

DRAFT Meeting Minutes

Public Body 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

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

The Public Body Procurement Workgroup (the Workgroup) met in-person in House Room 1 in the Capitol in Richmond, Virginia, with Joe Damico, Director of the Department of General Services (DGS), presiding. The meeting began with remarks from Mr. Damico, followed by discussion and recommendations for SB 272, public comment, and further discussion by the Workgroup members. Materials presented at the meeting are available through the [Workgroup's website](#).

Workgroup members and representatives present at the meeting included Joe Damico (Department of General Services), Willis Morris (Department of Small Business and Supplier Diversity), Joshua Heslinga (Virginia Information Technologies Agency), Lisa Pride (Virginia Department of Transportation), Jonathan Howe (Department of Planning and Budget), Patricia Innocenti (Virginia Association of Governmental Procurement), John McHugh (Virginia Association of State Colleges and University Purchasing Professionals), Leslie Haley (Office of the Attorney General), Andrea Peeks (House Appropriations Committee), and Mike Tweedy (Senate Finance and Appropriations Committee), and Joanne Frye, representing the Division of Legislative Services.

I. Call to Order; Remarks by Chair

Joe Damico, Director
Department of General Services

Mr. Damico called the meeting to order and thanked the House Clerk's Office for allowing the Workgroup to hold its meetings in House Room 1 in the Capital Building. He informed the Workgroup that this year he and Sandra Gill, Deputy Director of, will alternate as Chair of the Workgroup.

II. Introduction of Workgroup Members, Representatives, and Staff

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

Mr. Tweedy made a motion to approve the meeting minutes from the November 28, 2022 meeting of the Workgroup. The motion was seconded by Ms. Pride and unanimously approved by the Workgroup.

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

Next, Mr. Damico asked Ms. Gill to present a recap of the work accomplished by the Workgroup in 2022, as well as the proposed workplan for the Workgroup's 2023 studies.

Mr. Gill reminded the group that two bills were originally referred to the Workgroup by the General Assembly in 2022 (SB 550 and SB 575), and that a third bill was referred to the Workgroup later in the year (SB 272). Ms. Gill provided a summary of the work undertaken by the Workgroup related to SB 575 (which pertained to the use of a total cost of ownership calculator for medium-duty and heavy-duty vehicles) and SB 550 (which pertained to payment of subcontractors). Ms. Gill noted that two bills (SB 1313 and SB 2500) were introduced and passed by the General Assembly during the 2023 Session that implemented the Workgroup's recommendations on SB 550.

Moving to the proposed 2023 work plan, Ms. Gill provided an overview of the four new bills that were referred to the Workgroup by the General Assembly during the 2023 Session: SB 859, patroned by Senator Cosgrove; SB 912, patroned by Senator Ruff; SB 954, patroned by Senator Petersen; and SB 1115, patroned by Senator DeSteph. She stated that the proposed work plan includes tentative dates for six additional meetings for the workgroup to complete its studies of these four bills.

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

Ms. Gill noted that workgroup began its study of SB 272 at its last meeting on November 28, 2022. She provided the Workgroup with an overview of the information that was shared with the Workgroup on SB 272 at that meeting by stakeholders and subject matter experts. She also noted that since the last meeting DGS staff conducted a survey of local governments to determine the amount of concrete they use, but only six responses to the survey were received.

She then presented the Workgroup with several considerations for it to discuss as possible recommendations on SB 272. Those consideration were: (1) codify procurement preferences and initiatives in the bill for low carbon concrete, (2) address the issue with policy through preferences or incentives, (3) not make changes to the law or implement

policy because the industry is already moving towards low carbon concrete, (4) create tax incentives for the industry to move towards low carbon concrete, or (5) consider whether the Virginia Department of Environmental Quality should regulate CO₂ emissions for cement and concrete.

Mr. Damico asked Ms. Gill to clarify which agencies would be impacted by the bill as introduced. She stated that the bill amends the DGS code section, therefore agencies under DGS purview would be impacted and it would be DGS' responsibility to establish policy. Mr. Damico asked Ms. Gill for clarification as to how the Virginia Department of Transportation (VDOT) would be impacted by the bill, and she responded that the bill does not specifically exclude roads and bridges, however based on DGS' enabling legislation there could be an interpretation that roads and bridges are not under DGS' authority. Mr. Damico then confirmed with Ms. Gill that testimony provided to the Workgroup at its previous meeting indicated that VDOT uses approximately six percent of the total amount of concrete used in Virginia each year, and that DGS uses approximately one-half of one percent of the total amount of concrete used in Virginia each year.

