

**Special Joint General Laws Subcommittee Studying the
Virginia Public Procurement Act
October 9, 2013, 10:00 a.m.
House Room D, General Assembly Building
Meeting Summary**

The Special Joint General Laws Subcommittee Studying the Virginia Public Procurement Act (Special Subcommittee) held its third meeting of the 2013 interim on October 9, 2013, in Richmond, Virginia, in House Room D of the General Assembly Building. The meeting was called to order at 10:00 a.m. After opening remarks from Chairman S. Chris Jones, the Special Subcommittee received two scheduled presentations.

***Matt Conrad, Deputy Chief of Staff
Program Director, Enterprise Applications Master Services Agreement (EAMSA)***

Mr. Conrad stated that the EAMSA was competitively bid and awarded in 2005 under the administration of Governor Mark Warner. The initial seven-year contract provided for two three-year renewal options. Since 2005 there have been 36 statements of work (SOWs) for a total value of \$18 million. Of that amount, according to Mr. Conrad, only about \$2 million has been awarded under the administration of Governor McDonnell. Over the course of the contract the largest user has been the Department of Taxation, which used the EAMSA for the collection for delinquent tax collection. He explained that the 2011 biennial budget provided for executive branch agencies to use the EAMSA in five areas, including financial management, supply chain management, and information technology (IT) management and application development.

Chairman Jones raised the issue of possible overlap of the functions performed under the EAMSA and those performed by the Virginia Information Technologies Agency (VITA). Mr. Conrad asserted that there was no incursion or duplication of VITA functions. Regarding technology procurements, Chairman Jones expressed his hope that there was some communication with VITA to ensure that what is procured fits with current programs.

Sam Nixon, Jr., Chief Information Officer of the Commonwealth

Mr. Nixon stated that his presentation was a follow-up to the high-level overview that he provided previously at the Special Subcommittee's May 14, 2013 meeting, regarding information technology procurement in the state. VITA possesses oversight authority for the procurement of IT and telecommunication goods and services of every description for executive branch agencies. In performing this oversight, VITA ensures that the business requirements of covered executive branch agencies are aligned with technical expertise. In addition, VITA works to achieve interoperability between agencies by ensuring that procurements comply with state standards and architecture. Other VITA oversight responsibilities include protecting state data from growing cyber

security threats by constantly assessing vulnerabilities and risks, implementing system integration and software licensing, and overseeing intellectual property rights.

Mr. Nixon went on to provide the Special Subcommittee with observations relative to IT procurements and opportunities for improvement in three key areas:

(i) Improper use of the sole source procurement

- use of the sole source procurement exemption without clear justification
- use of sole source because of prior work by a vendor
- requests for proposals that are essentially noncompetitive

(ii) Improper use of contract change orders

- Initiating major IT projects by issuing change orders to existing contracts
- Change orders that can greatly expand the scope and cost of existing contracts
- Change orders that may not be subject to the same level of review as the original contract

(iii) Unauthorized procurements

- Agencies that procure IT without approval or delegation
- Possible violation of procurement laws in instances where the original contract scope is exceeded

Mr. Nixon then expressed concern that VITA lacks the oversight tools that are used by the Department of General Services (DGS) to ensure compliance with the state's procurement laws. He noted that while procurement authority for information technology procurement was transferred from DGS to VITA in 2003, the requisite oversight authority was not transferred. As a result, with regard to IT procurements, VITA does not have the authority to debar vendors, refuse to authorize contract payments, or review and approve contract modifications. These are powers the DGS exercises in its role of procurement oversight. Delegate David Albo noted that VITA does not seem to have much oversight authority. Chairman Jones noted that, while he does not think fraud is occurring, there remains a need to provide VITA with enforcement or oversight authority so the agency may enforce compliance with statutory procurement requirements. To that end, it may be appropriate to work with the Auditor of Public Accounts and the Office of the Inspector General to craft an appropriate solution in time for the 2014 Session.

The Special Subcommittee next received comment from individuals who registered to speak.

Ellen Davenport, Virginia Community College System

Ms. Davenport stated that the Virginia Community College System (VCCS) received Level II authority for IT procurement in 2008. This authority enables the VCCS to better

leverage the purchasing power of its 23 colleges to secure discounts and reduce overall costs that may not be possible through standard state contracts. Level II authority also provides the VCCS with the flexibility to support students while minimizing the need to increase tuition and fees. Ms. Davenport further stated that the VCCS maintains a good working relationship with VITA and will use VITA contracts for IT procurements when it is the most economical and efficient manner to proceed. The VCCS is required to submit an IT strategic plan to the CIO of the Commonwealth 45 days prior to the beginning of each fiscal year in addition to submitting a report on the previous year's IT expenditures by October 1 of each year.

According to Ms. Davenport, current procurement standards and guidelines for technology purchases ensure that the state's procurement practices are being followed while allowing higher education to obtain discounts and reduction of overall IT purchases.

Andrew Sinclair, Virginia Association of Governmental Purchasing (VAGP)

Mr. Sinclair stated that there were three areas that have received the most attention over the course of the first year of the Special Subcommittee's review of the public procurement law: (i) the appropriate use of competitive negotiation, (ii) procurement procedures for construction contracting, and (iii) IT procurement. Regarding the use of competition negotiation, Mr. Sinclair asserted that the intent of the Virginia Public Procurement Act (VPPA) is to allow individual public bodies broad flexibility in fashioning the details of competitions. He maintained that many concerns expressed over the course of the study appeared to be based on anecdotal events and that changes to the process should be made based the demonstrated need for such change. He suggested that the Special Subcommittee request the collection of supplemental data regarding the use of competitive negotiation, considering factors such as the construction project delivery method, the project scale, the type of public body making the procurement, and the statutory procurement authority that the public body is relying upon. If the General Assembly determines that an appeals process is necessary, Mr. Sinclair stated that his organization would support a board to hear such appeals rather than a state agency administrative review.

Regarding IT procurement, Mr. Sinclair stated that the VAGP favored collaborating with VITA or other stakeholders to investigate methods to (i) reduce the time and cost of IT procurements, (ii) increase competition for IT procurements, (iii) better allocation of risks for such projects.

Special Subcommittee Review

At the close of the public comment period, discussion among the Special Subcommittee members focused on best next steps. Areas of interest included (i) reviewing a system to allow potential vendors to complain or appeal the use of competitive negotiation or the terms of the request for proposal and (ii) increasing enforcement tools.

The meeting adjourned at 11:43 a.m.