

## Capital Outlay and Facility Management Forum

# DEB UPDATES

**Ed Gully, P.E.**

**Director, Division of Engineering and Buildings**

**May 5, 2016**

**Patrick Henry Office Building  
Richmond, Virginia**



# Overview

- **Update: Virginia Public Procurement Act (VPPA) Reform/Changes**
- **Secretary of Administration (SOA) Procedures for Construction Management at Risk (CM@R)**
- **Changes in CM@R and Design-Build forms**
- **Executive Order 20 (Small Business) procedures feedback**
- **Art and Architectural Review Board (AARB)**
- **Pool Process**
- **GCPay/Chapter 806 status/new 2016 Capital Bond Bill**
- **Enjoinment and Debarment**
- **Statewide Contracts & ESCOs**
- **COVATrax: new Initiative to allocate MR**
- **Fall Procurement Forum**



# Update on VPPA Reform

(1 of 3)

## Key changes that went into effect July 1, 2015:

- **Several sections reorganized**
- **Construction up to \$100,000** is eligible for small purchase procedures
- **A/E small purchase procedures (i.e. “Category B”)** limit increased from \$50,000 to \$60,000
- **A/E term contracts:** “...prohibit requiring the selected contractors to compete for individual projects based upon price” (i.e. no price shopping with term contractors)
- **Joint and Cooperative procurements:** As a general rule, construction may be procured via joint procurements but may not be procured via a cooperative procurement (i.e. no “piggybacking” on someone else’s contract)
- **New Construction Reporting Requirements** (see next slide)



# Update on VPPA Reform

(2 of 3)

## Construction Reporting Requirements:

- Effective July 1, 2015 through June 30, 2017
- **Quarterly report** required for any “construction project in excess of \$2.0 million that was procured by any method other than competitive sealed bidding”
- “Report shall identify the justification for the procurement method chosen including whether or not the procurement meets the standards set in the Secretary of Administration guidelines”
- First three reporting periods collected to date



# Update on VPPA Reform

(3 of 3)

## JOC: Job Order Contracting

	<u>July 1, 2014</u>	<u>July 1, 2015</u> <b>This also applies to renewals of prior JOC contracts</b>
Job Order Limit	\$400k	\$500k; order splitting prohibited
Total per 1 year term	\$2M	\$5M
# terms	1+4 = 5 years total	1+2 = 3 years total
Total, maximum value per contract	\$10M	\$15M
Professional Services procured via JOC	Not mentioned	Professional Services may be included on a job order where such professional services are: incidental and directly related to the job, do not exceed \$25k/job order, and do not exceed \$75k/term



# VPPA: 2016 Session Changes

§ 4-4.01 y., 2016 Appropriation Act *(pending signature)*

**Need Approval to use alternate procurement methods (DB, CM@R):**

- State agencies and higher ed without delegated capital procurement authority **must submit requests to DGS for review and approval**
- Tier II and III higher ed institutions with delegated capital procurement authority **must develop a process** for considering use of DB or CM@R, submit it to DGS for review, and then to BOV for approval
  - Process must consider, at a minimum, cost, schedule, complexity, and building use
  - APA will monitor process compliance



# VPPA: 2016 Session Changes

§ 4-4.01 y., 2016 Appropriation Act *(pending signature)*

**All requests/processes for use of CM@R must:**

- Include cost and project timeline as critical components of the selection process;
- Require that the CM contract is initiated no later than the Schematic Phase of design unless prohibited by authorization of funding restrictions; and
- Provide a written justification in the RFQ as to why sealed bidding is not practicable and/or fiscally advantageous



