Public Body Procurement Workgroup

http://dgs.virginia.gov/dgs/directors-office/procurement-workgroup/

Meeting # 1
Tuesday, May 2, 2023, 1:00 p.m.
House Room 1
The Virginia State Capitol
1000 Bank Street, Richmond, Virginia 23218

AGENDA

I. **Call to Order; Remarks by Chair**

II. **Introduction of Workgroup Members, Representatives, and Staff**

III. **Approval of Meeting Minutes from the November 28, 2022 Workgroup Meeting**

IV. **Recap of 2022 Work and Overview of Proposed 2023 Work Plan**

V. **Consideration and Discussion of Public Comment, Presentations, and Other Information Received by the Workgroup on SB 272**

VI. **Findings and Recommendations on SB 272**

VII. **Public Comment**

VIII. **Discussion**

IX. **Adjournment**

Members

Department of General Services
Virginia Information Technologies Agency
Department of Planning and Budget
Virginia Association of State Colleges and University Purchasing Professionals
Department of Small Business and Supplier Diversity
Virginia Department of Transportation
Virginia Association of Government Purchasing

Representatives

Office of the Attorney General
Senate Finance Committee
House Appropriations Committee
Division of Legislative Services

Staff

Jessica Budd, Legal Policy Analyst, DGS
Jessica Hendrickson, Director of Policy and Legislative Affairs, DGS

DRAFT Meeting Minutes

Public Body Procurement Workgroup

Meeting # 6

Monday, November 28, 2022, 9:30 a.m.
Conference Rooms C, D, and E
James Monroe Building
101 N 14th St, Richmond, Virginia 23219

http://dgs.virginia.gov/dgs/directors-office/procurement-workgroup/

The Public Body Procurement Workgroup (the Workgroup) met in-person in conference rooms C, D, and E in the James Monroe Building in Richmond, Virginia, with Sandra Gill, Deputy Director of the Department of General Services (DGS), presiding. The meeting began with remarks from Ms. Gill, followed by public comment, presentations, and discussion. Materials presented at the meeting are available through the Workgroup's website.

Workgroup members and representatives present at the meeting included Sandra Gill (Department of General Services), Lisa Pride (Virginia Department of Transportation), John McHugh (Virginia Association of State Colleges and University Purchasing Professionals), Patricia Innocenti (Virginia Association of Governmental Procurement), Leslie Haley (Office of the Attorney General), Mike Tweedy (Senate Finance and Appropriations Committee), and Joanne Frye (Division of Legislative Services).

Willis Morris with the Department of Small Business and Supplier Diversity, Joshua Heslinga with the Virginia Information Technologies Agency, Jason Saunders with the Department of Planning and Budget, and Andrea Peeks with the House Appropriations Committee were absent.

I. Call to Order; Remarks by Chair

Sandra Gill, Deputy Director
Department of General Services

Ms. Gill called the meeting to order and welcomed the Workgroup members to the Workgroup's sixth meeting of the year.

II. Approval of Meeting Minutes from the September 19, 2022 Workgroup Meeting

Mr. McHugh made a motion to approve the meeting minutes from the September 19, 2022 meeting of the Workgroup. The motion was seconded by Ms. Pride and unanimously approved by the Workgroup.

III. Status of the Final Reports for the Workgroup's Studies of SB 550 and SB 575

Ms. Gill shared with the Workgroup that the final reports for the Workgroup's studies of SB 550 and SB 575 have been finalized and submitted to the General Assembly. She noted that they are available on the Workgroup's website and through the portal on the General Assembly's Legislative Information System website.

IV. Presentation on SB 272

The Honorable Ghazala F. Hashmi
Senate of Virginia

Senator Hashmi began her remarks by thanking the Workgroup for the opportunity to present SB 272 to the Workgroup. She explained that the bill has two main purposes. The first purpose is environmental – to specifically address the issue of CO_2 emissions that result from cement production. The second purpose is to put Virginia in alignment with the efforts that the cement and concrete industry are already taking to reduce CO_2 emissions resulting from cement and concrete production and to establish Virginia as a leader in this area.

Senator Hashmi explained that the production of cement, which is used to make concrete, requires extreme heat, and stated that such heat is obtained by burning powdered coal or natural gas. She stressed that the chemical reaction resulting from burning the coal or natural gas releases CO_2. She emphasized the profound environmental impact of the production of cement by citing statistics showing that if cement was a country, it would rank third in line for global CO_2 emissions just behind the United States and China. She emphasized that this impact is going to grow overtime as the Commonwealth increases it use of cement and concrete as it seeks to improve its infrastructure, particularly roads and bridges.

With this in mind, Senator Hashmi explained that her original goal for SB 272 and now for the Workgroup's study of SB 272 is for the Workgroup to review the climate impact of cement production and investigate potential incentives that may be offered to the cement and concrete industry to reduce overall CO_2 emissions from the production of cement and concrete that is used in Commonwealth-funded projects. She concluded her remarks by noting her desire that all stakeholders be given the opportunity to share their insights with the Workgroup.

V. Public Comment

The first stakeholder to comment was Eric Koehler, the Director of Quality at Titan America. Mr. Koehler explained that Titan America operates in Virginia as Titan Virginia Ready-Mix and Roanoke Cement Company. He shared that he is a part of Titan America's decarbonization team and they are increasingly working to find ways to decarbonize cement and concrete in all stages of its production – from the raw material

extraction through the manufacturing process – and in its eventual delivery to the end user.

Mr. Koehler then described several efforts that Titan America has taken or is currently taking to reduce its carbon emissions. He shared that Titan America has committed to net zero concrete by 2050, as validated by the Science Based Targets initiative. He explained that in its efforts to meet that goal, Titan America will be required to meet interim objectives. Those interim objectives include achieving a 35% reduction target for their scope 1 emissions and a 45% reduction target for their scope 2 emissions by 2030. Given such goal and interim objectives, he stated Titan America is well on its way towards reducing its carbon emissions. Additionally, he shared that Titan America recently announced that they have fully converted their cement production to Type IL cement, also known as Portland Limestone Cement, which is about 10 percent lower in CO_2 than traditional Type I and Type II cement. He shared that Titan American first began manufacturing Tyle IL in 2015, and that they appreciated that Virginia's Department of Transportation (VDOT) was one of the first state departments of transportation to adopt Tyle IL cement. He expressed Titan America's desire to accelerate the process for getting innovative new materials into the VDOT's spec mix designs so that progress in reducing carbon emissions from the production of concrete can be achieved more quickly. Further, he noted that Titan America is working on researching carbon capture and utilization.

Mr. Koehler concluded his remarks by thanking the Workgroup for the opportunity to speak. He expressed Titan America's excitement about the study and about the future of concrete in Virginia, which he emphasized brings innovation, economic development, and other benefits to taxpayers.

The second stakeholder to comment was Chris Clow with Holcim Ready Mix Concrete in Virginia. He shared that Holcim is a Swiss-based company and is the world's leader in cement and concrete aggregate production. He stressed that carbon reduction is a significant challenge and goal for their entire industry. He stated that his company appreciates the importance that states across the country are placing on this initiative because it is very important that the right solution is reached. He stressed the importance of allowing all stakeholders to have an opportunity to participate in the Workgroup's study and thanked the Workgroup for the opportunity to speak at today's meeting.

The third and final stakeholder to comment was Nikhil Neelakantan with OpenAir. He explained that OpenAir is a distributed, volunteer-led network that aims to creatively capitalize on capitalize on opportunities to advance, accelerate, and coinvent CO_2 removal in the real world through collaborative advocacy and research on carbon emissions. He noted that OpenAir does not represent any particular industry group. He shared that OpenAir has been involved in highlighting the role that the cement and concrete industry has in creating a net zero future and shared that OpenAir has been involved with several pieces of legislation on this topic in numerous states and localities.

Mr. Neelakantan informed the Workgroup that there are a number of well-established and innovation-based pathways to reducing the carbon footprint of concrete. He stressed to

the Workgroup that the public sector has a critical role to play in leading the transition to lower carbon concrete because state and local governments together are the biggest purchasers of concrete in any given state. He emphasized that in the last two years numerous state and localities have focused on the power of public sector procurement to drive change and listed several examples. First, he shared that in 2020, Colorado passed its "Buy Clean" law, which includes concrete among several major construction materials that must meet emissions thresholds for public construction projects. Additionally, he noted that Colorado has binding targets for cement emissions reductions that will be phased in over the next three decades. He also shared that over the summer, the New Jersey Senate unanimously passed the Embodied Carbon Concrete Leadership Act (the Act) with significant bipartisan support, and that the Act recently passed the state assembly's environmental conservation committee and is scheduled for a full vote in the chamber next month. He emphasized that the Act is also supported by New Jersey's governor. Further, he shared that in 2022 New York passed its own version of the Act and implemented the first low carbon concrete specifications for public projects. Additionally, he shared that New York also introduced new carbon reduction targets and possible incentives as part of a new executive order, and also described low carbon concrete standards put in place by New York City and the New York Port Authority. Further, he highlighted for the Workgroup that cities such as Austin, Portland, and Honolulu have implemented carbon-based procurement standards of prioritization for concrete, and that Illinois, Massachusetts, Washington, and California have introduced similar legislation in the past year. He stressed that the federal government, under the Inflation Reduction Act, will mobilize significant funding that will flow to states in the coming months and years for low carbon concrete research and incentives, and that states that put in place clear plans and commitments to lower carbon in concrete will be best positioned to capture those resources.

Moving on to discuss international efforts at concrete decarbonization, Mr. Neelakantan pointed the Workgroup to the CO_2 Performance Ladder from the Netherlands. He explained that the Performance Ladder was initiated in 2009 and is a green public procurement instrument that certifies companies' climate action. In return for companies making commitments to reduce emissions, they receive an award advantage. He noted that the Performance Ladder serves as both a CO_2 management system by guiding the companies' climate action and as a public policy instrument through which the government can incentivize climate mitigation.

In concluding his remarks, Mr. Neelakantan stressed that action on concrete decarbonization must not come at the expense of safety or quality or overly burden taxpayers. He emphasized, however, that many existing and emerging decarbonization methods and practices are economically competitive and deliver superior quality and durability compared to conventional methods and practices.

VI. Presentation on DEQ's Role in Regulating Cement and Concrete Manufacturers in Virginia

Thomas Ballou, Air Data Analysis & Planning Manager

Virginia Department of Environmental Quality

Thomas Ballou, Air Data Analysis & Planning Manager at the Virginia Department of Environmental Quality (DEQ) gave a presentation to the Workgroup on DEQ's role in regulating cement and concrete manufacturers in Virginia. He shared that he has been involved in some of the regulatory efforts at DEQ to reduce CO_2 and also that his group works on emissions inventories, which estimate the level of emissions coming from facilities and manufacturers like cement and concrete producers.

As background, Mr. Ballou explained that the emissions that result from the cement and concrete sector are twofold – they come from the actual process of producing cement *and* from the combustion of fossil fuels (which is required to generate the extreme heat that is needed to produce clinker, a primary ingredient in cement). He noted that nationally, about 66 million metric tons of CO_2 are produced by the approximately 100 cement manufacturers in the country, and that such 66 million metric tons of CO_2 is about 10 percent of the total industrial emission of greenhouse gases (GHGs) in the country. He shared that in addition to emitting GHGs, cement and concrete manufacturers are also a fairly significant source of criteria pollutants, which are emissions identified in and regulated by the Clean Air Act. He highlighted that the primary criteria pollutants that are emitted by cement and concrete manufactures are sulfur dioxide (SO_2) and nitrogen oxides (NO_x) and noted that both a product of the combustion of fossil fuels.

