



Virginia Information Technologies Agency

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

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## VITA - Statutory Duties

“We enable the business of government”

- Infrastructure services
- Project oversight
- Information security
- IT Procurement
- Standards and architecture
- Enterprise applications
- E-9.1.1., VGIN, eGOV, Contingent Labor



## VITA Is COV's Central IT Procurement Agency

- Appropriation Act requires VITA to procure IT or delegate authority to agencies (§ 4-5.04 b.1.a)
  - VITA *"shall procure information technology and telecommunications goods and services of every description for its own benefit or on behalf of other state agencies and institutions, or authorize other state agencies or institutions to undertake such procurements on their own"*
- VITA also derives this duty & authority from statute:
  - § 2.2-2012 (VITA's Chapter)
  - § 2.2-1119 (DGS' Chapter)
- Oversight is generally limited to executive branch agencies only



## IT Procurement Requires IT Expertise

- Government runs on IT
  - Must align business requirements with technical expertise
- Need to increase interoperability between agencies
  - Comply with state standards and architecture
- Protect state data from growing cyber security threats
  - Assess vulnerabilities and risks
- System integration and software licensing
  - Full lifecycle management of major IT projects
  - Complex T&Cs, constant evolution among vendors
  - Long-term cost and operational impacts
- Intellectual property rights
  - Restrictions on ownership & usage



## Observation: Improper Use of Sole Sourcing

- Use of sole source without clear justification
  - Agencies desire particular system or vendor without clearly assessing alternatives
  - Can lead to higher prices or compatibility issues
- Use of sole source because of prior work by vendor
  - Vendor already familiar with agency & systems
  - Assert that competitive bids use staff time & add delay
- RFP's that are essentially non-competitive
  - Overly prescriptive mandatory requirements
  - Perception of favoritism discourages vendor participation



## Observation: Use of Contract Change Orders

- Major IT projects are initiated by issuing change orders to existing contracts
  - Limits competition, insufficient T&Cs
- Change orders can greatly expand scope & cost of existing contracts
  - Amendments can exceed \$1 million major IT project threshold
  - Often exceed 25% contract modification threshold, thus requiring DGS approval. (DGS obtains VITA's input before approval.)
- Change orders may not be subject to same level of review as original contract



## Observation: Unauthorized Procurements

- Agencies procure IT without approval or delegation
  - Creates security & support risks for the enterprise
  - No clear consequences for violation

*Note: Procurements are legally "null from the beginning" if authority wasn't delegated (1984-85 Opin. Atty. Gen.)*
- VPPA may be violated if contract scope is exceeded
  - Using existing contract to buy IT goods or services that aren't in scope to the contract



## Next Steps: Compliance and Accountability

- VITA lacks oversight tools long used by DGS
  - In 2003, oversight responsibility for IT was transferred from DGS to VITA but oversight authority was not
- DGS can debar vendors, but VITA cannot
- § 2.2-1115 states “Comptroller shall not issue any warrant” for procurement in violation of DGS’s Article
  - No statutory process for VITA to invoke this provision directly
  - Unclear applicability to IT
- DGS still approves modifications  $\geq 25\%$  original contract value (§§ 2.2-4309) and other waivers (2.2-4311.2)





# Questions?

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