# VPPA: 2016 Session Changes

## § 4-4.01 y., 2016 Appropriation Act *(pending signature)*

### Reporting and Posting Requirements:

- Apply to all state entities, and for all projects beginning with those authorized for construction in Chapter 665 (2015 Appropriation Act)
- **New Report:** Submit annually to DGS by Nov 1<sup>st</sup> for completed capital projects:
  - Procurement method
  - Project budget
  - Actual project costs
  - Expected timeline
  - Actual completion time
  - Any post-project issues
- **eVA:** Post approved capital projects and approved procurement methods and advertise for project delivery services no less than 30 days publicly on eVA



# CM@Risk: Review of SOA procedures

(1 of 2)

- **Request to use CM at Risk.** Generally, intended for large (>\$10M), complex projects with accelerated schedules.
- **Identify evaluation committee** which includes: minimum of 3 from agency, a BCOM representative, and possibly an OAG representative
- **Select the Construction Manager (CM):**
  - ✓ CM selected no later than schematic design to realize benefits of constructability and value engineering reviews concurrent with design development
  - ✓ Step 1, prequalification via RFQ. Include justifications for use of CM@Risk in RFQ. Output = short list of 2-5 offerors who demonstrate the “greatest conformance with RFQ requirements.”
  - ✓ Step 2, RFP; evaluate/rank proposals. Conduct negotiations with two or more offerors submitting the highest ranked proposals OR if only one offer is fully qualified or clearly more highly qualified, negotiate/award with that offeror
  - ✓ ***Lesson learned: ensure that “general conditions” requirements are clear and understood by all to ensure fair selection and to avoid potential duplicative costs when GMP established several months later***



# CM@Risk: Review of SOA procedures

(2 of 2)

- **Guaranteed maximum price (GMP)** generally set at completion of working drawings
  - ✓ *Lesson learned: closely scrutinize GMP for potential duplicative “general conditions” costs*
- **Cannot agree on GMP?**
  - ✓ Contract for phase 1 (pre-construction services) concluded
  - ✓ After review by DEB, either:
    - Use competitive sealed bidding with pre-qualified CMs (most likely) OR
    - Entertain a GMP from the other pre-qualified CMs (with prior DEB approval).

*Full SOA procedures located on the BCOM website*



# Changes to Key CM@Risk and Design-Build (DB) Forms

(1 of 2)

- **Goals:**
  - Streamline process; reduce redundant material in RFQ and RFP
  - Reinforce and ensure compliance with SOA procedures
  - Simplify small business evaluation
  - For CM@Risk, clarifies a 3-step process:
    - ✓ *RFQ: looking backwards at prior experience*
    - ✓ *RFP: looking forward at how experience is leveraged for this project*
    - ✓ *Interview (validate RFQ/RFP face-to-face)*



# Changes to Key CM@Risk and Design-Build (DB) Forms

(2 of 2)

- **Updated forms:**
  - ✓ CO-16: Contractor's Statement of Qualifications
  - ✓ DGS-30-466: Request for Qualification (Multi Use)
  - ✓ DGS-30-467: CM@Risk RFP Template
- **New Forms:**
  - ✓ CO-16 Attachment: Crosswalk of Firm and Key Personnel Experience
  - ✓ Small business attachment to RFP

***Forms available on BCOM's Website***  
*Your Feedback on these Changes is Appreciated!*



# **Soliciting Your Feedback on the Implementation of Executive Order 20:**

***Advancing Equity for Small, Women,  
and Minority Owned Businesses***

***effective July 22, 2014***



# Art and Architectural Review Board (AARB)

(1 of 4)

## When AARB Review is Necessary:

- For any changes to the exterior of a facility
- For new construction, including certain temporary facilities
- At the Schematic and/or Preliminary phase
  - *Seek Board review when you have fair certainty of the exterior appearance of the facility, location, overall massing, materials, colors, landscaping, etc.*
- When in doubt:
  - Email: [DEBinfo@DGS.virginia.gov](mailto:DEBinfo@DGS.virginia.gov) OR
  - Submit project and request Consent Agenda

***Remember: Approved/Signed Minutes indicate Final AARB Approval!***  
*(final Minutes available on the DEB website ~1 month after meeting)*