Mr. Ballou shared with the Workgroup that in Virginia specifically, DEQ regulates approximately 224 cement and/or concrete facilities. He stressed that DEQ regulates them only for criteria pollutants. They do not currently regulate them for CO_2. He noted that DEQ has generally only ventured into regulating CO_2 for two sectors – the power sector and motor vehicles. He emphasized that those two sectors are the main sources of CO_2 both in Virginia and in the country. He shared that there is one large cement manufacturer in Virginia – Roanoke Cement Company and noted that in 2021 Roanoke Cement Company emitted just under a million tons of CO_2 and approximately 2,600 tons of both SO_2 and NO_x. He explained that such criteria pollutant emissions are fairly significant, and that he would qualify Roanoke Cement Company as a substantially regulated source of criteria pollutants. Mr. Ballou explained that the 223 remaining cement and/or concrete facilities that are regulated by DEQ are mostly concrete batching and/or handling facilities and they are generally smaller operations. He noted that the main pollutants of concern at such facilities are particulate matter, and such facilities do not produce much CO_2.

Mr. Ballou then showed the Workgroup a pie chart illustrating the latest GHG inventory assembled by DEQ to provide the Workgroup with a general idea of the major sectors in GHG emissions. The chart showed that in total in 2018 there was approximately 140 million metric tons of CO_2 emitted in Virginia. He pointed out that the largest sector for GHG emissions is transportation, followed by the power sector. He highlighted that the industrial sector (which includes cement and concrete production) accounted for 10 percent of the total GHG emissions, and that the cement and concrete industry,

specifically, produced just under a million metric tons of CO_2, which he categorized as a fairly small component of Virginia's GHG inventory.

Mr. Ballou then gave the Workgroup a brief overview of some of the control technologies that are being developed and/or promoted as possible solutions for reducing carbon emissions resulting from the cement industry. He discussed carbon capture and sequestration or utilization as a potential solution, but shared that this potential solution is most likely a longer-term goal and can also be somewhat technologically and economically challenging. Further, he mentioned that cement manufacturers can switch to cleaner burning fuels to lower the amount of CO_2 that is emitted during the combustion process. Finally, he mentioned that cement manufacturers can use different raw materials, which can reduce CO_2 emissions during the production process.

VII. Presentation on VDOT's Use of Concrete for VDOT Projects

Charles A. Babish, State Materials Engineer
Virginia Department of Transportation

Andy Babish, State Materials Engineer with VDOT, spoke to the Workgroup about VDOT's use of concrete and it current practices related to carbon footprint reduction. He shared that according to a recent study done by the Balmoral Group for VDOT, it is estimated that VDOT's consumption of concrete in Virginia for the calendar year 2022 is approximately 525,000 cubic yards. He explained that such amount is approximately six percent of the total estimated concrete production in Virginia.

Mr. Babish then discussed some current efforts VDOT is taking to reduce its carbon footprint. He shared that VDOT allows the use of waste-stream byproducts, commonly referred to as supplementary cementitious materials (SCMs), in their concrete mixes as an alternative to portland cement. He cited examples of SCMs, including fly ash, which is a byproduct of coal-fire and coal-generated production facilities; slag cement, which is a byproduct of steel production; and silica fume, which is a byproduct of metal production. He explained that these CSMs have a small amount of cementing materials in them, and they react with cement to produce compounds with cementitious properties. As such, CSMs can replace some portland cement.

Additionally, Mr. Babish shared that VDOT also allows Type IL cement to be used in their mixes. He explained that Type IL cement is a newer cement in the marketplace that has become more commonplace in concrete production over the last three to four years. He noted that Type IL cement has more limestone content than the more commonly used "Type I" or "Type II" cements and takes less energy to manufacture, thus reducing its carbon footprint by about 10% (according to the Portland Cement Association).

Further, Mr. Babish noted that VDOT has been specifying maximum cementitious material contents for most of their structural concrete, especially for bridge decks, to prevent and mitigate shrinkage cracking. Doing so, he explained, promotes longevity and

durability in the structural concrete and reduces carbon footprint at construction and through the life of the structures.

Finally, Mr. Babish shared that VDOT has been looking at some carbon sequestration technologies and methods with the help of the Virginia Transportation Research Council and the industry as additional means of reducing VDOT's carbon footprint. He noted that they have been evaluating such technologies and methods for a few years to see how they may help with VDOT's long-term carbon reduction efforts.

VIII. Presentation on DGS' Use of Concrete for DGS Projects

W. Michael Coppa, Director of the Division of Engineering and Buildings
Virginia Department of General Services

Mike Coppa, the Director of the Division of Engineering and Buildings (DEB) for DGS, spoke to the Workgroup about DGS' use of concrete. Based upon the amount of money spent on construction annually in Virginia, Mr. Coppa shared that he estimates that DGS uses approximately 40,000 cubic yards of concrete per year, which is about one-half of a percent of the concrete used in Virginia per year.

Mr. Coppa noted that DEB writes the Construction and Professional Services Manual (CPSM), which agencies throughout the Commonwealth must follow for their construction. He explained that the CPSM looks for a 50-year lifecycle in buildings and simply requires the concrete mixes used for buildings to include at least 50 percent portland cement. They rely upon the project's structural engineers to design the specific concrete mixes within the parameters laid out in the CPSM, and DEB then looks at the appropriateness of such mixes based upon factors such as the need to reduce the heat of vibration or the need to increase strength.

Mr. Coppa summarized his remarks by reiterating that DGS uses a very small amount of concrete in its projects, the projects' architects and engineers are the ones to design the specific concrete mixes, and the CPSM looks for a long lifecycle for the Commonwealth's buildings.

IX. Discussion

Ms. Gill asked the Workgroup if they would like to engage in any discussion on the presentations and public comment received by the Workgroup thus far. Ms. Innocenti asked for clarification as to why the Workgroup is studying SB 272 given that the substitute version of SB 272 does not specifically request the Workgroup to undertake the study. Ms. Gill explained that SB 272 was not passed by the General Assembly during the 2022 Regular Session but was instead tabled in the House Committee on Agriculture, Chesapeake and Natural Resources with the committee's chairmen expressing his intent to ask VDOT and DGS to study the bill. She shared that over the summer, Delegate Leftwich sent a letter to DGS asking DGS to initiate a study on SB 272 and review ways to continue to reduce carbon emissions in concrete and cement without sacrificing the

integrity of the product and cost competitiveness. She noted that a copy of the letter from Delegate Leftwich was included in the meeting materials for today's meeting. She shared that for today's meeting, she called the Workgroup together to hear from Senator Hashmi, stakeholders, DEQ as the relevant Virginia regulatory agency for air emissions, and VDOT and DGS as the primary state agency users of concrete in Virginia to give presentations to the Workgroup and assist it with assessing the climate impact of cement and concrete and considering possible recommendations for reducing the climate impact of cement and concrete used on Commonwealth projects.

X. Public Comment

There was no further public comment.

XI. Adjournment

Ms. Gill adjourned the meeting at 10:13 a.m. and noted that the Workgroup's staff will reach out to the Workgroup's members to schedule the next meeting. She shared that at the next meeting the Workgroup will hear additional public comment and begin discussing potential recommendations.

For more information, see the Workgroup's website or contact that Workgroup's staff at pwg@dgs.virginia.gov.

Public Body Procurement Workgroup

http://dgs.virginia.gov/dgs/directors-office/procurement-workgroup/

2023 PROPOSED WORK PLAN

Meeting #1 – May 2, 2023 at 1:00 p.m.

1. Introduction of Workgroup Members, Representatives, and Staff
2. Recap of 2022 Work and Overview of Proposed 2023 Work Plan

During the 2023 Session, the General Assembly unanimously passed two bills that implemented the recommendations from the Workgroup's study of SB 550 (2022) [Sen. Bell] – SB 1313, patroned by Sen. Bell, and SB 2500, patroned by Del. Wiley.

The Workgroup began studying SB 272 (2022) [Sen. Hashmi] at its last meeting on November 28, 2022. The Workgroup must complete this study and report its findings and recommendations by December 1, 2023.

Additionally, during the 2023 Session, the General Assembly referred the following four new bills to the Workgroup for study:

- *SB 859 (2023), patroned by Senator Cosgrove, which would remove the requirement that local public bodies publish notice of a Request for Proposal on DGS' central electronic procurement website (eVA) if they elect not to publish notice of the Request for Proposal in a newspaper of general circulation in the area in which the contract is to be performed. Currently, local public bodies must publish notice of a Request for Proposal either on eVA or in a newspaper of general circulation in the area in which the contract is to be performed. They may choose to also post such notice on an "appropriate website." The bill would allow local public bodies to satisfy the VPPA's notice requirements for a Request for Proposal by simply posting notice of the Request for Proposal on an "appropriate website."*
- *SB 912 (2023), patroned by Senator Ruff, which would prohibit public bodies, in the case of proposals for information technology, from requiring offerors to state in their proposal any exceptions they may have to any of the contractual terms and conditions, including any liability conditions, contained in the Request for Proposal. The bill would require such offerors to instead state any such exceptions in writing at the beginning of negotiations, and require public bodies to consider such exceptions during negotiation.*
- *SB 954 (2023), patroned by Senator Petersen, which appears to (i) narrow the definition of "complex project" such that projects would be required to meet stricter criteria in order to be deemed complex and therefor appropriate for utilizing construction management and design-build (CM/DB) procurement methods; (ii) prohibit the use of CM/DB procurement methods for projects totaling less than $5*

million; and (iii) for projects totaling between $5 million and $125 million, require public bodies to (a) obtain approval from the Secretary of Administration to use CM/DB procurement methods and (b) conduct a two-step procurement process in which the public body must first award a contract for preconstruction services, and, upon completion of such contract, award a second contract for construction services using competitive sealed bidding.

- *SB 1115 (2023), patroned by Senator DeSteph, which would (i) require state public bodies to decrease the price of any bid offered by (a) seven percent for a "Virginia end product" and (b) two percent for a "U.S. end product"; (ii) require that when the lowest responsive and responsible bidder, after price preferences have been taken into account, who is a resident of Virginia is within five percent or $10,000, whichever is less, of the lowest responsive and responsible bidder who is a resident of another state, the bidder who is a resident of Virginia be given the opportunity to match the price of the bidder who is a resident of another state; and (iii) provide that if a state public body receives three or more bids from manufacturers that use materials or product components made in Virginia or in the U.S., such public body may only select from among such bids.*

The Workgroup must complete its studies of each of these bills and report its findings and recommendations to the bills' patrons and the appropriate committee chairmen by November 1, 2023.

3. SB 272 – Make preliminary findings and recommendations.

Meeting #2 – May 16, 2023 at 1:00 p.m.

1. SB 272 – Finalize findings and recommendations.
2. SB 859 –
    a. Hear presentations and public comment.
    b. Make preliminary findings and recommendations.
3. SB 912
    a. Hear presentations and public comment.
    b. Make preliminary findings and recommendations.

Meeting #3 – June 6, 2023 at 1:00 p.m.

1. SB 859 – Finalize findings and recommendations.
2. SB 912 – Finalize findings and recommendations.
3. SB 1115 –
    a. Hear presentations and public comment.

Meeting #4 – June 27, 2023 at 1:00 p.m.

1. SB 1115 –
    a. Review information received at previous meeting and receive any additional information.
    b. Make preliminary findings and recommendations.

Meeting #5 – July 18, 2023 at 9:30 a.m.

4. SB 1115 – Finalize findings and recommendations.
5. SB 954 –
    a. Hear presentations and public comment.

Meeting #6 – August 8, 2023 at 1:00 p.m.

2. SB 954 –
    a. Review information received at previous meeting and receive any additional information.
    b. Make preliminary findings and recommendations.

