the current threshold is not sufficient.	
22.	<b>Applicability/Exemptions</b> <i>Subcategory: Definitions</i>	<b>Department of Minority Business Enterprise</b>	Consider changing the definition of small business to more adequately target small businesses. <i>(Current language provides 250 or fewer employees or average gross receipts of \$10 million or less averaged over the previous three years.)</i>	
23.	<b>Enforcement/Oversight</b>	<b>DGS</b>	No consequences for violations.	
24.	<b>Enforcement/Oversight</b>	<b>DGS</b>	No central procurement oversight, thus making achievement of enterprise cost savings and efficiencies difficult.	

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25.	<b>Enforcement/Oversight</b>	<b>Hershel Keller</b> <i>(Petty, Livingston &amp; Richards, P.C.)</i>	An offeror or potential offeror should have the right to appeal a public body's decision to use competitive negotiation	
26.	<b>Enforcement/Oversight</b>	<b>Steve Vermillion</b> <i>(Associated General Contractors of VA)</i>	A public body should be required to conduct a debriefing and full disclosure of results, including all associated documents, relating to a response for qualification and technical and fee/price proposals.	
27.	<b>Enforcement/Oversight</b>	<b>Steve Vermillion</b> <i>(Associated General Contractors of VA)</i>	Prohibit a public body from requiring previous construction management or construction manager at risk experience as a prerequisite for qualification if the contractor has relevant experience with similar projects within the previous 10 years.	
28.	<b>Enforcement/Oversight</b>	<b>Steve Vermillion</b> <i>(Associated General Contractors of VA)</i>	Require a public body to provide a written justification for using construction management or construction manager at risk in lieu of competitive sealed bidding.	
29.	<b>Enforcement/Oversight</b>	<b>Steve Vermillion</b> <i>(Associated General Contractors of VA)</i>	All projects should be publicly advertised in eVA and in major newspapers and be open for qualifications through the RFQ process to all interested firms. Advertisements should include a description of the delivery method and process for qualification and technical evaluation of firms.	

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30.	<b>Enforcement/Oversight</b>	<b>Steve Vermillion</b> <i>(Associated General Contractors of VA)</i>	Establish and advertise requirements for a minimum standard to qualify through the RFQ process. All firms that meet the minimum standard will be considered as qualified for the project and may submit a price/fee proposal.	
31.	<b>Enforcement/Oversight</b>	<b>Steve Vermillion</b> <i>(Associated General Contractors of VA)</i>	In evaluating proposals public bodies should give critical consideration to the low price/fee submitted from a qualified contractor.	
32.	<b>Enforcement/Oversight</b>	<b>Steve Vermillion</b> <i>(Associated General Contractors of VA)</i>	Construction management at risk is most effective when the contractor is brought on board at the earliest possible time but no later than completion of the schematic drawings.	
33.	<b>Enforcement/Oversight</b>	<b>Design Professionals</b> <i>(VSAIA, ACEC)</i>	Lack of an enforcement mechanism to address violations or divergence from required procedures. There should be a process for appealing or identifying blatant violations without relying upon litigation that would be costly to all parties.	
34.	<b>Enforcement/Oversight</b>	<b>Design Professionals</b> <i>(VSAIA, ACEC)</i>	Ensure that public bodies receiving proposals under the PPEA and PPTA have appropriately skilled personnel to guarantee a good selection process.	

	<b>GENERAL ISSUE CATEGORY</b>	<b>SOURCE</b>	<b>COMMENT</b>	<b>NOTES</b>
35.	<b>Vendor Eligibility</b> <i>Subcategories: Preferences, Qualification to contract</i>	<b>Large Locality (Fairfax Co.)</b>	Avoid proposed changes that are in conflict with the intent of the VPPA.  <i>(Example: Changes based on (i) an Attorney General Opinion stating that a public body cannot consider factors that are not related to the goods or services being procured, (ii) enforcement of documented worker status, and (iii) preferences)</i>	
36.	<b>Vendor Eligibility</b> <i>Subcategory: Qualification to contract</i>	<b>Small Locality (Gloucester Co.)</b>	Avoid legislative actions that seek to make the procurement function a regulatory program.  <i>(Example: SCC registration and E-Verify requirements)</i>	
37.	<b>Vendor Eligibility</b>	<b>Wanda Edwards (Coalition for Procurement Reform)</b>	The design professional or contractor on a project should not have any connection with the manufacturer of the materials for the same project.	
38.	<b>Vendor Eligibility</b> <i>Subcategory: SWaM</i>	<b>DGS</b>	Small business set-aside preference should be examined for improvement	
39.	<b>Technology/Business Practice Outdated</b>	<b>Large Locality (Fairfax Co.)</b>	Adapt the VPPA to current technology and business practices. Consider using changes made to the Model Procurement Code as a guide.	