# Art and Architectural Review Board (AARB)

(2 of 4)

## AARB Meeting Logistics:

- When: 10:00am 1<sup>st</sup> Friday of every month
- Where: Virginia War Memorial
- Submissions due **two weeks prior** to meeting
- Check Agenda to see if your project is on the:
  - Consent Agenda: **don't need to be there** (unless noted)
  - Project Review Agenda: **need to be there** (unless noted)



# Art and Architectural Review Board (AARB)

(3 of 4)

- **Format:**
  - Electronic, submitted 2 weeks before meeting date
  - Complete the Fact Data Sheet
- **Include visuals of:**
  - Location and site plans
  - **How this project will “fit in” with surrounding buildings/campus. It is essential to describe the surrounding architecture, landscaping, and historic context before you get to the specifics of your building/project.**
  - Building and/or landscape design
  - Materials to be used
  - **Do NOT provide additional project information (ie, regarding interiors)**
- **Consent Agenda requests:**
  - For small-scale projects only
  - Selected demolition
  - Must have a clear scope of work that is well explained and documented



# Art and Architectural Review Board (AARB)

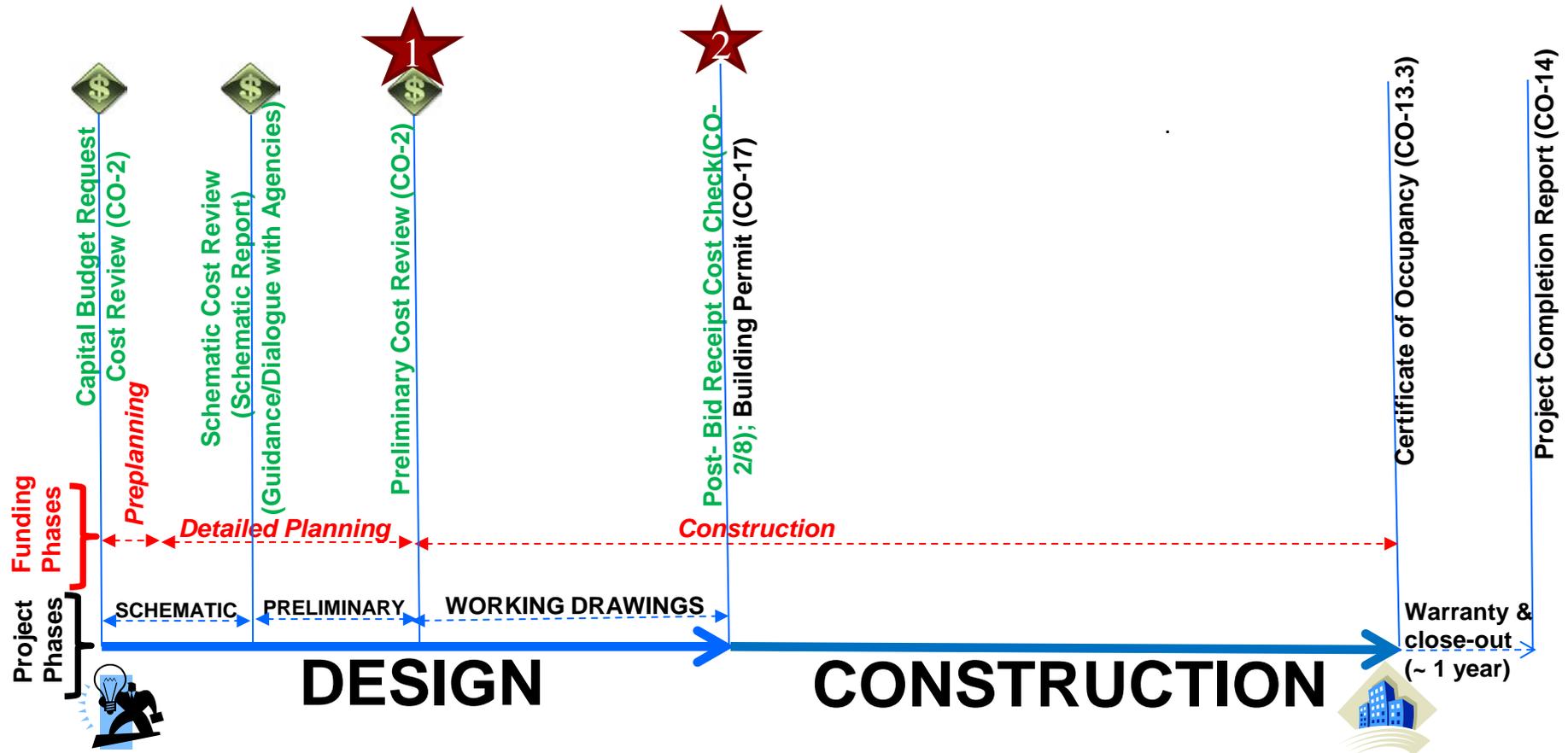
(4 of 4)