Meeting #7 – August 22, 2023 at 1:00 p.m.

1. SB 954 – Finalize findings and recommendations.

November 1, 2023

1. Reports on the Workgroup's findings and recommendations on SB 859, SB 912, SB 954, and SB 1115 due to the bills' patrons and committee chairmen.

December 1, 2023

1. Reports on the Workgroup's findings and recommendations on SB 272 due to the General Assembly.

2023 SESSION

SB 1313 Construction contracts; payment clauses to be included in certain contracts.

Introduced by: **John J. Bell** | **all patrons** ... **notes** | **add to my profiles**

SUMMARY AS PASSED: (all summaries)

Virginia Public Procurement Act; private contracts; payment of subcontractors. Clarifies certain definitions throughout the Code for consistency between public and private construction contracts. The bill updates the notice required when a general contractor withholds all or a part of the amount invoiced by a subcontractor in a public construction contract and when an owner withholds payment from a general contractor to include language specifically identifying the contractual noncompliance, the dollar amount being withheld, and the lower-tier subcontractor responsible for the contractual noncompliance. This bill is identical to **HB 2500.**

FULL TEXT

01/10/23 Senate: Prefiled and ordered printed; offered 01/11/23 23104170D pdf | impact statement

02/01/23 Senate: Committee substitute printed 23105164D-S1 pdf | impact statement

02/14/23 House: Committee substitute printed 23106787D-H1 pdf | impact statement

02/23/23 Senate: Bill text as passed Senate and House (SB1313ER) pdf | impact statement

03/26/23 Governor: Acts of Assembly Chapter text (CHAP0676) pdf

AMENDMENTS

House committee, floor amendments and substitutes offered

Senate committee, floor amendments and substitutes offered

HISTORY

01/10/23 Senate: Prefiled and ordered printed; offered 01/11/23 23104170D

01/10/23 Senate: Referred to Committee on General Laws and Technology

02/01/23 Senate: Reported from General Laws and Technology with substitute (14-Y 0-N)

02/01/23 Senate: Committee substitute printed 23105164D-S1

02/03/23 Senate: Constitutional reading dispensed (38-Y 0-N)

02/06/23 Senate: Read second time

02/06/23 Senate: Reading of substitute waived

02/06/23 Senate: Committee substitute agreed to 23105164D-S1

02/06/23 Senate: Engrossed by Senate - committee substitute SB1313S1

02/06/23 Senate: Constitutional reading dispensed (39-Y 0-N)

02/06/23 Senate: Passed Senate (39-Y 0-N)

02/10/23 House: Placed on Calendar

02/10/23 House: Read first time

02/10/23 House: Referred to Committee on General Laws

02/14/23 House: Reported from General Laws with substitute (22-Y 0-N)

02/14/23 House: Committee substitute printed 23106787D-H1

02/16/23 House: Read second time

02/17/23 House: Read third time

02/17/23 House: Committee substitute agreed to 23106787D-H1

02/17/23 House: Engrossed by House - committee substitute SB1313H1

02/17/23 House: Passed House with substitute BLOCK VOTE (99-Y 0-N)

02/17/23 House: VOTE: Block Vote Passage (99-Y 0-N)

02/20/23 Senate: House substitute agreed to by Senate (40-Y 0-N)

02/20/23 Senate: Title replaced 23106787D-H1

02/23/23 Senate: Enrolled

02/23/23 Senate: Bill text as passed Senate and House (SB1313ER)

02/23/23 House: Signed by Speaker

02/25/23 Senate: Signed by President

03/02/23 Senate: Enrolled Bill Communicated to Governor on March 2, 2023

03/02/23 Governor: Governor's Action Deadline 11:59 p.m., March 27, 2023

03/26/23 Governor: Approved by Governor-Chapter 676 (effective 7/1/23)

03/26/23 Governor: Acts of Assembly Chapter text (CHAP0676)

CHAPTER 676

An Act to amend and reenact §§ 2.2-4347, 2.2-4354, and 11-4.6 of the Code of Virginia, relating to construction contracts; payment clauses to be included; right to payment of subcontractors.

[S 1313]

Approved March 26, 2023

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-4347, 2.2-4354, and 11-4.6 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-4347. Definitions.

As used in this article, unless the context requires a different meaning:

"Construction contract" means a contract relating to the construction, alteration, repair, or maintenance of a building, structure, or appurtenance to such building or structure, including moving, demolition, and excavation connected with such building or structure, or any provision contained in any contract relating to the construction of projects other than buildings.

"Contractor" *or "general contractor"* means the entity that has a direct contract with any "state agency" as defined herein~~,~~ or any agency of local government as discussed in § 2.2-4352.

"Debtor" means any individual, business, or group having a delinquent debt or account with any state agency that obligation has not been satisfied or set aside by court order or discharged in bankruptcy.

"Payment date" means either (i) the date on which payment is due under the terms of a contract for provision of goods or services~~;~~ or (ii) if such date has not been established by contract, (a) ~~thirty~~ *30* days after receipt of a proper invoice by the state agency or its agent or ~~forty-five~~ *45* days after receipt by the local government or its agent responsible under the contract for approval of such invoices for the amount of payment due~~,~~ or (b) ~~thirty~~ *30* days after receipt of the goods or services by the state agency or ~~forty-five~~ *45* days after receipt by the local government, whichever is later.

"State agency" means any authority, board, department, instrumentality, institution, agency, or other unit of state government. ~~The term shall~~ *"State agency" does* not include any county, city, or town or any local or regional governmental authority.

"Subcontractor" means any entity that has a contract to supply labor or materials to the contractor to whom the contract was awarded or to any subcontractor in the performance of the work provided for in such contract.

§ 2.2-4354. Payment clauses to be included in contracts.

Any contract awarded by any state agency, or any contract awarded by any agency of local government in accordance with § 2.2-4352, shall include:

1. A payment clause that obligates ~~a~~ *the* contractor on a construction contract, *in the event that the contractor has not received payment from the state agency or local government for work performed by a subcontractor under such contract,* to be liable for the entire amount owed to ~~any~~ *such* subcontractor ~~with which it contracts~~ *and to pay such subcontractor within 60 days of the receipt of an invoice following satisfactory completion of the work for which the subcontractor has invoiced.* Such contractor shall not be liable for amounts otherwise reducible due to the subcontractor's noncompliance with the terms of the contract. However, in the event that the contractor withholds all or a part of the amount ~~promised to~~ *invoiced by* the subcontractor under the *terms of the* contract, the contractor shall notify the subcontractor *within 50 days of the receipt of such invoice*, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment, *specifically identifying the contractual noncompliance, the dollar amount being withheld, and the lower-tier subcontractor responsible for the contractual noncompliance*. Payment by the party contracting with the contractor shall not be a condition precedent to payment to any lower-tier subcontractor, regardless of that ~~contractor~~ *contractor's* receiving payment for amounts owed to that contractor. Any provision in a *construction* contract contrary to this section shall be unenforceable. *Nothing in this subdivision shall be construed to (i) apply to or prohibit the inclusion of any retainage provisions in a construction contract or (ii) apply to contracts awarded solely for professional services as that term is defined in § 2.2-4301 where the public body is contracting directly with an architectural and engineering firm.*

2. A payment clause that obligates the contractor to take one of the two following actions within seven days after receipt of amounts paid to the contractor by the state agency or local government for work performed by the subcontractor under that contract:

a. Pay the subcontractor for the proportionate share of the total payment received from the agency attributable to the work performed by the subcontractor under that contract; or

b. Notify the agency and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

3. A payment clause that requires (i) individual contractors to provide their social security numbers and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.

4. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts owed by the contractor that remain unpaid after seven days following receipt by the contractor of payment from the state agency or agency of local government for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision 2.

5. An interest rate clause stating, "Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month."

Any such contract awarded shall further require the contractor to include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of the state agency or agency of local government. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

§ 11-4.6. Required contract provisions in construction contracts.

A. As used in this section, unless the context requires a different meaning:

"Construction contract" means ~~a contract between a general contractor and a subcontractor relating to the construction, alteration, repair, or maintenance of a building, structure, or appurtenance thereto, including moving, demolition, and excavation connected therewith, or any provision contained in any contract relating to the construction of projects other than buildings~~ *a contract for the construction, alteration, repair, or maintenance of a building, structure, or appurtenance thereto, including moving, demolition, and excavation connected therewith, or any provision contained in any contract relating to the construction of projects other than buildings, except for contracts awarded solely for professional services as that term is defined in § 2.2-4301*.

"~~General~~ *Contractor" or "general* contractor" ~~and "subcontractor" have the meanings ascribed thereto in § 43-1~~ *means the same as that term is defined in § 54.1-1100,* except that ~~those terms~~ *such term* shall not include persons solely furnishing materials.

"Owner" means a person or entity, other than a public body as defined in § 2.2-4301, responsible for contracting with a general contractor for the procurement of a construction contract.

"Subcontractor" means the same as that term is defined in § 2.2-4347.

B. *1.* In any construction contract between an owner and a general contractor, the parties shall include a provision that requires the owner to pay such general contractor within 60 days of the receipt of an invoice following satisfactory completion of the portion of the work for which the general contractor has invoiced. An owner shall not be ~~required to pay~~ *liable for* amounts ~~invoiced that are subject to withholding pursuant to the contract for~~ *otherwise reducible due to* the general contractor's noncompliance with the terms of the contract. However, in the event that an owner withholds all or a part of the amount invoiced by the general contractor under the terms of the contract, the owner shall notify the general contractor *within 45 days of the receipt of such invoice*, in writing ~~and with reasonable specificity~~, of his intention to withhold all or part of the general contractor's payment with the reason for nonpayment, *specifically identifying the contractual noncompliance and the dollar amount being withheld*. Failure of an owner to make timely payment as provided in this ~~subsection~~ *subdivision* shall result in interest penalties consistent with § 2.2-4355. Nothing in this ~~subsection~~ *subdivision* shall be construed to apply to or prohibit the inclusion of any retainage provisions in a construction contract.

~~C.~~ *2.* Any *construction* contract in which there is at least one general contractor and one subcontractor shall be deemed to include a provision under which any ~~higher-tier~~ *general* contractor is liable to any ~~lower-tier~~ subcontractor with whom the ~~higher-tier~~ *general* contractor contracts for satisfactory performance of the subcontractor's duties under the contract. Such contract shall require such ~~higher-tier~~ *general* contractor to pay such ~~lower-tier~~ subcontractor within the earlier of (i) 60 days of the *receipt of an invoice following* satisfactory completion of the portion of the work for which the subcontractor has invoiced or (ii) seven days after receipt of amounts paid by the owner to the general contractor or by the ~~higher-tier~~ contractor to the ~~lower-tier contractor~~ *subcontractor* for work performed by a subcontractor pursuant to the terms of the contract. Such contractors shall not be liable for amounts otherwise reducible ~~pursuant to a breach of contract by~~ *due to* the ~~subcontractor~~ *subcontractor's noncompliance with the terms of the contract*. However, in the event that a contractor withholds all or a part of the amount invoiced by any ~~lower-tier~~ subcontractor under the contract, the contractor shall notify the subcontractor *within 50 days of the receipt of such invoice,* in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment, specifically identifying the contractual noncompliance, the dollar amount being withheld, and the ~~lower-tier~~ subcontractor responsible for the contractual noncompliance. Payment by the party contracting with the contractor shall not be a condition precedent to payment to any ~~lower-tier~~ subcontractor, regardless of that ~~contractor~~ *contractor's* receiving payment for amounts owed to that contractor, unless the party

contracting with the contractor is insolvent or a debtor in bankruptcy as defined in § 50-73.79. Any provision in a contract contrary to this section shall be unenforceable. Failure of a contractor to make timely payment as provided in this ~~subsection~~ *subdivision* shall result in interest penalties consistent with § 2.2-4355. Nothing in this ~~subsection~~ *subdivision* shall be construed to apply to or prohibit the inclusion of any retainage provisions in a construction contract. *Every subcontract between a subcontractor and a lower-tier subcontractor or supplier, of any tier, shall contain the identical payment, notice, and interest requirements as those provided in this subdivision if (i) such construction contract is related to a project other than a single-family residential project and (ii) the value of the project, or an aggregate of projects under such construction contract, is greater than $500,000.*

~~D.~~ *C. 1.* Any construction contract between a general contractor and its subcontractor and any lower tier *additional* subcontract entered into on or after July 1, 2020, shall be deemed to include a provision under which the general contractor, its subcontractor, and the *additional* subcontractor at any lower tier are jointly and severally liable to pay the employees of any *additional* subcontractor at any lower tier the greater of (i) all wages due to a subcontractor's employees or to the lower tier subcontractor's employees at such rate and upon such terms as shall be provided in the employment agreement between the subcontractor and its employees or (ii) the amount of wages that the subcontractor or any lower tier subcontractor is required to pay to its employees under the provisions of applicable law, including the provisions of the Virginia Minimum Wage Act (§ 40.1-28.8 et seq.) and the federal Fair Labor Standards Act (29 U.S.C. § 201 et seq.).