Mr. Damico asked the Workgroup if they have any thoughts or comments. Ms. Pride stated that VDOT has been working diligently for several years to allow the use of lower carbon concrete in its specifications and to work with the industry to continue to lower the amount of carbon associated with the concrete it uses in its projects. She indicated that she would like the Workgroup to move forward with the third recommendation presented by Ms. Gill, which was to not impose additional requirements on the industry because they are already making progress on this issue and VDOT has also been moving in the right direction. She also reiterated how small the amount of concrete used by state agencies is compared to the private sector.

Mr. Damico asked Ms. Gill about DEQ's testimony at the previous meeting and whether they stated that they currently monitor CO₂ emissions from the production of cement and concrete. She stated that DEQ testified that they do not currently regulate CO₂ emissions from the production of cement and concrete. He then asked if there was any indication in the previous meeting as to whether DEQ is in a position to monitor the industry's commitment to move toward a CO₂ emissions-free cement and concrete manufacturing process. Ms. Gill stated the DEQ did not testify that they have any intent to regulate, monitor, or track CO₂ emissions from the production of cement and concrete. Mr. Damico asked the Workgroup members whether they feel that it would be appropriate to ask DEQ if they could monitor and report on the CO₂ emissions from the production of cement and concrete in order to track the industry's process toward moving towards lower carbon concrete. Mr. Heslinga sought clarification as to whether Mr. Damico is contemplating asking DEQ to monitor the industry's progress as opposed to affirmatively regulating the industry's CO₂ emissions. Mr. Damico answered in the affirmative.

VI. Findings and Recommendations on SB 272

Mr. Damico asked Ms. Pride to restate her recommendation. Ms. Pride stated that she recommends that the Workgroup allow VDOT to continue the work that has done regarding permitting the use of lower carbon concrete in its specifications and allow the industry to continue the progress that it has made in reducing the amount of carbon in concrete, allow those two things to be the drivers of the reduction of carbon in concrete. Mr. Heslinga stated he would second the recommendation and sought clarification on the process of finalizing the recommendation. Mr. Damico called for a vote of the Workgroup. Prior to the voting Mr. Morris asked for clarification as to whether there would be voluntary reporting by VDOT and/or the industry on progress towards this initiative. Ms. Pride stated VDOT does not currently do such reporting, but they keep track of their specifications and could report on those changes. The Workgroup voted in favor of the recommendation made by Ms. Pride¹. Next, Mr. Damico asked the Workgroup for approval to engage DEQ regarding its capacity to monitor the industry's progress towards producing emissions-free cement. The Workgroup unanimously approved his request.

VII. Public Comment

The first stakeholder to comment was Walton Shephard with the Natural Resources Defense Council. Mr. Shephard stated that he wanted to clarify that the bill never contemplated imposing any requirements and that it only contemplated rewarding voluntary actions that the industry is indeed already taking. He asked the state to recognize those actions by codifying provisions that would use the state's purchasing power to show a preference for cleaner concrete or cement similar to provisions implemented in New Jersey. He acknowledged that Virginia does allow the use of cleaner cement and concrete but stressed that he would like the state proactively encourage its use.

Mr. Morris asked Mr. Shelton for clarification regarding the voluntary rewards system. Mr. Shephard responded that when bids come in and a particular bidder's concrete is verified to be cleaner than average, such bidder would receive a slight bonus in the bid stack. Mr. Damico asked for clarification as to how such a preference would work if there is one cement manufacturer in Virginia, and further asked about the potential cost impacts of bringing in lower carbon concrete from manufacturers located outside of Virginia. Mr. Shelton responded that he is not sure of the answers to such questions, but that he assumes that theoretically such procurement preference would still incentivize Virginia's one manufacturer to clean up its production process because the state could purchase cement from a producer in Maryland or North Carolina instead of the one manufacturer in Virginia.

¹ The votes on recommendation the recommendation were as follows: Yes – Patricia Innocenti, John McHugh, Jonathan Howe, Joe Damico, Lisa Pride, and Joshua Heslinga, Willis Morris; Abstain – Andrea Peeks, Mike Tweedy, Leslie Haley, and Joanne Frye

The second stakeholder to comment was Kisia Kimmons, a technical services manager with Roanoke Cement. Ms. Kimmons confirmed that Roanoke Cement is the only cement manufacturer in Virginia, but there are also several producers from outside of the state that deliver product within the state that also provide lower carbon cement products. She stated that such other products come from places such as South Carolina and various locations in the North East, and that some are imported.