## AARB Presentations:

- **Provided:**
  - Laptop, projector, all submitted electronic materials
- **Please bring:**
  - Updated/additional presentation materials
    - Bring on a flash drive or disk (no paper handouts)
  - Physical samples of materials
- **Subsequent presentations for the same project:**
  - State when previous presentation(s) were made
  - Briefly review project
  - Restate previous Board comments
    - **Show visual of previous renderings upon which Board comments were based**
  - Show what was done to address Board comments.

# The Pool Process

Phases, Critical Milestones (★) and Detailed Cost Reviews (◆)



★ This detailed cost review ensures the project is “right-sized” and the funding is appropriate to complete the design and construct the facility. This establishes the basis for the application of the “105% rule.” **This is the most critical “GO” for an agency in the pool process as it typically allows them to “proceed with execution.”**

★ Cost check ensures bids are within authorized funding; based upon bid prices, either maintain current project funding (typically the case), reduce project funding if exceptionally low bids received, or increase project funding via an agency appeal up to 105% of that amount determined at milestone 1. If bids result in project(pool \$) > 105% as defined at milestone 1, then agency must either reduce scope, provide more agency funding, or request additional \$ from GA.



# GCPay

- **Mandatory** for Chapter 806 construction pool projects
- Considering optional use for all other projects
  - DGS investigating continuing statewide contract for optional use for electronic CO-12 (Schedule of Values / Applications for Payment)
  - Agencies with projects authorized for construction in the 2016 Capital Bond Bill (Chapters 759/769) must submit select data points to BCOM on quarterly basis to comply with mandatory debt tracking requirements