~~E.~~ *2.* A general contractor shall be deemed to be the employer of ~~a~~ *any* subcontractor's employees ~~at any tier~~ for purposes of § 40.1-29. If the wages due to the subcontractor's employees under the terms of the employment agreement between a subcontractor and its employees are not paid, the general contractor shall be subject to all penalties, criminal and civil, to which an employer that fails or refuses to pay wages is subject under § 40.1-29. Any liability of a general contractor pursuant to § 40.1-29 shall be joint and several with the subcontractor that failed or refused to pay the wages to its employees.

~~F.~~ *3.* Except as otherwise provided in a contract between the general contractor and the subcontractor, the subcontractor shall indemnify the general contractor for any wages, damages, interest, penalties, or attorney fees owed as a result of the subcontractor's failure to pay wages to the subcontractor's employees as provided in ~~subsection d~~ *subdivision 1*, unless the subcontractor's failure to pay the wages was due to the general contractor's failure to pay moneys due to the subcontractor in accordance with the terms of their construction contract.

~~G.~~ *4.* The provisions of this ~~section~~ *subsection* shall only apply if (i) it can be demonstrated that the general contractor knew or should have known that the subcontractor was not paying his employees all wages due, (ii) the construction contract is related to a project other than a single family residential project, and (iii) the value of the project, or an aggregate of projects under one construction contract, is greater than $500,000. As evidence a general contractor or *any* subcontractor~~, regardless of tier,~~ may offer a written certification, under oath, from the subcontractor in direct privity of contract with the general contractor or subcontractor stating that (a) the subcontractor and each of his sub-subcontractors has paid all employees all wages due for the period during which the wages are claimed for the work performed on the project and (b) to the subcontractor's knowledge all sub-subcontractors below the subcontractor~~, regardless of tier,~~ have similarly paid their employees all such wages. Any person who falsely signs such certification shall be personally liable to the general contractor or subcontractor for fraud and any damages the general contractor or subcontractor may incur.

COMMONWEALTH OF VIRGINIA

SUSAN CLARKE SCHAAR
CLERK OF THE SENATE
POST OFFICE BOX 396
RICHMOND, VIRGINIA 23218

SENATE

March 24, 2023

Mr. Joseph F. Damico
Director, Department of General Services
1100 Bank Street, Suite 420
Richmond, Virginia 23219

Dear Joe:

This is to inform you that, pursuant to Rule 20 (o) of the Rules of the Senate of Virginia, the Senate Committee on General Laws and Technology has referred the subject matter contained in Senate Bill 859 to the Virginia Department of General Services for study. It is requested that the appropriate committee chair and bill patron receive a written report, with a copy to this office, by November 1, 2023.

With kind regards, I am

Sincerely yours,

Susan Clarke Schaar

SCS:lgs

cc: Sen. Adam P. Ebbin, Chair, Senate Committee on General Laws and Technology
Sen. John A. Cosgrove, Jr., Patron of SB 859
Amigo Wade, Director, Division of Legislative Services

COMMONWEALTH OF VIRGINIA

SUSAN CLARKE SCHAAR
CLERK OF THE SENATE
POST OFFICE BOX 396
RICHMOND, VIRGINIA 23218

SENATE

March 24, 2023

Mr. Joseph F. Damico
Director, Department of General Services
1100 Bank Street, Suite 420
Richmond, Virginia 23219

Dear Joe:

This is to inform you that, pursuant to Rule 20 (o) of the Rules of the Senate of Virginia, the Senate Committee on Finance and Appropriations has referred the subject matters contained in Senate Bill 912, Senate Bill 954, and Senate Bill 1115 to the Procurement Workgroup for study. It is requested that the appropriate committee co-chairs and bill patrons receive written reports, with copies to this office, by November 1, 2023.

With kind regards, I am

Sincerely yours,

Susan Clarke Schaar

SCS:gc

cc: Sen. Janet D. Howell, Co-Chair, Senate Committee on Finance and Appropriations
Sen. George L. Barker, Co-Chair, Senate Committee on Finance and Appropriations
Sen. Frank M. Ruff, Jr., Patron of SB 912
Sen. J. Chapman Petersen, Patron of SB 954
Sen. Bill DeSteph, Patron of SB 1115
Amigo Wade, Director, Division of Legislative Services
April Kees, Director, Senate Finance and Appropriations Committee

2023 SESSION

SB 859 Va. Public Procurement; competitive negotiation, localities to post public notice on website.

Introduced by: **John A. Cosgrove, Jr.** | **all patrons** ... **notes** | **add to my profiles**

SUMMARY AS INTRODUCED:

Virginia Public Procurement Act; competitive negotiation; allows localities to post public notice on appropriate websites. Removes the requirement that if a local public body elects not to publish notice of a Request for Proposal in a newspaper of general circulation in the area in which the contract is to be performed, then such local public body shall post such notice on the Department of General Services' central electronic procurement website. The bill allows local public bodies to post such notice on any appropriate website without requiring local public bodies to post such notice in a newspaper.

FULL TEXT

12/30/22 Senate: Prefiled and ordered printed; offered 01/11/23 23102127D pdf | impact statement

HISTORY

12/30/22 Senate: Prefiled and ordered printed; offered 01/11/23 23102127D

12/30/22 Senate: Referred to Committee on General Laws and Technology

01/11/23 Senate: Passed by indefinitely in General Laws and Technology with letter (14-Y 0-N)

23102127D

SENATE BILL NO. 859

Offered January 11, 2023

Prefiled December 30, 2022

A BILL to amend and reenact § 2.2-4302.2 of the Code of Virginia, relating to Virginia Public Procurement Act; competitive negotiation; public notice of Request for Proposal.

Patron—Cosgrove

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-4302.2 of the Code of Virginia is amended and reenacted as follows:

§ 2.2-4302.2. Process for competitive negotiation.

A. The process for competitive negotiation shall include the following:

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposal, indicating whether a numerical scoring system will be used in evaluation of the proposal, and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities, specifications or qualifications that will be required. Except with regard to contracts for architectural, professional engineering, transportation construction, or transportation-related construction services, a public body may include as a factor that will be used in evaluating a proposal the proposer's employment of persons with disabilities to perform the specifications of the contract. In the event that a numerical scoring system will be used in the evaluation of proposals, the point values assigned to each of the evaluation criteria shall be included in the Request for Proposal or posted at the location designated for public posting of procurement notices prior to the due date and time for receiving proposals. No Request for Proposal for construction authorized by this chapter shall condition a successful offeror's eligibility on having a specified experience modification factor;

2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of proposals by posting on the Department of General Services' central electronic procurement website or other appropriate websites. Public bodies may also publish in a newspaper of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. Posting on the Department of General Services' central electronic procurement website shall be required of ~~(i)~~ any state public body ~~and (ii) any local public body if such local public body elects not to publish notice of the Request for Proposal in a newspaper of general circulation in the area in which the contract is to be performed~~. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities. In addition, proposals may be solicited directly from potential contractors. Any additional solicitations shall include certified businesses selected from a list made available by the Department of Small Business and Supplier Diversity; and

3. For goods, nonprofessional services, and insurance, selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. In the case of a proposal for information technology, as defined in § 2.2-2006, a public body shall not require an offeror to state in a proposal any exception to any liability provisions contained in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. The offeror shall state any exception to any liability provisions contained in the Request for Proposal in writing at the beginning of negotiations, and such exceptions shall be considered during negotiation. Price shall be considered, but need not be the sole or primary determining factor. After negotiations have been conducted with each offeror so selected, the public body shall select the offeror which, in its opinion, has made the best proposal and provides the best value, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror; or

4. For professional services, the public body shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and

performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In addition, offerors shall be informed of any ranking criteria that will be used by the public body in addition to the review of the professional competence of the offeror. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the public body may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. In accordance with § 2.2-4342, proprietary information from competing offerors shall not be disclosed to the public or to competitors. For architectural or engineering services, the public body shall not request or require offerors to list any exceptions to proposed contractual terms and conditions, unless such terms and conditions are required by statute, regulation, ordinance, or standards developed pursuant to § 2.2-1132, until after the qualified offerors are ranked for negotiations. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the public body shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious.

Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the public body can be negotiated at a price considered fair and reasonable and pursuant to contractual terms and conditions acceptable to the public body, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price.

Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the Request for Proposal, a public body may award contracts to more than one offeror.

Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

B. Multiphase professional services contracts satisfactory and advantageous to the completion of large, phased, or long-term projects may be negotiated and awarded based on a fair and reasonable price for the first phase only, where the completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to entering into any such contract, the public body shall (i) state the anticipated intended total scope of the project and (ii) determine in writing that the nature of the work is such that the best interests of the public body require awarding the contract.

For the purposes of subdivision A 1, "experience modification factor" means a value assigned to an employer as determined by a rate service organization in accordance with its uniform experience rating plan required to be filed pursuant to subsection D of § 38.2-1913.

2023 SESSION

SB 912 Virginia Public Procurement Act; competitive negotiation, exceptions to contractual terms.

Introduced by: **Frank M. Ruff, Jr.** | **all patrons** ... **notes** | **add to my profiles**

SUMMARY AS INTRODUCED:

Virginia Public Procurement Act; competitive negotiation; exceptions to contractual terms and conditions of the Request for Proposal. Prohibits a public body from requiring an offeror to state in a proposal any exception to any contractual terms or conditions, including any liability provisions, contained in a Request for Proposal for information technology. The bill also requires the offeror to state any such exception in writing at the beginning of negotiations, which exception shall be considered during negotiations. Current law only prohibits a public body from requiring an offeror to state in a proposal any exception to the liability provisions of the Request for Proposal.

FULL TEXT

01/05/23 Senate: Prefiled and ordered printed; offered 01/11/23 23101862D pdf | impact statement

HISTORY

01/05/23 Senate: Prefiled and ordered printed; offered 01/11/23 23101862D

01/05/23 Senate: Referred to Committee on General Laws and Technology

01/11/23 Senate: Reported from General Laws and Technology (14-Y 0-N)

01/11/23 Senate: Rereferred to Finance and Appropriations

02/02/23 Senate: Passed by indefinitely in Finance and Appropriations with letter (9-Y 6-N)

23101862D

SENATE BILL NO. 912

Offered January 11, 2023

Prefiled January 5, 2023

A BILL to amend and reenact § 2.2-4302.2 of the Code of Virginia, relating to Virginia Public Procurement Act; competitive negotiation; exceptions to contractual terms and conditions of Request for Proposal.

