

PROPOSED PURPOSES OF 2015 CONSTRUCTION PROCUREMENT REFORM LEGISLATION:

1. Establishment of the Design-Build/Construction Management Review and Construction Procurement Oversight Board.

- a. Board composition and calendar:
 - i. The Board shall be composed of eleven members to be appointed by the Governor as follows: the Director of the Division of Engineering and Buildings of the Department of General Services, or his designee; the Director of the Department of Small Business & Supplier Diversity, or his designee; three Class A general contractors selected from a list recommended by the Associated General Contractors; one architect and one engineer selected from a list recommended by the Consulting Engineers Council of Virginia, the Virginia Society of the American Institute of Architects, and the Virginia Society of Professional Engineers; two representatives of public bodies other than the Commonwealth selected from a list recommended by the Virginia Municipal League and the Virginia Association of Counties; two representatives of public institutions of higher education. The Attorney General, or his designee, shall be a non-voting member of the Board.
 - ii. The Board shall meet monthly, unless no business is to be heard.
- b. Advance approval of the Board is required to use competitive negotiation to procure construction for projects under \$20,000,000.
 - i. Advance Board approval would be required for:
 1. construction procurement;
 2. by any public body;
 3. for a project with a budget under \$20,000,000;
 4. by other than competitive sealed bidding;
 - ii. Such approval would only be granted after the public body, after a public hearing, demonstrated the use of competitive sealed bidding was not fiscally advantageous to the public as that term will be further defined in regulations to be promulgated by the Board.
- c. Board also has authority to intervene in procurements for construction projects with budgets of \$20,000,000 or greater.
 - i. Intervention can be initiated:
 1. on Board's own accord, or
 2. on behalf of an offeror on the project.
- d. The \$20,000,000 threshold would be reviewed at least every 3 years.
- e. In the event the Board finds a violation of the VPPA or its regulations, failure of the public body to correct the violation could subject it to funding restrictions.
- f. Board has general authority to enforce the VPPA and its regulations, including without limitation:
 - i. Elimination of unreasonable pre-qualification criteria;
 - ii. Elimination of unreasonable competitive negotiation scoring criteria;

- iii. Requiring that construction managers be engaged at schematic design phase; and
 - iv. Requiring public bodies to document in writing reasons for the use of other than the lowest priced offeror.
 - g. Board is authorized to make post-project evaluations of construction projects procured by other than competitive sealed bidding entered into by public bodies, including:
 - i. cost and time savings;
 - ii. effectiveness of the selection;
 - iii. evaluation and award of such contracts; and
 - iv. the benefit to the public.
 - v. (Public bodies are required to cooperate in such evaluations.)
 - h. Board shall report to the General Assembly and the Governor on or before December 1, 2016, and annually thereafter, concerning:
 - i. the Board's evaluation of and findings regarding the use of alternative methods of procurement other than competitive sealed bidding;
 - ii. any recommendations relating to future use of design-build or construction management contracts by such public bodies; and
 - iii. any recommendations for improvement of the VPPA.
 - i. On or before July 1, 2015, the Board shall adopt regulations, as it deems appropriate:
 - i. based on the substantive requirements of Chapter IX of the Capital Outlay Manual of the Commonwealth, for a two-step competitive negotiation process which shall be applied to design-build and construction management projects undertaken by public bodies; and
 - ii. for construction management projects, such regulations shall also include applicable provisions of the Required Construction Management Contract Terms of the Capital Outlay Manual.
 - iii. (Such regulations shall also allow the Review Board to approve deviations from provisions of the Capital Outlay Manual that it deems appropriate.)
 - j. Any public body aggrieved by a decision of the Board may appeal through the administrative processes act.
2. **VPPA to be modified to require public bodies post all invitations to bid and request for proposals on eVA.**
3. **Knowing and willful failure to comply with the VPPA will be a Class 3 misdemeanor.**