DRAFT Meeting Minutes

Public Body Procurement Workgroup

Meeting # 4

Tuesday, June 27, 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 two presentations on preferences, public comment, and concluded with discussion among the Workgroup members. Materials presented at the meeting are available through the Workgroup's website. A recording of the meeting is available on the House of Delegates video streaming site.

Workgroup members and representatives present at the meeting included Joe Damico (Department of General Services), Joshua Heslinga (Virginia Information Technologies Agency), Lisa Pride (Virginia Department of Transportation), 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), Jason Saunders (Department of Planning and Budget), Willis Morris (Department of Small Business and Supplier Diversity) and Rebecca Schultz (the Division of Legislative Services). Members from the Senate Finance and Appropriations Committee and House Appropriations Committee did not attend.

I. Call to Order; Remarks by Chair

Joe Damico, Director
Department of General Services

Mr. Damico called the meeting to order and shared that Rebecca Schultz is in attendance for the Division of Legislative Services and that members with the Senate Finance and Appropriations Committee and House Appropriations Committee are not in attendance.

II. Approval of Meeting Minutes from the June 6, 2023 Workgroup Meeting

Mr. Heslinga made a motion to approve the meeting minutes from the June 6, 2023 meeting of the Workgroup. The motion was seconded by Mr. Morris and unanimously approved by the Workgroup.

III. Presentations by Public Body Stakeholders on Preferences

As presentations began, Senator DeSteph joined the meeting and Mr. Damico invited him to speak to the Workgroup about SB 1115 before continuing with presentations. Senator DeSteph shared that his goal is to do what other states are doing by providing preferential treatment for Virginia owned-businesses. He stated that Maryland, West Virginia, and many other states around us currently have in-state preferences for businesses. He shared that in addition to pushing for products made in Virginia, he also is pushing for products made in America. He informed the Workgroup that his bill is a simple bill and everyone except one or two people support it.

Mr. Damico inquired about a possible amended version of SB 1115 and asked if Senator DeSteph planned to present such to the Workgroup. Senator DeSteph stated that he is aware of an amended version, however the Governor's team was supposed to send it for review and has not as of before this meeting started.

Next, Pete Stamps, the Director of DGS's Division of Purchases and Supply, gave a presentation to the Workgroup about current procurement preferences in the Code of Virginia and in policy. Mr. Stamps provided an overview of the following preferences in the Virginia Public Procurement Act (VPPA); tie bid, absolute, percentage, and price-matching. He continued his presentation noting that in DGS' enabling legislation, DGS/DPS is required to establish procurement preferences for recycled oil, recycled antifreeze, and biodiesel fuel. Mr. Stamps concluded his presentation sharing that the Agency Procurement and Surplus Property Manual (APSPM) and the Construction and Professional Services Manual (CPSM) provide guidance to executive branch agencies on preferences.

John McHugh asked how executive orders fit into preferences, specifically EO-35 the small business executive order. Mr. Stamps stated that EO-35 is another preference in addition to the existing preferences in the Code. Mr. Damico asked if institutions of higher education and local governments are subject to the sections of the Code that Mr. Stamps referenced in his presentation. Mr. Stamps responded by stating that institutions of higher education are not subject to those sections of the Code and Patti Innocenti shared that local governments, depending on their ordinances, may not be required to follow these sections of the Code.

Prior to moving to the second presentation, Senator DeSteph shared that he received the proposed amendments to SB 1115 and gave a brief overview, stating that he does not

have any major issues with the draft but would like time to more carefully review the draft prior to commenting.

Next, the Workgroup heard a presentation from Randy Wintory with the Virginia Department of Transportation (VDOT). Mr. Wintory presented on SB 1115 and the impact it would have to VDOT, specifically federally funded transportation projects. He noted that the bill creates geographical preferences and discriminates on the basis of the locality, which is concerning for VDOT because federal laws prohibits use of such in-state preferences in order to obtain Federal aid for highway projects.

Mr. Wintory continued his presentation with an overview of VDOT funding programs, focusing on highway construction funding. He stated that in FY22 VDOT allocated $3.3 billion to highway construction projects and 85% of those were awarded to Virginia contractors. He added that each year VDOT receives approximately $1 billion in federal funding to assist with highway construction projects that VDOT would be at risk of losing if SB 1115 were in place. Mr. Wintory provided federal law and regulation citations that prohibit the use of preferences on federally funded projects. He shared a brief listing of other states the exclude federal funded projects from preference requirements, such as South Carolina, Texas, and West Virginia. Mr. Wintory concluded his presentation with additional concerns regarding ambiguities in SB 1115 language, pointing out terms that are unclear or undefined.