Patron—Ruff

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-4302.2 of the Code of Virginia is amended and reenacted as follows:

§ 2.2-4302.2. Process for competitive negotiation.

A. The process for competitive negotiation shall include the following:

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposal, indicating whether a numerical scoring system will be used in evaluation of the proposal, and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities, specifications or qualifications that will be required. Except with regard to contracts for architectural, professional engineering, transportation construction, or transportation-related construction services, a public body may include as a factor that will be used in evaluating a proposal the proposer's employment of persons with disabilities to perform the specifications of the contract. In the event that a numerical scoring system will be used in the evaluation of proposals, the point values assigned to each of the evaluation criteria shall be included in the Request for Proposal or posted at the location designated for public posting of procurement notices prior to the due date and time for receiving proposals. No Request for Proposal for construction authorized by this chapter shall condition a successful offeror's eligibility on having a specified experience modification factor;

2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of proposals by posting on the Department of General Services' central electronic procurement website or other appropriate websites. Public bodies may also publish in a newspaper of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. Posting on the Department of General Services' central electronic procurement website shall be required of (i) any state public body and (ii) any local public body if such local public body elects not to publish notice of the Request for Proposal in a newspaper of general circulation in the area in which the contract is to be performed. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities. In addition, proposals may be solicited directly from potential contractors. Any additional solicitations shall include certified businesses selected from a list made available by the Department of Small Business and Supplier Diversity; and

3. For goods, nonprofessional services, and insurance, selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. In the case of a proposal for information technology, as defined in § 2.2-2006, a public body shall not require an offeror to state in a proposal any exception to any *contractual terms or conditions, including any* liability provisions contained in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. The offeror shall state any exception to any *contractual terms or conditions, including any* liability provisions contained in the Request for Proposal in writing at the beginning of negotiations, and such exceptions shall be considered during negotiation. Price shall be considered, but need not be the sole or primary determining factor. After negotiations have been conducted with each offeror so selected, the public body shall select the offeror which, in its opinion, has made the best proposal and provides the best value, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror; or

4. For professional services, the public body shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with

emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In addition, offerors shall be informed of any ranking criteria that will be used by the public body in addition to the review of the professional competence of the offeror. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the public body may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. In accordance with § 2.2-4342, proprietary information from competing offerors shall not be disclosed to the public or to competitors. For architectural or engineering services, the public body shall not request or require offerors to list any exceptions to proposed contractual terms and conditions, unless such terms and conditions are required by statute, regulation, ordinance, or standards developed pursuant to § 2.2-1132, until after the qualified offerors are ranked for negotiations. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the public body shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious.

Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the public body can be negotiated at a price considered fair and reasonable and pursuant to contractual terms and conditions acceptable to the public body, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price.

Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the Request for Proposal, a public body may award contracts to more than one offeror.

Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

B. Multiphase professional services contracts satisfactory and advantageous to the completion of large, phased, or long-term projects may be negotiated and awarded based on a fair and reasonable price for the first phase only, where the completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to entering into any such contract, the public body shall (i) state the anticipated intended total scope of the project and (ii) determine in writing that the nature of the work is such that the best interests of the public body require awarding the contract.

For the purposes of subdivision A 1, "experience modification factor" means a value assigned to an employer as determined by a rate service organization in accordance with its uniform experience rating plan required to be filed pursuant to subsection D of § 38.2-1913.

2023 SESSION

SB 954 Virginia Public Procurement Act; construction management and design-build contracting.

Introduced by: **J. Chapman Petersen** | **all patrons** ... **notes** | **add to my profiles**

SUMMARY AS INTRODUCED:

Virginia Public Procurement Act; construction management and design-build contracting; applicability. Requires a two-step process consisting of (i) a preconstruction contract and (ii) competitive sealed bidding for construction services for certain projects totaling less than $125 million. Complex projects, defined in the bill, may request an exemption from the provisions of the bill and relevant law from the Secretary of Administration. If a complex project totals more than $125 million, the bill provides that an exemption from the provisions of the bill and relevant law is not required. Finally, the bill states that competitive sealed bidding is the preferred method of procurement for construction services in the Commonwealth.

FULL TEXT

01/06/23 Senate: Prefiled and ordered printed; offered 01/11/23 23100261D pdf | impact statement

HISTORY

01/06/23 Senate: Prefiled and ordered printed; offered 01/11/23 23100261D

01/06/23 Senate: Referred to Committee on General Laws and Technology

02/01/23 Senate: Reported from General Laws and Technology (9-Y 6-N)

02/01/23 Senate: Rereferred to Finance and Appropriations

02/02/23 Senate: Passed by indefinitely in Finance and Appropriations with letter (12-Y 4-N)

23100261D

SENATE BILL NO. 954

Offered January 11, 2023

Prefiled January 6, 2023

A BILL to amend and reenact §§ 2.2-4378 through 2.2-4382 of the Code of Virginia and to amend the Code of Virginia by adding in Article 2 of Chapter 43.1 of Title 2.2 a section numbered 2.2-4380.1, by adding in Article 3 of Chapter 43.1 of Title 2.2. a section numbered 2.2-4381.1, and by adding in Article 4 of Chapter 43.1 of Title 2.2 a section numbered 2.2-4382.1, relating to the Virginia Public Procurement Act; construction management and design-build contracting; applicability.

Patron—Petersen

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-4378 through 2.2-4382 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 2 of Chapter 43.1 of Title 2.2 a section numbered 2.2-4380.1, by adding in Article 3 of Chapter 43.1 of Title 2.2 a section numbered 2.2-4381.1, and by adding in Article 4 of Chapter 43.1 of Title 2.2 a section numbered 2.2-4382.1 as follows:

§ 2.2-4378. Purpose; applicability.

A. The purpose of this chapter is to enunciate the public policies pertaining to governmental procurement of construction utilizing the construction management and design-build procurement methods. *Competitive sealed bidding is the preferred method of procurement for construction services.* Notwithstanding any other provision of law, the Commonwealth may enter into contracts on a fixed price design-build basis or construction management basis in accordance with the provisions of this chapter and § 2.2-1502.

B. Except as provided in subsection C, this chapter shall apply regardless of the source of financing, whether it is general fund, nongeneral fund, federal trust fund, state debt, or institutional debt.

C. The following shall be exempt from the provisions of this chapter:

1. *Projects totaling less than $5 million;*

2. Projects of a covered institution that are to be funded exclusively by a foundation that (i) exists for the primary purpose of supporting the covered institution and (ii) is exempt from taxation under § 501(c)(3) of the Internal Revenue Code; ~~and~~

~~2.~~ *3.* Transportation construction projects procured and awarded by the Commonwealth Transportation Board pursuant to subsection B of § 33.2-209*; and*

4. Complex projects where an entity has received an exemption from the provisions of this chapter from the Secretary of Administration. If a project totals more than $125 million, the entity shall not be required to obtain an exemption from the provisions of this chapter from the Secretary of Administration. The Secretary of Administration shall not combine projects or allow projects to surpass the $125 million threshold.

D. The provisions of this chapter shall supplement the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.), which provisions shall remain applicable. In the event of any Restructured Higher Education Financial and Administrative Operations Act of 2005 (§ 23.1-1000 et seq.), or any other provision of law, this chapter shall control.

§ 2.2-4379. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Competitive sealed bidding" means the same as that term as described in § 2.2-4302.1.

"Complex project" means a construction project that includes ~~one~~ *two* or more of the following ~~significant~~ components: *significantly* difficult site location, ~~unique~~ ~~equipment,~~ ~~specialized~~ *unconventional* building systems, ~~multifaceted~~ ~~program,~~ accelerated schedule *only due to federal or state regulatory mandates, registered* historic designation, or *substantial and* intricate phasing ~~or~~ ~~some~~ ~~other~~ ~~aspect~~ ~~that~~ ~~makes~~ ~~competitive~~ ~~sealed~~ ~~bidding~~ ~~not~~ ~~practical~~ *of an occupied building*.

"Construction management contract" means a contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner and may also include, if provided in the contract, the furnishing of construction services to the owner.

"Covered institution" means a public institution of higher education operating (i) subject to a management agreement set forth in Article 4 (§ 23.1-1004 et seq.) of Chapter 10 of Title 23.1, (ii) under a memorandum of understanding pursuant to § 23.1-1003, or (iii) under the pilot program authorized in the appropriation act.

"Department" means the Department of General Services.

"Design-build contract" means a contract between a public body and another party in which the party contracting with the public body agrees to both design and build the structure, or other item specified in the contract.

"Preconstruction contract" means a contract between a public body and another party in which the party contracting with the public body agrees to provide preconstruction services for the benefit of the public body.

"Public body" means the same as that term is defined in § 2.2-4301.

"State public body" means any authority, board, department, instrumentality, agency, or other unit of state government. "State public body" does not includes any covered institution; any county, city, or town; or any local or regional governmental authority.

§ 2.2-4380. Construction management or design-build contracts for state public bodies authorized; projects totaling more than $125 million.

A. Any state public body may enter into a contract for construction on a fixed price or not-to-exceed price construction management or design-build basis *for a project totaling more than $125 million,* provided that such public body complies with the requirements of this article and the procedures adopted by the Secretary of Administration for using construction management or design-build contracts.

B. Procedures adopted by a state public body pursuant to this article shall include the following requirements:

1. A written determination is made in advance by the state public body that competitive sealed bidding is not practicable or fiscally advantageous, and such writing shall document the basis for the determination to use construction management or design-build. The determination shall be included in the Request for Qualifications and maintained in the procurement file;

2. Prior to making a determination as to the use of construction management or design-build for a specific construction project, a state public body shall have in its employ or under contract a licensed architect or engineer with professional competence appropriate to the project who shall (i) advise the public body regarding the use of construction management or design-build for that project and (ii) assist the public body with the preparation of the Request for Proposal and the evaluation of such proposals;

3. Public notice of the Request for Qualifications is posted on the Department's central electronic procurement website, known as eVA, at least 30 days prior to the date set for receipt of qualification proposals;

4. For construction management contracts, the contract is entered into no later than the completion of the schematic phase of design, unless prohibited by authorization of funding restrictions;

5. Prior construction management or design-build experience or previous experience with the Department's Bureau of Capital Outlay Management shall not be required as a prerequisite for award of a contract. However, in the selection of a contractor, a state public body may consider the experience of each contractor on comparable projects;

6. Construction management contracts shall require that (i) no more than 10 percent of the construction work, as measured by the cost of the work, be performed by the construction manager with its own forces and (ii) the remaining 90 percent of the construction work, as measured by the cost of the work, be performed by subcontractors of the construction manager, which the construction manager shall procure by publicly advertised, competitive sealed bidding to the maximum extent practicable; and

7. The procedures *shall* allow for a two-step competitive negotiation process.

C. The Department shall evaluate the proposed procurement method selected by the state public body and make its recommendation as to whether the use of the construction management or design-build procurement method is appropriate for the specific project. In its review, the Department shall also consider:

1. The written determination of the state public body;

2. The compliance by the state public body with subdivisions B 1, 2, and 7;

3. The project cost, expected timeline, and use;

4. Whether the project is a complex project; and

5. Any other criteria established by the Department to evaluate the proposed procurement method for the project.

D. The Department shall conduct its review within five working days after receipt of the written determination and render its written recommendation within such five-working-day period. The written recommendation of the Department shall be maintained in the procurement file.