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	<b>BILLS REFERRED FROM 2014 GENERAL ASSEMBLY</b>	-----	<b>BILLS REFERRED FROM 2014 GENERAL ASSEMBLY</b>	-----
40.	<b>Vendor Eligibility</b> <i>Subcategory: SWaM</i>	<b>HB 223</b> <b>Dance</b>	<b>Virginia Public Procurement Act; establishment of historically underutilized business zones (HUB zones).</b> Requires the Department of General Services and the Virginia Information Technologies Agency to develop procurement regulations for the utilization of small businesses located in historically underutilized business zones (HUB zones). The bill also authorizes public bodies to establish programs to facilitate the participation of small businesses in HUB zones. Such programs must be in writing and comply with any enhancement or remedial measures authorized by the Governor in the case of state agencies or the chief executive of a local governing body in the case of local agencies.	
41.	<b>Cooperative Procurement</b>	<b>HB 289</b> <b>Albo</b>	<b>Virginia Public Procurement Act; cooperative procurement.</b> Eliminates the limitation for cooperative procurement for 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.	
42.	<b>Applicability/Exemptions</b> <i>Subcategory: Method of Procurement</i>	<b>HB 290</b> <b>Albo</b>	<b>Virginia Public Procurement Act; competitive negotiation; job order contracting.</b> Makes technical changes to the provisions of the Virginia Public Procurement Act related to job order contracting.	

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43.	<b>Applicability/Exemptions</b> <i>Subcategory: Nature/Identity of public body</i>	<b>HB 421</b> <b>Minchew</b>	<b>Virginia Public Procurement Act; competitive negotiation; term contracts for certain architectural and engineering services.</b> Increases the term contract limits for architectural and engineering services from \$1 million to \$2.5 million per project for state agencies and from \$5 million \$10 million per term.	
44.	<b>Applicability/Exemptions</b> <i>Subcategory: Nature/Identity of public body</i>	<b>HB 549</b> <b>Filler-Corn</b>	<b>Virginia Public Procurement Act; transportation construction services.</b> Provides that for the award of transportation construction projects, certain specified factors other than price may be considered.	
45.	<b>Vendor Eligibility</b> <i>Subcategory: qualification to contract</i>	<b>HB 769</b> <b>Hugo</b>	<b>Virginia Public Procurement Act; project labor agreements by certain state agencies.</b> Provides, under certain conditions, that when engaged in procuring products or services or letting contracts for construction, manufacture, maintenance, or operation of any project paid for in whole or in part by state funds, or when overseeing or administering such procurement, neither the Commonwealth Transportation Board nor any state transportation agency nor any construction manager acting on behalf of such entities shall, in their bid specifications, project agreements, or other controlling documents, provide an incentive in the scoring of such bids that favors entities entering into project labor agreements. The bill sets out exceptions to this requirement.	

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46.	Vendor Eligibility <i>Subcategory: SWaM</i>	HB 797 Lopez	<b>Department of Small Business and Supplier Diversity; definition of small business.</b> Changes the definition of small business to require the business to have 250 or fewer employees and average annual gross receipts of \$10 million or less averaged over the previous three years. Currently, a small business is required to meet one or the other of these conditions.	
47.	Vendor Eligibility <i>Subcategory: SWaM</i>	HB 1223 Yancey	<b>Virginia Public Procurement Act; small, women, and minority-owned businesses.</b> Defines "historically Black colleges and universities" and provides that the term "minority-owned business" includes historically Black colleges and universities, regardless of the percentage ownership by minority individuals or, in the case of a corporation, partnership, or limited liability company or other entity, the equity ownership interest in the corporation, partnership, or limited liability company or other entity. The bill also requires that programs to facilitate the participation of small businesses and all businesses owned by women, minorities, or service disabled veterans in procurement transactions include a provision for fair and equitable evaluations and opportunities for small businesses and all businesses owned by women, minorities, or service disabled veterans	

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48.	Enforcement/Oversight	HB 1159 Rasoul	<p><b>COIA: Political contributions; prohibitions during procurement process.</b> Includes the mayor or chief executive officer of a locality, school superintendent, and any member of a local governing body, planning commission, or school board in the current prohibition against knowingly soliciting or accepting a contribution, gift, or other item with a value greater than \$50 from any bidder, offeror, or private entity who has submitted a bid or proposal pursuant to the Virginia Public Procurement Act, the Public-Private Transportation Act, or the Public-Private Education Facilities and Infrastructure Act during the bidding period. The restrictions only apply if the stated or expected value of the contract is \$5 million or more and do not apply to contracts awarded as the result of competitive sealed bidding. Furthermore, no bidder, offeror, or private entity who has submitted a bid or proposal under such acts shall offer or promise to make such a gift to the mayor or chief executive officer of a locality, school superintendent, or any member of a local governing body, planning commission, or school board. Any violation shall be subject to a civil penalty of \$500 or up to two times the amount of the contribution or gift, whichever is greater.</p>	

