

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

**Work Group 2
Information Technology, Goods, and Other Professional Services**

**October 15, 2014, at 1:30 p.m.
House Room 1, The Capitol, Richmond
Meeting Summary**

Members present: Eugene Anderson, Mike Bacile, Ashley Colvin (for Eric Link), Michael Dalton (for Brian Epley), Joe Damico, Gwendolyn Davis, Eric Denby, Phyllis Errico, Keith Gagnon, Robert Gleason, Mary Helmick, Patti Innocenti, Tom Kaloupek, William Lindsey, Phil Pippert, Ridge Schulyer, Lem C. Stewart and John Westrick.

Members absent: Lee Brazzell, Angela Chiang, and Nicole Riley

Work Group 2 of the General Laws Special Joint Subcommittee Studying the Virginia Public Procurement Act (Special Joint Subcommittee) held its fifth and final meeting of the 2014 interim on Wednesday, October 15, 2014, at 1:30 p.m. in House Room 1 at the Capitol. The meeting began with the review of two redrafts comprising (i) the efforts of the work group to establish equal footing for competitive negotiation and competitive sealed bidding, and (ii) the gradual removal of the requirement for the publication of notices of requests for proposals.

The first redraft removes preference for the procurement of goods, services, or insurance by competitive sealed bidding. The draft does not change the requirement for professional services to be procured by competitive negotiation or the preference for construction to be procured by competitive sealed bidding. The work group unanimously approved the draft for recommendation to Special Joint Subcommittee. The second redraft removes the requirement for the publication of notices of requests for proposals by July 1, 2017. During the interim, the Department of General Services will provide an electronic data file of business opportunities to any requesting newspaper or other print publication with circulation in Virginia. Localities would have the option of doing the same or providing an electronic data file of all business opportunities to DGS's central electronic procurement website. Also during this period, public bodies issuing Requests for Proposals (RFPs) are required to ascertain the method by which an offeror submitting a proposal in response to the RFP became aware of the solicitation, whether by newspaper publication, website posting, or other method. Such findings will be reported by July 1, 2016, to the Chairmen of the House Committee on General Laws and the Senate Committee on General Laws and Technology.

Phyllis Errico, Virginia Association of Counties, stated that the draft should clarify that there will be no fee charged to localities providing the files to DGS. It was also noted that the redraft called for the publication of all business opportunities, while current law only requires the publication of RFPs. Joseph Damico, Deputy Director, DGS, supported allowing more transparency. The floor was opened to receive public comment on the redrafts. Ginger Stanley,

Executive Director, Virginia Press Association, directed comments to the publication draft. She asserted that the public has a right to know how its money will be used and requested more time to consider the ramifications of the changes. After making a few technical changes, the work group unanimously approved the draft for recommendation to Special Joint Subcommittee.

The work group then moved to review a discussion draft establishing the Virginia Public Procurement Advisory Council (the Council). The draft was based on previous work group discussions and modeled to some degree on the Freedom of Information Advisory Council. The Council would be a legislative branch entity consisting of 13 members, including legislators and representatives of state and local government and the vendor community. The purpose of the Council would be to encourage and facilitate compliance with the state's procurement laws. The Council would be authorized to hire an executive director and other employees as deemed necessary. The powers and duties of the Council would be as follows:

1. Conduct training seminars and educational programs;
2. Publish educational materials;
3. Review written determinations of public bodies regarding methods of procurement and statutory waivers and related exemptions from the laws governing public procurement and collect data necessary to evaluate the effectiveness and appropriateness of such determinations, waivers and exemptions;
4. Provide a forum to address concerns regarding public procurement;
5. Monitor changes in state laws relating to public procurement and make recommendations for changes in such laws; and
6. Provide an annual report.

Eric Denby, Director of Procurement and Supplier Diversity Services, University of Virginia, suggested removal of item three under the powers and duties because the work group had just approved a draft removing the requirement for written determinations to use competitive negotiations for the procurement of goods and services. It was noted that written determinations were still required to use competitive negotiation to procure construction. Tom Kaloupek, Director of Materials Management, Virginia Tech, did not support the Council having such authority. Mr. Damico agreed that item three should be deleted and that item five should be expanded to include the collection of data on the use of such waivers. Mr. Denby asserted that a 13-member Council would be too big and would create operational issues that could hold up procurements. Robert Gleason, Director, Division of Purchases & Supply, DGS, stated that he had not seen the number of issues rise to the point of supporting another level of oversight to the process. Gwendolyn Davis, Chair, Equipping Businesses for Success Institute, maintained that the Council is needed and that recent disparity studies support the need for additional oversight to ensure compliance with the state's procurement laws and regulations.

Mr. Kaloupek stated that the entity should start out with a more limited focus and should serve as a resource. He maintained that a three-member entity limited to providing education, training, and a forum for discussion would be appropriate to start. Phil Pippert, Director, Supply Chain Management, Virginia Information Technologies Agency (VITA) suggested including the state's Chief Information Officer as a part of any proposed entity to gain the perspective of technology procurements. Mary Helmick, Director, Procurement Services, James Madison University, expressed support for an entity that would be truly advisory. She suggested the duties be pared down to (i) conducting training seminars and educational programs, (ii) publishing educational materials, (iii) providing a forum to address concerns regarding public procurement, and (iv) monitoring changes in state laws relating to public procurement and making recommendations for changes in such laws. Eugene Anderson, Director, Department of Procurement Services, Norfolk State University, added that item four is a key component because currently there is no forum for members of the vendor community to express their concerns. Mr. Anderson also stated the importance of ensuring that the entity was properly staffed, and he suggested the draft be changed to require the Council to hire an executive director.

While there was some degree of consensus reached on possibility of establishing an advisory entity, there remained substantial disagreement in several areas including composition and size, powers and duties, and appropriate staffing. The group could not reach a consensus to the point of advancing specific language or recommending legislation for consideration. The floor was opened for public comment on the establishment of an advisory council. No comment was offered.

A final issue for consideration before the work group pertained to the use of cooperative procurement to purchase insurance. The issue had been referred by Work Group 1 because it concerned the purchase of nonprofessional services, which was included in the scope of work for Work Group 2. After brief discussion, no action was recommended.

Next Steps

Staff informed the members that they were released from service. A report including the activities of the work group and consensus recommendations will be presented to the Special Joint Subcommittee at a meeting that will be scheduled prior to the commencement of the 2015 legislative session.