

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

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

**July 23, 2014, at 1:30 p.m.
House Room 1, The Capitol, Richmond
Meeting Summary**

Members present: Eugene Anderson, Mike Bacile, Rick Berry (for Mary Helmick), Chester Brazzell (for Lee Brazzell), Angela Chiang, Joe Damico, Gwendolyn Davis, Eric Denby, Brian Epley, Phyllis Errico, Keith Gagnon, Robert Gleason, Patti Innocenti, Tom Kaloupek, William Lindsey, Eric Link, Steve Owens (for John Westrick), Phil Pippert, Nicole Riley, Lem C. Stewart, Jr.

Members absent: Lee Brazzell, Mary Helmick, Ridge Schulyer, and John Westrick.

Work Group 2 of the General Laws Special Joint Subcommittee Studying the Virginia Public Procurement Act (VPPA) held its third meeting of the 2014 interim on Wednesday, July 23, 2014, at 1:30 p.m. in House Room 1 at the Capitol, Richmond. The meeting began with the review of staff-prepared discussion drafts reflecting the various proposals offered by work group members and interested parties. The objective of the review was to facilitate consensus on specific language regarding (i) establishing equal footing for competitive negotiations and competitive sealed bidding and (ii) revising the requirement for the publication of notice for competitive negotiation.

I. Equal Footing for Competitive Negotiation and Competitive Sealed Bidding; Discussion Draft

Staff conveyed that the objective of the discussion draft is to remove the preference for the use of competitive sealed bidding as the method for procurement under the Virginia Public Procurement Act (VPPA). The work group reached consensus that both the preference for competitive sealed bidding and the requirement for the written determination be removed. Mike Bacile, Purchasing Director, Chesterfield County, stated that the language does not belong in a public body's Request for Proposals because it still connotes a preference for competitive sealed bidding. He suggested removing the language amending § 2.2-4302.2 on page 1, lines 11 through 13. Eugene Anderson, Director of Procurement Management at Norfolk State University, added that under current practice establishing a justification for using competitive negotiation is extremely easy and does not add value to the process. After additional discussion, it was the consensus of the group to approve the draft as amended.

II. Publication of Notice; Competitive Negotiation; Discussion Draft

The work group reviewed the discussion draft amending provisions in the Code relating to the requirement for procurements using competitive negotiation to be published in a local newspaper. The draft consists of three components. The first component provides for the Department of General Services to provide to any requesting newspaper or print publication with circulation in Virginia, free of charge, an electronic data file containing all active business

opportunity notices posted on the agency's central electronic procurement website. The second component of the draft provides for the elimination of the publication requirement effective July 1, 2018, effectively establishing a transition period of three years. The third component requires all public bodies to report annually the method by which between July 1, 2015, and July 1, 2018, an offeror submitting a proposal in response to a request for proposal (RFP) became aware of the solicitation.

Joe Damico, Deputy Director, Department of General Services, stated that the first component of the draft is predicated on all local public bodies publishing business opportunities on Virginia Business Opportunities/eVA. Without localities doing so, the information provided by DGS will not have any local data. Mr. Bacile stated that he did not think localities should be required to post on Virginia Business Opportunities/eVA. Phyllis Errico, General Counsel, Virginia Association of Counties, suggested a shorter transition period of two years rather than three years. Mr. Bacile agreed with the shorter reporting period and questioned why the information was being gathered if the desire is to transition to elimination of the requirement.

Staff solicited remarks on the draft from the work group members. Gwen Davis, Chair, Equipping Businesses for Success Institute, expressed support for the approach taken by the draft citing the importance of having a transition period. Lem C. Stewart, Jr., Executive Vice President, Advantus Strategies, LLC, stated that a reporting form is necessary to ensure that the information provided from the various public bodies is consistent. Tom Kaloupek, Director of Materials Management, Virginia Tech, said that he did not support including the reporting requirement because with the large number of RFPs his agency and some other agencies solicit, it will be difficult to meet the requirement. Mr. Damico agreed that the reporting is burdensome, but explained that the data is needed. Angela Chiang, Director of Operations, Department of Small Business and Supplier Diversity (SBSD), maintained that the transition period is needed to allow all involved to prepare for elimination of the newspaper publication requirement and for the general public to be adequately informed on how to access business opportunities. Mr. Anderson stated that he supported a two-year transition but that he was willing to accept the longer three-year transition for the long-term benefit of eliminating the publication requirement. Nicole Riley, Virginia State Director, National Federal of Independent Businesses, asserted that at least two years is needed to allow adequate time for the education of small businesses.

Keith Gagnon, Director of Procurement, Virginia Community College System (VCCS) noted that Invitations for Bid (IFB) are not required to be published and his agency has had no problems getting bids. Ms. Errico stated that she could accept the two-year transition period if there is no reporting requirement. Ms. Chiang interjected that the reporting requirement is needed to develop data to assist legislators in determining the proper policy. Both Ms. Errico and William Lindsey, Purchasing Agent, Gloucester County, noted that surveys have been conducted that indicate there is no support for continued publication of RFPs. Ms. Riley asserted that she had not seen the data from such studies and maintained there is a need to make sure that elimination of the publication requirement is the correct policy path.

The work group opened the floor to receive public comment on the publication of notice; competitive negotiation discussion draft.