E. If a state public body elects to proceed with the project using a construction management or design-build procurement method despite the recommendation of the Department to the contrary, such state public body shall state in writing its reasons therefor and any justification for not following the recommendation of the Department and submit same to the Department. The written statement of a state public body's decision to not follow the recommendation of the Department shall be maintained in the procurement file.

§ 2.2-4380.1. Additional contract requirements for projects totaling less than $125 million.

For all projects totaling less than $125 million, in addition to the requirements outlined in subdivisions B 2, 3, and 5 of § 2.2-4380, a state public body that enters into a contract for construction management shall conduct a two-step process beginning with a preconstruction contract. Upon completion of the preconstruction contract, the state public body shall then obtain construction services for the project through competitive sealed bidding.

§ 2.2-4381. Construction management or design-build contracts for covered institutions authorized; projects totaling more than $125 million.

A. Any covered institution may enter into a contract for construction on a fixed price or not-to-exceed price construction management or design-build basis *for a project totaling more than $125 million*, provided that such institution complies with the requirements of this article and with the procedures adopted by the Secretary of Administration for using construction management or design-build contracts.

B. Covered institutions shall:

1. Develop procedures for determining the selected procurement method which, at a minimum, shall consider cost, schedule, complexity, and building use;

2. Submit such procedures, and any subsequent changes to adopted procedures, to the Department for review and comment; and

3. Submit Department-reviewed procedures to its board of visitors for adoption.

C. Procedures adopted by a board of visitors pursuant to this article shall include the following requirements:

1. A written determination is made in advance by the covered institution that competitive sealed bidding is not practicable or fiscally advantageous, and such writing shall document the basis for the determination to use construction management or design-build. The determination shall be included in the Request for Qualifications and maintained in the procurement file;

2. Prior to making a determination as to the use of construction management or design-build for a specific construction project, a covered institution shall have in its employ or under contract a licensed architect or engineer with professional competence appropriate to the project who shall (i) advise the covered institution regarding the use of construction management or design-build for that project and (ii) assist the covered institution with the preparation of the Request for Proposal and the evaluation of such proposals;

3. Public notice of the Request for Qualifications is posted on the Department's central electronic procurement website, known as eVA, at least 30 days prior to the date set for receipt of qualification proposals;

4. For construction management contracts, the contract is entered into no later than the completion of the schematic phase of design, unless prohibited by authorization of funding restrictions;

5. Prior construction management or design-build experience or previous experience with the Department's Bureau of Capital Outlay Management shall not be required as a prerequisite for award of a contract. However, in the selection of a contractor, a covered institution may consider the experience of each contractor on comparable projects;

6. Construction management contracts shall require that (i) no more than 10 percent of the construction work, as measured by the cost of the work, be performed by the construction manager with its own forces and (ii) the remaining 90 percent of the construction work, as measured by the cost of the work, be performed by subcontractors of the construction manager, which the construction manager shall procure by publicly advertised, competitive sealed bidding to the maximum extent practicable; and

7. The procedures *shall* allow for a two-step competitive negotiation process.

D. The Department shall evaluate the proposed procurement method selected by a covered institution and make its recommendation as to whether the use of the construction management or design-build procurement method is appropriate for the specific project. In its review, the Department shall also consider:

1. The written determination of the covered institution;

2. The compliance by the covered institution with subdivisions C 1, 2, and 7;

3. The project cost, expected timeline, and use;

4. Whether the project is a complex project; and

5. Any other criteria established by the Department to evaluate the proposed procurement method for the project.

E. The Department shall conduct its review within five working days after receipt of the written determination and render its written recommendation within such five-working-day period. The written recommendation of the Department shall be maintained in the procurement file.

F. If a covered institution elects to proceed with the project using a construction management or design-build procurement method despite the recommendation of the Department to the contrary, such

covered institution shall state in writing its reasons therefor and any justification for not following the recommendation of the Department and submit same to the Department. The written statement of a covered institution's decision to not follow the recommendation of the Department shall be maintained in the procurement file.

§ 2.2-4381.1. Additional contract requirements for projects totaling less than $125 million.

For all projects totaling less than $125 million, in addition to the requirements outlined in subsection B and subdivisions C 2, 3, and 5 of § 2.2-4381, a covered institution that enters into a contract for construction management shall conduct a two-step process beginning with a preconstruction contract. Upon completion of the preconstruction contract, the covered institution shall then obtain construction services for the project through competitive sealed bidding.

§ 2.2-4382. Design-build or construction management contracts for local public bodies authorized; projects totaling more than $125 million.

A. Any local public body may enter into a contract for construction on a fixed price or not-to-exceed price construction management or design-build basis *for a project totaling more than $125 million,* provided that the local public body (i) complies with the requirements of this article and (ii) has by ordinance or resolution implemented procedures consistent with the procedures adopted by the Secretary of Administration for utilizing construction management or design-build contracts.

B. Prior to making a determination as to the use of construction management or design-build for a specific construction project, a local public body shall have in its employ or under contract a licensed architect or engineer with professional competence appropriate to the project who shall (i) advise such public body regarding the use of construction management or design-build for that project and (ii) assist such public body with the preparation of the Request for Proposal and the evaluation of such proposals.

C. A written determination shall be made in advance by the local public body that competitive sealed bidding is not practicable or fiscally advantageous, and such writing shall document the basis for the determination to utilize construction management or design-build. The determination shall be included in the Request for Qualifications and be maintained in the procurement file.

D. Procedures adopted by a local public body for construction management pursuant to this article shall include the following requirements:

1. Construction management may be utilized on projects where the project cost is expected to be less than the project cost threshold established in the procedures adopted by the Secretary of Administration for utilizing construction management contracts, provided that (i) the project is a complex project and (ii) the project procurement method is approved by the local governing body. The written approval of the governing body shall be maintained in the procurement file;

2. Public notice of the Request for Qualifications is posted on the Department's central electronic procurement website, known as eVA, at least 30 days prior to the date set for receipt of qualification proposals;

3. The construction management contract is entered into no later than the completion of the schematic phase of design, unless prohibited by authorization of funding restrictions;

4. Prior construction management or design-build experience or previous experience with the Department's Bureau of Capital Outlay Management shall not be required as a prerequisite for award of a contract. However, in the selection of a contractor, the local public body may consider the experience of each contractor on comparable projects;

5. Construction management contracts shall require that (i) no more than 10 percent of the construction work, as measured by the cost of the work, be performed by the construction manager with its own forces and (ii) the remaining 90 percent of the construction work, as measured by the cost of the work, be performed by subcontractors of the construction manager, which the construction manager shall procure by publicly advertised, competitive sealed bidding to the maximum extent practicable;

6. The procedures *shall* allow for a two-step competitive negotiation process; and

7. Price is a critical basis for award of the contract.

E. Procedures adopted by a local public body for design-build construction projects shall include a two-step competitive negotiation process consistent with the standards established by the Division of Engineering and Buildings of the Department for state public bodies.

§ 2.2-4382.1. Additional contract requirements for projects totaling less than $125 million.

For all projects totaling less than $125 million, in addition to the requirements outlined in subsection B and subdivisions D 2, 4, and 7 of § 2.2-4382, a local public body that enters into a contract for construction management shall conduct a two-step process beginning with a preconstruction contract. Upon completion of the preconstruction contract, the local public body shall then obtain construction services for the project through competitive sealed bidding.

2023 SESSION

SB 1115 Virginia Public Procurement Act; preference for products made or manufactured in Virginia.

Introduced by: **Bill DeSteph** | **all patrons** ... **notes** | **add to my profiles**

SUMMARY AS INTRODUCED:

Virginia Public Procurement Act; preference for products made or manufactured in Virginia and the U.S.; recyclable content; report. Provides preference for a bidder who is a resident of Virginia over a bidder who is a resident of any other state in determining the award for any contract for goods, services, or construction under the Virginia Public Procurement Act. The bill requires a state agency to decrease by seven percent the price of any offer for a Virginia end product, defined in the bill, and to decrease by two percent the price of any offer for a U.S. end product, defined in the bill, when evaluating bids for purposes of making an award determination. When the lowest responsive and responsible bidder, after price preferences have been taken into account, is a resident of Virginia and the offer price is within $10,000 or five percent, whichever is less, of the lowest responsive and responsible bidder who is a resident of another state, the Virginia resident shall be given the option to match the price of the nonresident bidder. Current allowance for granting price preferences to Virginia residents is made mandatory by the bill. The bill directs the Secretary of Commerce and Trade to convene a stakeholder work group to recommend revisions to the recyclable materials tax credit and report on the work group's recommendations by November 1, 2023. This bill is a recommendation of the Manufacturing Development Commission.

FULL TEXT

01/10/23 Senate: Prefiled and ordered printed; offered 01/11/23 23103895D pdf | impact statement

02/01/23 Senate: Committee substitute printed 23106208D-S1 pdf | impact statement

AMENDMENTS

Senate committee, floor amendments and substitutes offered

HISTORY

01/10/23 Senate: Prefiled and ordered printed; offered 01/11/23 23103895D

01/10/23 Senate: Referred to Committee on General Laws and Technology

02/01/23 Senate: Reported from General Laws and Technology with substitute (13-Y 0-N 2-A)

02/01/23 Senate: Incorporates SB1176 (McPike)

02/01/23 Senate: Committee substitute printed 23106208D-S1

02/01/23 Senate: Rereferred to Finance and Appropriations

02/02/23 Senate: Passed by indefinitely in Finance and Appropriations with letter (11-Y 4-N)

23106208D

SENATE BILL NO. 1115

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology on February 1, 2023)

(Patrons Prior to Substitute—Senators DeSteph and McPike [SB 1176])

A BILL to amend and reenact § 2.2-4324 of the Code of Virginia, relating to Virginia Public Procurement Act; preference for products made or manufactured in Virginia and the U.S.; report.

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-4324 of the Code of Virginia is amended and reenacted as follows:

§ 2.2-4324. Preference for products made or manufactured in Virginia and the U.S.; recyclable content.

A. ~~In the case of a tie bid, preference shall be given to goods produced in Virginia and goods, services, or construction provided by Virginia persons, firms, or corporations; otherwise the tie shall be decided by lot~~ *For the purposes of this section:*

"End product" means the tangible product described in a solicitation for bids, including its component parts and its final form.

"Grown" means locally derived from any timber, agricultural product, aquaculture product, or livestock that is produced, cultivated, raised, or harvested upon the land or from the water.

"Made" or "manufactured" means assembled, fabricated, or processed into an end product, the price of which is substantially related to the cost of such assemblage, fabrication, or processing.

"Principal place of business" means the physical business location where the natural persons who direct, control, and manage the business's day-to-day operations are located.

"U.S. end product" means an end product made, manufactured, or grown in the United States.

"Virginia business" means a business that maintains a principal place of business within Virginia.

"Virginia end product" means an end product made, manufactured, or grown in Virginia.

B. *In determining the award of any contract for goods, services, or construction, preference shall be given to Virginia end products and to Virginia businesses or Virginia residents, as applicable, in accordance with this section.*

C. When evaluating bids for purposes of making an award determination, a state public body shall decrease the price of any bid offered (i) for a Virginia end product, by seven percent and (ii) for a U.S. end product, by two percent. If the lowest responsive and responsible bidder, after price preferences have been taken into account, who is a resident of Virginia is within five percent or $10,000, whichever is less, of the lowest responsive and responsible bidder who is a resident of another state, then the bidder who is a resident of Virginia shall be granted the option to match the price of the bidder who is a resident of another state.