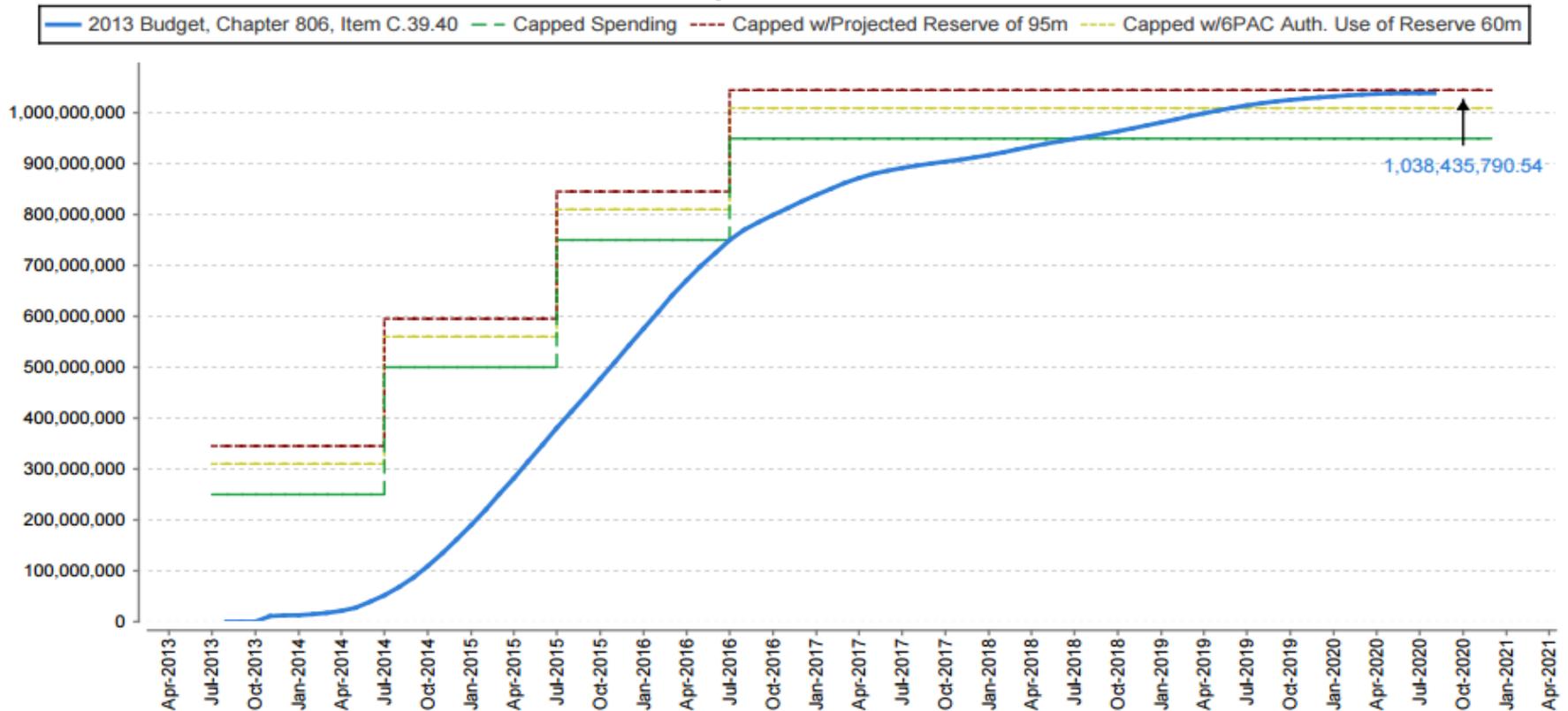


# Chapter 806 Projection

As of March 31, 2016

2013 Budget, Chapter 806, Item C.39.40

Estimated Fund Expenditure Versus Fund Limits





# 2016 Capital Bond Bill

## Chapters 759 (HB1344) & 769 (SB731)

§	\$Type	\$Total	# of Projects	Purpose
1	VPBA & VCBA	\$1,778,632,677	74	Construction Pool
2	VPBA & VCBA	\$12,200,000	4	Supplements for 4 projects
3	VPBA & VCBA	\$15,600,000	9	Equipment Pool
4	CCPF	-	21	Detailed Planning Pool- effective <b>July 1, 2017</b> ; authorizes use of other NGF to move to working drawings and reimbursement of NGF when project is funded for construction; agencies <b>cannot submit planning documents prior to July 1, 2018</b>
5	VPBA	\$350,000,000	-	<i>(Norfolk International Terminal)</i>
6	VPBA	\$59,000,000	-	<i>(Reimbursements to dischargers in the Chesapeake Bay watershed/DEQ)</i>
7	VPBA	\$20,000,000	-	<i>(Stormwater Local Assistance Fund/DEQ)</i>
8	-	-	-	<i>(Related to the Advanced Manufacturing Apprentice Academy Ctr)</i>
9	-	-	-	<i>(Related to Fort Monroe)</i>
10	-	-	-	<b>Applies \$300M annual spending cap to projects in 1 &amp; 2</b>
11	-	-	-	<i>Related to Capitol Square General Assembly Building (note: decision brief signed)</i>



# Enjoinment & Debarment

1 of 5



DEPARTMENT OF  
GENERAL SERVICES

**DIVISION OF ENGINEERING AND BUILDINGS**

Serving Government. Serving Virginians.