Matt Paxton, Virginia News Gazette

Mr. Paxton stated that his newspaper has been in business for over 213 years. He voiced concern that the Internet is not available in all parts of the state, which would have an adverse

effect on both the citizens and local contractors in those areas. Mr. Paxton also asserted that the publication costs amount to a miniscule percentage of a local public body's total budget.

Ginger Stanley, Virginia Press Association (VPA)

Ms. Stanley asserted that RFPs published in local newspapers reach a broad pool of local businesses and also serve as notices of proposed government actions to local residents. By contrast, RFPs published on a government website reach fewer potential bidders, including small businesses, minority businesses, and businesses in rural areas. In addition, Ms. Stanley maintained that not all Virginia businesses have easy or immediate access to online requests for proposals, with some communities having no access to the Internet at all. Ms. Stanley provided the work group with the results of a recent survey conducted by DecideSmart for the VPA examining the views of 500 adult Virginians about the principle of the public's right to know and the placement of public notices. According to the survey, 97% of the respondents said that the principle of the public's right to know what their government is doing and planning is either very important or somewhat important. The survey also found that 94% of respondents thought that keeping the citizens informed of public notices/legal advertisements in newspapers is an important function of government agencies. Ms. Stanley added that she has worked on this issue for over 10 years and has never seen a survey conducted by the Virginia Municipal League or the Virginia Association of Counties.

No other comment other public comment on the publication issue was offered and the work group continued its discussion.

Eric Denby, Director of Procurement and Supplier Diversity Services, University of Virginia, stated that small businesses are interested in the type of small purchases that are found on eVA and that are not included in the RFPs that are required to be published in newspapers. He further asserted that every advertisement is different in terms of the information that is contained and that often a potential bidder may have to go to two or three places to get full information. Ms. Errico offered as a compromise to have a two-year transition with a one-year reporting period.

Mr. Stewart stated that he favors leaving the decision to publish up to the locality. Mr. Damico suggested as a compromise that DGS could provide the information to the newspapers and if localities did not want to submit opportunities to Virginia Business Opportunities/eVA, then they could submit the information themselves directly to the relevant newspaper. William Lindsey, Purchasing Agent, Gloucester County, suggested that localities be given the option of providing the information directly to the newspapers or, in the alternative, to DGS for inclusion in what the agency provides in its submission to newspapers.

The consensus of the work group was to have a two-year transition period and a reporting period of one year. In addition, it was agreed that DGS and localities would provide an electronic data file containing all active business opportunities to any requesting newspaper free of charge. Localities would, however, have the option of providing procurement information directly to the newspapers or providing it to DGS to be included in what it submits to newspapers.

III. Enforcement and Oversight

Staff provided an array of items for consideration regarding enforcement and oversight relating to the procurement process. The items covered three general areas: (i) enforcement, procurement process; (ii) enforcement, administrative appeal alternative; and (iii) general oversight.

Mr. Owens stated that there used to be a procurement appeals board located within the Secretary of Administration, but that it was limited to procurements concerning goods. He further stated that the option to appeal to the board was infrequently used. Ms. Chiang maintained that an effective appeals process is necessary in order to keep everyone in line with the requirements of the process. Mr. Kaloupek asserted that Virginia Tech has an appeals process that is not being used. Mr. Denby added that the problem is that vendors do not want to protest because it may adversely affect future procurement opportunities with that agency. Robert Gleason, Director, Division of Purchases & Supply, DGS, remarked that SBSB had a role in advocating for small, women-owned, and minority-owned businesses (SWaM). Mr. Chiang noted that the agency has only advisory authority and cannot impose sanctions.

Mr. Damico suggested that the work group consider providing a role for the Office of the Inspector General (OSIG). He asserted that OSIG is responsible for looking into waste, fraud, and abuse and that it already has a structure at the state level for reviewing the activities of state agencies. In addition, at OSIG the process is confidential. Ms. Chiang asserted that there must be an administrative remedy with each step clearly set out. Ms. Davis indicated her support for such a process. Mr. Anderson maintained that any process must first require the vendor or bidder to protest the award before being allowed to appeal. Mr. Gagnon added that whatever the work group did it needed to be in concert with what work group #1 may be considering. Mr. Owens agreed that the work groups should stay in sync on these issues, noting that the construction discussion will have different concerns, chiefly the selection of method of procurement. Mr. Gagnon also offered that an administrative appeals process may be better suited for construction-related procurement than for goods and services. Mr. Berry stated that, in terms of enforcement or oversight options, there needs to be a distinction made between project delivery method and method of procurement.

Chester Brazzell stated that he supported requiring all public bodies to establish an administrative appeals procedure. Ms. Errico maintained that procurement is about relationships and that adding another level of administrative review will not necessarily help the process. She suggested that establishing an advisory council similar to the Freedom of Information Advisory Council may be a good idea. Mr. Anderson noted that often contractors just want to vent and that there should be an entity available to respond. He further noted that training and education are key issues that could be addressed by an advisory entity. Ms. Chiang reasserted that there needs to be a formal appeals process. Patti Innocenti, Deputy Director, Purchasing and Supply Management, Fairfax County, stated that the county awards 550 contracts per year and there are few protests. Mr. Gleason added that the supplier manual used by DGS includes an appeals process that is applicable to executive branch agencies.

It was the consensus of the work group to continue discussion of the issue at future meetings.

Next Meeting

The next meeting of the work group is scheduled for September 17, 2014. The meeting adjourned at 3:45 p.m.