D. Whenever the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a percentage preference, a like preference shall be ~~allowed~~ *granted* to the lowest responsive and responsible bidder who is a resident of Virginia and is the next lowest bidder. If the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a price-matching preference, a like preference shall be ~~allowed~~ *granted* to responsive and responsible bidders who are residents of Virginia. If the lowest bidder is a resident contractor of a state with an absolute preference, the bid shall not be considered. The Department of General Services shall post and maintain an updated list on its website of all states with an absolute preference for their resident contractors and those states that allow their resident contractors a percentage preference, including the respective percentage amounts. For purposes of compliance with this section, all public bodies may rely upon the accuracy of the information posted on this website.

~~C. Notwithstanding the provisions of subsections B and C, in~~ *E. In* the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content, *including waste tires and materials manufactured by advanced recycling factories.*

~~D. For the purposes of this section, a Virginia person, firm or corporation shall be deemed to be a resident of Virginia if such person, firm or corporation has been organized pursuant to Virginia law or maintains a principal place of business within Virginia.~~

F. If a state public body receives three or more bids from a manufacturers that use materials or product components made in Virginia or in the United States, such body may only select from among those bids.

2. That the Secretary of Commerce and Trade and the Department of Taxation shall establish a work group of stakeholders, including representatives from the Virginia Manufacturers

Association, the Virginia Asphalt Association, the Virginia Transportation Construction Alliance, the Virginia Recycling Association, and the Virginia Economic Development Partnership, to recommend revisions to the recyclable materials tax credit, established pursuant to § 58.1-439.7 of the Code of Virginia, that will contribute to an increase in recycled materials and the growth of recyclable materials businesses to fulfill the expectations outlined in Executive Order 17 (2022). The Secretary of Commerce and Trade shall submit an executive summary of the work group's recommendations to the General Assembly and the Governor by November 1, 2023.

OUTLINE OF INFORMATION PRESENTED AT NOVEMBER 28, 2022 PROCUREMENT WORK GROUP MEETING ON SB 272:

I. What is the issue?
   a. Sen. Hashmi:
      i. CO_2 emissions that result from cement production.
         1. Sen. Hashmi's request to PWG –
            a. Review the climate impact of cement production and investigate potential incentives that may be offered to the cement and concrete industry to reduce overall CO_2 emissions from the production of cement and concrete that is used in Commonwealth-funded projects.

II. What is the magnitude of the issue?
   a. DEQ:
      i. Concrete batching and/or handling facilities do not produce much CO_2. CO_2 is instead emitted during cement production.
      ii. The emissions that result from cement production are twofold. They come from -
         1. The actual process of producing cement *and*
         2. The combustion of fossil fuels (which is required to generate the extreme heat that is needed to produce clinker, a primary ingredient in cement).
      iii. Scope of emissions
         1. Nationally -
            a. The approximately 100 cement manufacturers in the country produce about 66 million metric tons of CO_2.
               i. = about 10% of total <u>industrial</u> GHG emissions in the country.
         2. Virginia -
            a. In 2018, approximately 140 million metric tons of CO_2 was emitted in Virginia.
               i. The largest sector for emissions in transportation, followed by the power sector.
               ii. The industrial sector (which includes cement and concrete production) accounted for about 10% of the total CO_2 emissions (just under a million metric tons of CO_2).
                  - Virginia only has one large cement manufacturer (Roanoke Cement Company), which in 2021 emitted just under a million tons of CO_2
                     - This is a fairly small component of Virginia's GHG inventory.
      iv. Scope of DEQ's regulatory authority
         1. DEQ regulates -

a. Criteria pollutants (emissions identified in and regulated by the federal Clean Air Act)
b. GHGs (CO_2) emitted by the two sectors that emit the largest amount of GHGs - the power sector and motor vehicles.
    i. Otherwise, DEQ does not regulate CO_2 from other sources (including cement producers).

III. How much do state and local government projects contribute to the issue?
    a. OpenAir (environmental group):
        i. CO_2 emissions from the cement and concrete industry must be addressed if we are to work towards a net zero carbon future.
        ii. The public sector has a critical role to play in leading the transition to lower carbon concrete because state and local governments together are the biggest purchasers of concrete in any given state.
    b. VDOT:
        i. A recent study done by the Balmoral Group for VDOT estimated that VDOT's consumption of concrete in Virginia for the calendar year 2022 is approximately 525,000 cubic yards = 6% of the total estimated concrete production in Virginia.
            1. This figure includes local transportation projects.
    c. DGS:
        i. Based upon the amount of money spent on construction annually in Virginia, DEB estimates that DGS uses approximately 40,000 cubic yards of concrete per year = 0.5% of the concrete used in Virginia per year.

IV. What is currently being done to address the issue?
    a. Industry
        i. Titan America
            1. Has a decarbonization team.
            2. They are increasingly working to find ways to decarbonize cement and concrete in all stages of its production - from the raw material extraction through the manufacturing process - and in its eventual delivery to the end user.
            3. They have fully converted their cement production to Type IL cement (aka Portland Limestone Cement), which is about 10% lower in CO_2 than traditional Type I and Type II cement.
                a. They have been producing Type 1L cement since 2015.
                b. VDOT was one of the first state departments of transportation to adopt Type IL cement.
            4. They have committed to net zero concrete by 2050, as validated by the Science Based Targets initiative.
                a. They are required to meet interim objectives.
                    i. For example, they must achieve a 35% reduction target for their scope 1 emissions and 45% reduction target for their scope 2 emissions by 2030.
    b. VDOT

i. Allows the use of materials in their concrete mixes that create less CO_2:
    1. VDOT allows the use of waste-stream byproducts (supplementary cementitious materials, or SCMs) in their concrete mixes as an alternative to replace some Portland Cement.
        a. This is like recycling, so less CO_2 is emitted since less Portland Cement is used in the mix.
    2. VDOT allows Type IL cement to be used in their mixes.
        a. Type IL cement has more limestone content than the more commonly used Type I or Type II cements. It takes less energy to manufacture, so its carbon footprint is about 10% less than the traditional Type I and Type II cements.
    3. VDOT specifies maximum cementitious material content for most of their structural concrete in order to prevent and mitigate shrinkage cracking and therefor promote longevity and durability. Doing so also reduces the concrete's carbon footprint both at construction and through the life of the structures.
    4. VDOT has been working with the Virginia Transportation Research Council and the industry for a few years to investigate carbon sequestration technologies and methods to see how they may help with VDOT's long-term carbon reduction efforts.

c. DGS
    i. CPSM requires that concrete mixes contain at least 50% Portland Cement in order to ensure a long life cycle for the building.
        1. Structural engineers then design the rest of the mix based upon the building's additional needs (e.g., the need to reduce the heat of vibration or the need to increase strength) and DEB reviews the appropriateness of such mixes based upon such additional needs.

d. DEQ
    i. Potential solutions:
        1. Manufacturers can switch to cleaner burning fuels to lower the amount of CO_2 that is emitted during the construction process.
        2. Manufacturers can use different raw materials, which can reduce CO_2 emissions during the production process.
        3. Carbon capture and sequestration or utilization
            a. This potential solution is most likely a longer-term goal and can also be somewhat technologically and economically challenging.

V. What can be done to further address the issue?
    a. Titan America – Would like to see the process for getting innovative new materials into VDOT's spec mix designs accelerated so that progress in reducing carbon emission from the production of concrete can be achieved more quickly.
    b. Open Air – Per OpenAir, other states/cities and countries have passed legislation requiring or incentivizing the use of lower carbon concrete.

PWG/SB 272 Survey - Local Government Usage of Concrete						
Questions	Response #1	Response #2	Response #3	Response #4	Response #5	Response #6
What is your name?	Patti Innocenti	Wendy Cole	Steven Lee	Hollie Casey	James Bisbee	Connie Gibson
What is your title?	Procurement Manager	Procurement Coordinator	Executive Director of Materials Management	Procurement Officer	Supervisor of Procurement & Risk Management	Procurement Manager
What is your email address?	patricia.innocenti@fairfaxva.gov	colewe@staffordschools.net	leect@evms.edu	hcasey@dinwiddieva.us	bisbeejg@ci.waynesboro.va.us	connie.gibson@pittgov.org
responding? Please specify county, city, town, K-12 schoolsystem, authority, etc. in your response (Example: Henrico County, Henrico County Public Schools).	City of Fairfax	Stafford County Public Schools	Eastern Virginia Medical School	Dinwiddie County Government	City of Waynesboro	Pittsylvania County Board of Supervisors
vertical construction contracts awarded in FY 2022? Please only include locally-funded projects, NOT state-funded projects.	$0	$9,649,725.60	$0	$0	$0	$0

July 12, 2022

Mr. Joe Damico
Director, Dept. of General Services
1100 Bank Street
Richmond, VA 23219

Dear Mr. Damico,

During the 2022 General Assembly Session, Senator Ghazala Hashmi carried Senate Bill 272; *Concrete; DGS shall convene a work group to review climate impact.* On March 3rd, 2022, this was left in Agriculture, Chesapeake and Natural Resources Committee.

In advance of the 2023 General Assembly Session, I request that you convene a group of interested parties to study SB 272 and review ways to continue to reduce carbon emissions in concrete and cement, without sacrificing the integrity of the product and cost competitiveness.

I ask that you include as part of this group representatives from the VRMCA to work through concerns and find a possible solution which is necessary to accomplish this work by December 1, 2023.

Thank you for your advocacy work on behalf of the Department of General Services and your willingness to work collaboratively with other stakeholders to find a solution. I have enclosed a copy of this legislation, and I stand by to assist in any way.

Sincerely,

James A. "Jay" Leftwich, Jr.
Chairman, House General Laws Committee

2022 SESSION

SB 272 Concrete; DGS shall convene a work group to review climate impact.

Introduced by: **Ghazala F. Hashmi** | **all patrons** ... **notes** | **add to my profiles**

SUMMARY AS PASSED SENATE: (all summaries)

Climate impact of concrete; work group; report. Directs the Department of General Services to convene a stakeholder work group to review the climate impact of concrete and recommend policies and practices to incentivize the reduction of the air emission impact of the production of concrete procured by agencies of the Commonwealth for Commonwealth-funded projects. The work group shall report its findings, including any public comments received, and recommendations no later than November 1, 2023.

FULL TEXT

01/11/22 Senate: Prefiled and ordered printed; offered 01/12/22 22101529D pdf

01/25/22 Senate: Committee substitute printed 22105171D-S1 pdf | impact statement

AMENDMENTS

Senate committee, floor amendments and substitutes offered

HISTORY

01/11/22 Senate: Prefiled and ordered printed; offered 01/12/22 22101529D

01/11/22 Senate: Referred to Committee on Agriculture, Conservation and Natural Resources

01/25/22 Senate: Reported from Agriculture, Conservation and Natural Resources with substitite (9-Y 6-N)

01/25/22 Senate: Committee substitute printed 22105171D-S1

01/27/22 Senate: Constitutional reading dispensed (39-Y 0-N)

01/28/22 Senate: Read second time

01/28/22 Senate: Reading of substitute waived

01/28/22 Senate: Committee substitute agreed to 22105171D-S1

01/28/22 Senate: Engrossed by Senate - committee substitute SB272S1

01/31/22 Senate: Read third time and passed Senate (22-Y 18-N)

02/22/22 House: Placed on Calendar

02/22/22 House: Read first time

02/22/22 House: Referred to Committee on Agriculture, Chesapeake and Natural Resources

02/25/22 House: Assigned ACNR sub: Chesapeake

02/28/22 House: Subcommittee recommends laying on the table (6-Y 4-N)

03/08/22 House: Left in Agriculture, Chesapeake and Natural Resources

22101529D

SENATE BILL NO. 272

Offered January 12, 2022

Prefiled January 11, 2022

A BILL to amend and reenact § 10.1-1186 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 2.2-1135.1 and 33.2-276.1 and by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:13, relating to lower carbon concrete; report.