**DEB Notice 072011**

( Effective: 7/12/2011 )

**Department of General Services Debarment and Enjoinment Procedures for Construction**

Procedures online: [www.dgs.virginia.gov](http://www.dgs.virginia.gov)



# Enjoinment & Debarment

2 of 5

## Purpose of ENJOINMENT:

1. To get the contractor to perform appropriately
2. Often serves as a prerequisite or “Step 1” for potential debarment

## Reasons for ENJOINMENT: Section III. A.

1. Failure to meet SWaM requirements
2. Delinquency in excess of 10%
3. Unwillingness or inability to fulfill contract
4. Commencing construction activities prior to issuance of a building permit



# Enjoinment & Debarment

3 of 5

## Purpose of DEBARMENT:

1. Punitive Action

## Reasons for DEBARMENT: Section IV. A.

1. Performance and related causes:

- a. Breach of contract with the Commonwealth
- b. Stating an unwillingness or inability to honor a binding bid
- c. Falsifying or misrepresenting manufacturer's specs
- d. Use of abusive or obscene language or threat
- e. Delaying construction completion by failing to correct work





# Enjoinment & Debarment

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## Reasons for DEBARMENT: Section IV. A., cont.

### 2. Non-performance related causes:

- a. Proof of involvement in any criminal offense involving public contracting.
- b. Conviction of any offenses indicating a lack of moral, ethical, or business integrity.
- c. Conferring or offering to confer any gift, gratuity, favor, or advantage, present or future.
- d. Failing to disclose a condition constituting a conflict of interest.
- e. Sale of building materials by an independent contractor employed to provide A/E services, but not construction.
- f. 



# Enjoinment & Debarment

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## Reasons for DEBARMENT: Section IV. A., cont.

### 2. Non-performance related causes, cont.:

- f. Sale of building materials by the design professional to the contractor.
- g. Sale of goods to the COV when debarred.
- h. Court judgment finding a violation of antitrust law.
- i. Failure to pay re-procurement costs due to termination for default.
- j. Enjoinment may be converted to debarment if the contractor continues with construction without a building permit.



# Statewide Contracts: Benefits

1 of 6

- ✓ Procurement process is done for you; saves time and money for the Commonwealth
- ✓ Companies have been pre-screened
- ✓ Costs have been established and compared to current market trends
- ✓ Process is as easy as issuing a purchase order



# Statewide Contracts: Benefits

2 of 6

- **Professional Services (Category B):** for small projects where total design fees are less than \$50,000
- **Pre-Qualified Small Businesses Contractors List:** for contract awards up to \$500,000 per project (renovation) or \$250,000 per project (new construction).  
Change: increased threshold for streamlined procedures from \$50k to \$100k
- **Non Professional Construction-Related Services:** cost estimator, project manager, roofing inspector, space planner, interior design, facility assessments, and signage design



# Statewide Contracts: Benefits

3 of 6

- **Construction Testing and Environmental Services:** asbestos/lead, environmental assessments, soils technician, mortar joint testing, and air monitoring
- **Security Consulting:** risk assessments, security master plans, and security system design; does not include IT security or security guard services. (Note: this contract will be combined in the coming year with non-professional services)
- **Institute for Building Technology and Safety (IBTS) Agreement:** a nonprofit public service entity that provides technical services to support agency work related to building code and public safety