Mr. McHugh asked whether low carbon concrete is more expensive than traditional concrete. Ms. Kimmons responded that typically in many markets Type IL cement has cost the same as traditional Type I/II concrete and that it has been a one-to-one replacement. Ms. Frye asked whether the low carbon cement produced by Roanoke Cement is lower in carbon than the other low carbon cement products on the market. Ms. Kimmons responded that it can vary depending on the product. Mr. Heslinga asked if there are existing reporting on the adoption of lower carbon cement. Ms. Kimmons stated that she is not aware of any required reporting, however from a manufacturing perspective it is not difficult for them to provide replacement factor information. Mr. Morris asked Ms. Kimmons for clarification that Roanoke Cement is the only cement manufacturer in Virginia, which she confirmed, and asked whether they have experienced any supply chain challenges. Ms. Kimmons responded that they are not experiencing any such challenges at this time, and reiterated that the state has resources from other facilities as well that feed into this market.

The third stakeholder to comment was Phil Abraham with the Vectre Corporation. Mr. Abraham spoke to the Workgroup concerning its study of SB 550 last year and the legislation subsequently passed by the General Assembly during the 2023 Session (SB 1313 and HB 2500) implementing recommendations made by the Workgroup on SB 550. He expressed concern that SB 1313 and SB 2500 require contractors on public construction contracts to make payment to their subcontractors within 60 days of completion of their work regardless of whether such a contractor has received payment from the state or local government, as applicable, for such work. He shared that general contractors are concerned about how this requirement would impact them in situations in which they have not been paid by the state or local government and in which there has been no fault on the part of the contractor that would justify the state or local government to withhold such payment. Mr. Abraham stated that he would like to work with the Workgroup on a tweak to the law to address this concern.

Ms. Peeks asked Mr. Abraham whether the issue he described has occurred, or whether he is looking to address this potential situation in the event that it might occur. He stated that it is rare, but it has occurred.

Mr. Shephard, the first stakeholder to comment, spoke to the Workgroup again to clarify that cement is a component of concrete, so while the concrete used on a specific project is usually made locally to a project's location, the cement used in such concrete does not necessarily have to have been produced locally to the project's location.

VIII. Discussion

Mr. Tweedy asked if either VDOT or DGS track how much low carbon concrete they use. Both DGS and VDOT stated that they do not currently track this information.

IX. Adjournment

Mr. Damico adjourned the meeting at 1:53 p.m. and noted that the Workgroup's next meeting is tentatively scheduled for May 23, 2023. He stated, however, that this date may change and that once staff has finalized the meeting date and location such information will be announced to the Workgroup members and stakeholders.

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

Public Body Procurement Workgroup

Draft of Final Recommendation for SB 272

The Workgroup finds that it is not appropriate at this time for the state to enact procurement incentives for the cement and concrete industries to reduce overall CO₂ emissions resulting from the manufacturing cement and production of concrete that is used in state-funded projects because (i) the cement and concrete industries are already making significant strides to reduce overall CO₂ emissions resulting from the manufacturing of cement and production of concrete and has committed to making additional progress in the future, (ii) the Virginia Department of Transportation permits and advocates for lower carbon concrete to be used in its specifications and has been working with the cement and concrete industries for several years to reduce the amount of CO₂ associated with the concrete used in transportation projects, and (iii) the state agencies that use concrete on vertical construction projects use a very small amount of the total cement produced in Virginia each year (one-half percent).

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,

A handwritten signature in black ink, appearing to read "Susan", written over a horizontal line.

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

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

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

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

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

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

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

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

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,

A handwritten signature in black ink, appearing to read "Susan".

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 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

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

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

82 Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the
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84 Should the public body determine in writing and in its sole discretion that only one offeror is fully
85 qualified or that one offeror is clearly more highly qualified and suitable than the others under
86 consideration, a contract may be negotiated and awarded to that offeror.

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

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

SB912 – VITA proposed amendment (alternative forms)

Amendment (showing changes to SB912 introduced version) – not IT only

....

41 3. For goods, nonprofessional services, and insurance, selection shall be made of two or more
42 offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of
43 the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal.
44 ~~In the case of a proposal for information technology, as defined in § 2.2-2006, a public body shall not~~
45 ~~require an offeror to state in a proposal any exception to any contractual terms or conditions, including~~
46 ~~any liability provisions contained in the Request for Proposal.~~ Negotiations shall then be conducted with
47 each of the offerors so selected. ~~The offeror shall state any exception to any contractual terms or~~
48 ~~conditions, including any liability provisions contained in the Request for Proposal in writing at the~~
49 ~~beginning of negotiations, and such~~ *A public body shall not base the scoring or evaluation of which offerors*
are selected for negotiations on exceptions stated in a proposal to any contractual terms or conditions. Any
exceptions shall be considered during negotiation. Price shall be

....

Amendment (showing changes to SB912 introduced version) – IT only

....

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