Mr. Morris asked for explanation on the difference between resident of Virginia versus Virginia business in SB 1115. Mr. Wintory stated that the terminology used in subsection C of the bill is confusing because of the use of the undefined term "resident of Virginia" instead of using the defined term "Virginia businesses". Mr. Damico asked if other federal money going to other agencies would be impacted by the bill? Mr. Wintory shared that other states statutes are broad and unclear on the application of preferences when using non-state funding and he would suggest that Virginia be clear about the application of preferences and funding sources. Ms. Innocenti shared that based on her research with FEMA grants, there is a prohibition of using preferences with FEMA funds.

IV. Public Comment on SB 1115

Trenton Clarke, President of the Virginia Asphalt Association, was the only stakeholder to speak. He shared that overall they are supportive of buying Virginia products but expressed concern over the impact of preferences to federal funded projects. Mr. Clarke explained the process of recyclable materials in the asphalt process and focused his comments on the second enactment clause of SB 1115, speaking to Virginia's recyclable materials tax credit asking that consideration be given to expanding this tax credit. He explained that allowing the use of more recyclable materials reduces cost and helps asphalt plants reduce their carbon footprint. He further explained that the tax credit applies only to asphalt recycling done at a fixed facility and does not account for the evolution of equipment which allows recycled material use in asphalt at project sites. He

concluded his remarks restating the importance of revisiting the recycle tax credit by allowing it to be applied to equipment used at project sites.

V. Findings and Recommendations on SB 1115

Next, Mr. Damico began by asking Staff to confirm if the bill as written impacts institutions of higher education or local government. Ms. Gill stated that the bill would not apply to institutions of higher education operating under management agreements, nor would it apply to local governments that are exempt from the VPPA.

Mr. Heslinga shared that preferences are not generally a part of VITA's information technology procurements as VITA does not generally use competitive sealed bidding to procure IT goods. He stated that most IT procurements inherently involve a large amount of services and require awarding based on more than just price, therefore VITA utilized the competitive negotiation procurement process most often. He concluded his remarks by stating that many IT goods involve a lot of components and depending on how preferences would be structured and applied since not all components may come from Virginia or the USA we could see more protests on IT procurements.

Ms. Innocenti stated that VAGP believes local preference policies are in conflict with the principles of the VPPA and prevent full and open competition. She noted that the VPPA has a provision for best value and depending on the procurement, the locality could introduce a preference as a best value concept.

Mr. Saunders asked for clarification on how preferences are applied using the example that if another state has an in-state preference, does Virginia reciprocate? Mr. Stamps replied that yes, Virginia does reciprocate and would then apply that same preference to Virginia bidders.

Next, Mr. Damico shared that the VPPA currently has a procurement preference in the case of a tie-bid explaining that in the case of a tie-bid, the award would go to a Virginia business. Mr. Damico stated that with the existing tie-bid language, the interest in providing opportunities to Virginia businesses by Senator DeSteph, and the desire to ensure public bodies obtain the best price for goods being procured, he would like to consider something that would address the interests stated while ensuring the Commonwealth gets the best value. He shared that while preferences could impact price, could there be an approach whereby if a state agency issues a bid for a good and an out-of-state business is the lowest responsive and responsible bidder, is there harm in allowing the Virginia business the opportunity to price match the low bid of the out-of-state business?

Mr. Damico asked VDOT if this type of preference would impact federally funded projects. Mr. Wintory stated that he believes it would because you would not be initially awarding to the low bidder. Ms. Pride included that this preference could be applied to state-funded projects, however she is unsure how that would impact competition overall and if out-of-state vendors would not want to participate due to the preference.

Mr. McHugh added that certain terms need to be defined in SB 1115, such as Virginia made products, if implementing SB 1115. He stated that it would be helpful to require the Virginia firm to certify they are in fact a Virginia firm on the bid.

Mr. Damico concluded by asking the Workgroup to provide Senator DeSteph an opportunity to review the draft language he received while at the meeting and to allow the Workgroup additional time to consider the information discussed today.

VI. Public Comment

None.

VII. Discussion

None.

VIII. Adjournment

Mr. Damico adjourned the meeting at 2:03 p.m. and noted that the next Workgroup meeting is scheduled for July 18, 2023 at 9:30 a.m. in the House Committee Room located in the Pocahontas Building.

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

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 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.