Patron—Hashmi

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 10.1-1186 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 2.2-1135.1 and 33.2-276.1 and by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:13 as follows:

§ 2.2-1135.1. Use of lower carbon concrete.

A. As used in this section:

"Concrete" means structural and nonstructural masonry, precast, and ready-mix concrete building products.

"Concrete global warming potential baseline" or "baseline" means the average global warming potential values for concrete specifications approved for use by the Department and the Department of Transportation in buildings, infrastructure, and roadways owned by the Commonwealth. The baseline shall be determined by the Department of Environmental Quality, in consultation with the Department and the Department of Transportation, pursuant to § 10.1-1186.

"Environmental product declaration" means product specific Type I11 environmental product declarations that conform to ISO Standard 14025 and enable the numeric GWP and environmental impact comparisons between concrete mixes fulfilling the same functions.

"Global warming potential" or "GWP" means a numeric value included in an environmental product declaration that measures the total contribution to global warming from the emission of greenhouse gases, or the elimination of greenhouse gas sinks, that results from the production or utilization of a specific product or service.

"Lower carbon concrete" means concrete mixes and products that have been verified to result in a global warming potential value that is at least 20 percent lower than the concrete global warming potential baseline.

B. By January 1, 2023, the Department, the Department of Transportation, and the Department of Environmental Quality shall develop and implement performance-based specifications for concrete use in buildings, infrastructure, and roadways owned by the Commonwealth.

C. 1. For any building project initiated by the Department after January 1, 2023, that involves the placement of 50 cubic yards or more of concrete, a concrete material provider shall be eligible for a performance bonus if such provider utilizes a lower carbon concrete.

2. The provisions of this subsection shall not apply to a project if the Director, in his sole discretion, determines that (i) it would not be in the public interest, (ii) it would result in unreasonable costs, (iii) such lower carbon concrete cannot be produced or made in sufficient and reasonably available quantities of satisfactory quality, or (iv) it would conflict with compliance with state or federal law. Such determination shall be included in the request for proposal, invitation to bid, or other solicitation for any project for which such determination is made.

D. The Department shall report annually to the Governor and the General Assembly, beginning December 1, 2023, of the lower carbon concrete performance bonus, including a cost-benefit analysis of the use of lower carbon concrete.

§ 10.1-1186. General powers of the Department.

The Department shall have the following general powers, any of which the Director may delegate as appropriate:

1. Employ such personnel as may be required to carry out the duties of the Department;

2. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter, including, but not limited to, contracts with the United States, other states, other state agencies and governmental subdivisions of the Commonwealth;

3. Accept grants from the United States government and agencies and instrumentalities thereof and any other source. To these ends, the Department shall have the power to comply with such conditions

and execute such agreements as may be necessary, convenient, or desirable;

4. Accept and administer services, property, gifts and other funds donated to the Department;

5. Implement all regulations as may be adopted by the State Air Pollution Control Board, the State Water Control Board, and the Virginia Waste Management Board;

6. Administer, under the direction of the Boards, funds appropriated to it for environmental programs and make contracts related thereto;

7. Advise and coordinate the responses of state agencies to notices of proceedings by the State Water Control Board to consider certifications of hydropower projects under 33 U.S.C. § 1341;

8. Advise interested agencies of the Commonwealth of pending proceedings when the Department of Environmental Quality intervenes directly on behalf of the Commonwealth in a Federal Energy Regulatory Commission proceeding or when the Department of Wildlife Resources intervenes in a Federal Energy Regulatory Commission proceeding to coordinate the provision of information and testimony for use in the proceedings;

9. *Establish, in cooperation with the Department of General Services and the Department of Transportation, the concrete global warming potential baseline, as that term is defined in § 33.2-276.1. Such baseline shall be established by January 1, 2023, and reestablished every five years thereafter.*

10. Notwithstanding any other provision of law and to the extent consistent with federal requirements, following a proceeding as provided in § 2.2-4019, issue special orders to any person to comply with: (i) the provisions of any law administered by the Boards, the Director or the Department, (ii) any condition of a permit or a certification, (iii) any regulations of the Boards, or (iv) any case decision, as defined in § 2.2-4001, of the Boards or Director. The issuance of a special order shall be considered a case decision as defined in § 2.2-4001. The Director shall not delegate his authority to impose civil penalties in conjunction with issuance of special orders. For purposes of this subdivision, "Boards" means the State Air Pollution Control Board, the State Water Control Board, and the Virginia Waste Management Board; and

~~10.~~ *11.* Perform all acts necessary or convenient to carry out the purposes of this chapter.

§ 33.2-276.1. Use of lower carbon concrete.

A. As used in this section:

"Concrete" means structural and nonstructural masonry, precast, and ready-mix concrete building products.

"Concrete global warming potential baseline" or "baseline" means the average global warming potential values for concrete specifications approved for use by the Department of General Services and the Department in buildings, infrastructure, and roadways owned by the Commonwealth. The baseline shall be determined by the Department of Environmental Quality, in consultation with the Department and the Department of General Services, pursuant to § 10.1-1186.

"Environmental product declaration" means product specific Type I11 environmental product declarations that conform to ISO Standard 14025 and enable the numeric GWP and environmental impact comparisons between concrete mixes fulfilling the same functions.

"Global warming potential" or "GWP" means a numeric value included in an environmental product declaration that measures the total contribution to global warming from the emission of greenhouse gases, or the elimination of greenhouse gas sinks, that results from the production or utilization of a specific product or service.

"Lower carbon concrete" means concrete mixes and products that have been verified to result in a global warming potential value that is at least 20 percent lower than the concrete global warming potential baseline.

B. By January 1, 2023, the Department, the Department of General Services, and the Department of Environmental Quality shall develop and implement performance-based specifications for concrete use in buildings, infrastructure, and roadways owned by the Commonwealth.

C. 1. For any highway, bridge, or infrastructure project initiated by the Department after January 1, 2023, that involves the placement of 50 cubic yards or more of concrete, a concrete material provider shall be eligible for a performance bonus if such provider utilizes a lower carbon concrete that is included on the Department's approved materials list.

2. The provisions of this subsection shall not apply to a project if the Commissioner, in his sole discretion, determines that (i) it would not be in the public interest, (ii) it would result in unreasonable costs, (iii) such lower carbon concrete cannot be produced or made in sufficient and reasonably available quantities of satisfactory quality, (iv) it would result in the loss or reduction of federal funding, (v) it would limit or jeopardize the ability to obtain federal funding, or (vi) it would conflict with compliance with state or federal law. Such determination shall be included in the request for proposal, invitation to bid, or other solicitation for any project for which such determination is made.

D. The Department shall implement an expedited evaluation process for lower carbon concrete, materials, and methods submitted by application from a private entity for inclusion on the Department's approved materials list. Applicants shall be notified of evaluation results no later than six months after

the submission of an application, unless technical constraints make completing of the evaluation in such time frame impractical.

E. The Department shall report annually to the Governor and the General Assembly, beginning December 1, 2023, of the lower carbon concrete performance bonus, including a cost-benefit analysis of the use of lower carbon concrete.

§ 58.1-439.12:13. Environmental product declaration tax credit.

A. For purposes of this section, "environmental product declaration (EPD) technology implementation cost" means the total initial cost incurred by concrete and concrete component producers to analyze, adopt, and implement technologies that enable the subsequent completion of Type I11 EPDs that conform to ISO Standard 14025 at concrete production facilities and enable the numeric global warming potential and environmental impact comparisons between concrete mixes fulfilling the same functions.

B. 1. For taxable years beginning on or after January 1, 2022, but before January 1, 2025, a taxpayer that is a producer of concrete, including producers of major concrete components, cement, and aggregate, shall be allowed a nonrefundable credit against the tax imposed pursuant to § 58.1-320 or 58.1-400 for amounts paid in the taxable year for EPD technology implementation costs incurred for an EPD analysis at up to eight concrete, cement, supplementary cementitious materials, or aggregate production facilities owned and operated by the taxpayer in Virginia.

2. For taxable years beginning on or after January 1, 2025, but before January 1, 2026, a taxpayer that is a producer of concrete, including producers of major concrete components, cement, and aggregate, shall be allowed a nonrefundable credit against the tax imposed pursuant to § 58.1-320 or 58.1-400 for amounts paid in the taxable year for EPD technology implementation costs incurred for an EPD analysis at a single concrete, cement, supplementary cementitious materials, or aggregate production facility owned and operated by the taxpayer in Virginia.

C. The credit shall equal the lesser of the amount actually paid in the taxable year for such EPD technology implementation costs or $5,000.

D. The amount of the credit that may be claimed in any single taxable year shall not exceed the total amount of tax imposed by this chapter for that taxable year. If the amount of the credit allowed under this section exceeds the taxpayer's tax liability for the taxable year during which the EPD technology implementation costs were incurred, the amount that exceeds the tax liability may be carried over for credit against the income taxes of the taxpayer in the next five taxable years or until the total amount of the tax credit has been taken, whichever is sooner.

E. The Tax Commissioner shall develop guidelines implementing the provisions of this section. Such guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

2. That the Materials Division of the Department of Transportation shall, by January 1, 2023, complete an evaluation of the durability, strength, and structural performance of portland limestone cement, and such cement shall be included on the list of approved materials if the evaluation finds that inclusion is consistent with the goals of public safety and cost efficiency. For purposes of this enactment, "portland limestone cement" means Type IL or Type IT blended hydraulic cement (ASTM C595) that includes up to 15 percent pulverized limestone as a substitute for clinkers.

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SENATE BILL NO. 272

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources on January 25, 2022)

(Patron Prior to Substitute—Senator Hashmi)

A BILL to review and recommend policies related to the climate impact of concrete.

Be it enacted by the General Assembly of Virginia:

1. *§ 1. A. The Department of General Services (DGS) shall convene a stakeholder work group (Work Group) to review the climate impact of concrete and recommend policies and practices to incentivize the reduction of air emission impact of the production of concrete procured by agencies of the Commonwealth for Commonwealth-funded projects.*

B. The Work Group shall be selected by the Director of DGS and shall consist of at the following: two licensed professional engineers, two licensed registered architects, one representative of the construction industry, one representative of the concrete producer industry, one representative of the concrete testing and validation industry, one representative of an accredited school of civil engineering, two representatives of environmental non-governmental organizations, one representative of the Department of Transportation, one representative of DGS, and one representative of DEQ.

C. The Work Group shall consult with any relevant associations that set industry standards for the procurement of low carbon concrete and shall consult with affected contractors and subcontractors to consider the air emissions and related impacts, as well as the health and safety impacts, of concrete.

D. The Work Group shall consider:

1. The use of environmental product declarations to measure the climate impact of concrete procured by agencies of the Commonwealth;

2. The use of performance incentives to encourage the adoption of low carbon materials and methods by concrete manufacturers that provide concrete for Commonwealth-funded projects;

3. The establishment of an expedited product evaluation, testing, and approval protocol for low carbon concrete projects; and

4. The implementation of performance-based specification standards for concrete, including requirements that a structural material achieve specified performance based outcomes from the use of the structural material, such as outcomes related to material, strength, durability, permeability, and other attributes related to the function of the building material for the applied uses, as opposed to requiring that a structural material be produced using a specified manufacturing process, design feature, technology, or proportion of materials. The Advisory Group shall examine the use of methods of compliance, including maximum cement content specifications and specifications based on maximum potential for global warming.

E. The Work Group and DGS shall allow for the submission of public comments to the Work Group, and shall report its findings, including any public comments received, and recommendations to the Governor and the Chairmen of the House Committee on Agriculture, Chesapeake and Natural Resources and the Senate Committee on Agriculture, Conservation and Natural Resources no later than November 1, 2023.