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<b>49.</b>	<b>Vendor Eligibility</b> <i>Subcategory: SWaM</i>	<b>HB 1194/SB 632</b> <b>James/Lucas</b>	<b>Department of Small Business and Supplier Diversity; establishment of minority-owned and women-owned state purchasing program.</b> Provides for the Department of Small Business and Supplier Diversity, in conjunction with the Department of General Services, the Virginia Information Technologies Agency, and the Department of Transportation, to develop a program establishing a requirement that at least 15 percent of all state purchases be made from minority-owned or women-owned businesses that are also certified as small businesses.	

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50.	Enforcement/Oversight	HB 1208 Albo	<p><b>Virginia Public Procurement Act; consideration of early payment discounts.</b> Prohibits the consideration of discounts for early payment of invoices offered by any bidder in the determination of the lowest priced bid on any contract awarded using competitive sealed bidding. The bill also provides that no bidder shall be required to offer discounts for early payment of invoices as a condition of any Invitation to Bid, and no bidder shall be declared nonresponsive for failure to offer a discount for early payment of invoices. With respect to competitive negotiation, the bill provides that any offer submitted in response to a Request for Proposal may contain offers for discounts for the early payment of invoices by public bodies; but that, if offered, such discounts shall not be considered in the selection of qualified offerors or in the evaluation of prices submitted by any such offeror. Finally, the bill provides that discounts for prompt payment shall not be considered in the evaluation or made a condition of offers or bids by any state agency or local public body. However, any offered discount may form a part of the award and shall be taken if payment is made within the discount period indicated in the offer or bid by the offeror or bidder. As an alternative to offering a prompt payment discount in conjunction with the offer or bid, offerors or bidders who are awarded contracts may include prompt payment discounts on individual invoices. In connection with any discount offered for prompt payment, time shall be computed from the date of the submission of the invoice by the contractor or supplier.</p>	

	<b>GENERAL ISSUE CATEGORY</b>	<b>SOURCE</b>	<b>COMMENT</b>	<b>NOTES</b>
51.	<b>Application/Exemptions</b> <i>Subcategory: Method of procurement</i>	<b>HB 1238 Gilbert</b>	<b>Virginia Public Procurement Act; disclosure of cost estimates in solicitations prohibited.</b> Provides that no Invitation to Bid or Request for Proposal shall contain the public body's cost estimate for that which is sought to be procured.	
52.	<b>Application/Exemptions</b> <i>Subcategory: Nature/Identity of public body 1</i>	<b>SB 174 Black</b>	<b>Virginia Public Procurement Act; competitive negotiation; term contracts for certain architectural and engineering services.</b> Increases the term contract limits for architectural and engineering services to \$2.5 million per project for state agencies and \$10 million per term. Currently, these limits are \$1 million and \$5 million, respectively.	
53.	<b>Vendor Eligibility</b> <i>Subcategory: SWaM</i>	<b>SB 616 Alexander</b>	<b>Department of Small Business and Supplier Diversity; creation of Department of Minority Business Enterprise and the Department of Business Assistance.</b> Eliminates the Department of Small Business and Supplier Diversity and re-creates the Department of Minority Business Enterprise and the Department of Business Assistance as those two departments existed prior to January 1, 2014. As such, the bill reassigns the former powers and duties of the Department of Small Business and Supplier Diversity to the Department of Minority Business Enterprise and the Department of Business Assistance. The bill contains numerous technical amendments.	

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<b>54.</b>	<b>Application/Exemptions</b> <i>Subcategory: Method of procurement</i>	<b>SB 645 McEachin</b>	<b>Virginia Public Procurement Act; transportation construction services.</b> Provides that for the award of transportation construction projects, certain specified factors other than price may be considered. The bill also provides that construction may be procured using either competitive sealed bidding or competitive negotiation and requires the public body to set forth in writing that the method selected is practicable or fiscally advantageous to the public. In addition, the bill establishes instances where the determination of the public body is presumed to be appropriate. Under current law, construction may only be procured by competitive bidding except under certain circumstances.	



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

**1. APPLICABILITY/EXEMPTIONS**

- Nature/Identity of public body
- Goods, services, construction- nature of what is being procured
- Definitions
- Method of procurement
- Readability/Internal consistency

**2. VENDOR ELIGIBILITY**

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

**3. COOPERATIVE PROCUREMENT**

**4. ENFORCEMENT/OVERSIGHT**

**5. TECHNOLOGY/BUSINESS PRACTICE OUTDATED**