# Statewide Contracts: Benefits

4 of 6

- **Fire Suppression System Testing, Maintenance and Repair:** inspection services, repairs and maintenance of fire suppression systems (sprinkler systems), including fire pumps and related components
- **Water Treatment Services:** installation of water treatment equipment for mechanical systems and inspection/testing of water chemistry
- **Maintenance and Repair for Building Automation, Fire Alarm and Security Systems:** repairs, maintenance, upgrades, and renovations of existing building automation, fire alarm, and security systems
- **Fire/Water Damage Emergency Restoration:** damage clean-up, remediation, restoration, and water extraction



# Statewide Contracts

## Contracts Expiring 12/31/16

5 of 6

- **Web-based Construction Cost Accounting- GCPay:** electronic approval process for approving invoices from contractors and design firms. Investigating possible continuation.
- **Facility Assessment Services: Accruent/VFA (FICAS):** for tracking performing facility condition assessments



# Statewide Contracts: Benefits

6 of 6

***Your feedback is important to us!***

Let us know if:

- Any of these contracts need improvement
- You would like to see any additional contracts
- Any of the contractors on these contracts are not performing, so we may assist



# Energy Services Contracting (ESCOs): Typical Tasks

- Chiller and cooling tower replacements
- Replacing meters
- Re-lamping
- Window and envelope treatments
- Water fixture replacements
- Maintenance operations training
- Building automation
- HVAC improvements
- Renewable energy
- New energy sources



# Energy Services Contracting (ESCOs): Changes to the DEB ESCO Contract

- Updated CO-9 DB (ESCO) contract
- Updated Energy Special Terms and Conditions
- Performance bonds for energy savings may be provided later in the process (*Note: no change to the requirements for ESCO construction bonds*)
- Option to use Notice of Intent to Award

***REMINDER: The CO-9DB(ESCO), energy special terms and conditions, and the CO-7DB may only be modified with DGS approval!***



# Energy Services Contracting (ESCOs): Contract Timeline

**\*Current contract expires March 31, 2017\***

Work in progress under this contract may be extended through September 30, 2017, if:

- ***No later than March 1, 2017:*** The agency completes a technical energy audit and makes a formal request to DGS to extend the contract another 6 months so that a contract can be in place by September 30, 2017
- ***No later than March 31, 2017:*** DGS issues a contract modification to the ESCO and public body for a 6 month extension (the maximum possible under existing procurement regulations) to complete the energy contract for that specific public body
- ***No later than September 30, 2017:*** The energy contract is signed and DGS is provided a copy of the executed contract



## Energy Services Contracting (ESCOs): Process Overview

- Companies are pre-qualified (see DEB pool)
- Contact 4 or more from the pre-qualified pool to conduct “back of the envelope” audit
- You interview and discuss the audits
- You select ESCO and begin negotiations for the technical energy audit
- BCOM review
- At completion of technical energy audit, you decide whether to proceed to design-build construction contract



# Energy Services Contracting (ESCOs): Lessons Learned

- Closely scrutinize alleged/projected operations and maintenance savings
- Closely scrutinize baseline; longer duration preferable (ie, multiple years)
- These are typically long-term, relatively high \$ contracts; as a result, consider independent, 3<sup>rd</sup> party reviews:
  - To validate the baseline
  - Before signing the contract
  - For measurement and verification
  - The Institute for Building Technology and Safety (IBTS) can provide independent 3<sup>rd</sup> party assistance/expertise: [www.ibts.org](http://www.ibts.org)



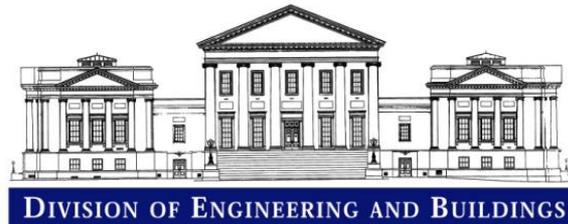
# Fall Procurement Forum

November 15<sup>th</sup>, 2016

- VCCO-focused
- Need your feedback on topics



# QUESTIONS?



**Ed Gully, P.E.**  
**Director, Division of Engineering and Buildings**