

**REPORT OF THE  
DEPARTMENT OF GENERAL SERVICES**

**Study of Methods and Technologies  
Needed to Implement Competitive  
Procurement by Electronic Means**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



**SENATE DOCUMENT NO. 12**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
2002**





# COMMONWEALTH of VIRGINIA

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December 7, 2001

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The Honorable James S. Gilmore, III  
Governor of Virginia  
State Capitol, 3<sup>rd</sup> Floor  
Richmond, Virginia 23219

Dear Governor Gilmore:

Senate Joint Resolution No. 403 requested the Department of General Services to study the methods and technologies needed to implement competitive procurement via electronic means, including electronic sealed bidding. In conducting this study, DGS was also requested to determine and recommend any changes to the provisions of the Code of Virginia that are necessary to accommodate electronic competitive procurement.

To conduct this study, DGS reviewed the *Virginia Public Procurement Act* and implementing policy and regulations as relating to electronic procurement; the Commonwealth's electronic procurement solution (*eVA*) directed by Executive Order 65(00) and approved by the Secretary of Technology; other electronic solutions being implemented within the Commonwealth; and electronic procurement initiatives by the Department of Defense, state and local governments. Further, DGS reviewed the Commonwealth's electronic procurement initiatives with regard to the *Code's* intent that procurements, even though conducted electronically, would be conducted the "Virginia Way".....fair, open, and honest with equal opportunity for all in compliance with *Code* §2.2-4300.

As a result of this review, DGS has identified no legal barriers to the implementation of electronic competitive procurement, including electronic sealed bidding, which cannot be addressed through the policy and regulatory changes already in process by the Department. The implementation of electronic procurement, including electronic sealed bidding, is progressing successfully with *eVA*, the Commonwealth's electronic procurement solution.

Sincerely,

A handwritten signature in black ink, appearing to read "D. B. Smit".

D. B. Smit  
Acting

**c: Members of the Virginia General Assembly**

**Attachments:**

**Executive Summary**

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## Executive Summary

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Senate Joint Resolution No. 403 (Appendix A) requested the Department of General Services (DGS) to study the methods and technologies needed to implement competitive procurement via electronic means, including electronic sealed bidding. In conducting this study, DGS was also requested to determine and recommend any changes to the provisions of the *Code of Virginia* that are necessary to accommodate electronic competitive procurement. The *Code §2.2-1111* gives DGS the sole authority to establish the policy and procedures implementing the *Virginia Public Procurement Act (VPPA)* (Appendix B).

To conduct this study, DGS reviewed the *VPPA* and implementing policy and regulations as affecting electronic procurement; the Commonwealth's electronic procurement solution (*eVA*) directed by Executive Order 65(00) and approved by the Secretary of Technology (Appendix C); other electronic solutions being implemented within the Commonwealth; electronic procurement initiatives by the Department of Defense, state and local governments. Further, DGS reviewed the Commonwealth's electronic procurement initiatives from the *Code's* intent that procurements, even though conducted electronically, would be conducted the "Virginia Way,".....fair, open, and honest with equal opportunity for all in compliance with *Code §2.2-4300* (Appendix D).

Findings from the review are summarized below:

- DGS is in the process of completing the implementation of *eVA*, the Commonwealth's total electronic procurement solution, including electronic sealed bidding. VDOT is currently conducting electronic sealed bidding over the internet for highway construction projects.
- There are no known *Code of Virginia* legal requirements that prevent implementing electronic procurement, including electronic sealed bidding.
- A policy change, outside of DGS authority is needed to remove a barrier to implementing electronic procurement. Administrative policy needs to reflect that records for audit and financial review can be stored in electronic format and that electronic signatures are acceptable.
- Technology solutions that permit full implementation of electronic procurement, including electronic competitive sealed bidding, compliance with security requirements and compliance with the *Code of Virginia* are being implemented or used in the Commonwealth.
- The e Government Office of the Secretary of Technology, working with a team of Commonwealth agencies and institutions, is developing interfaces or data exchange protocols between *eVA* and agency business management systems (ERPs).
- Procurement regulations require the use of *eVA*, the Commonwealth's electronic procurement solution, including electronic sealed bidding, unless an exception is granted by DGS.

## **Executive Summary**

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Recommendations from the review are summarized below:

- Policies be revised to reflect that records for audit and financial review can be stored in electronic format and that electronic signatures are acceptable.

## Background

Senate Joint Resolution No. 403 (Appendix A) requested the Department of General Services (DGS) to study the methods and technologies needed to implement competitive procurement via electronic means, including electronic sealed bidding. In conducting this study, DGS was also requested to determine and recommend any changes to the provisions of the *Code of Virginia* that are necessary to accommodate electronic competitive procurement. The *Code §2.2-1111* gives DGS the sole authority to establish the policy and procedures implementing the *Virginia Public Procurement Act (VPPA)* (Appendix B).

In conducting this study, it is necessary to understand the procurement environment in the Commonwealth. The environment is decentralized with almost every agency and institution conducting their own procurement operations and with local customized small purchasing procedures. Agencies and institutions desire to operate autonomously from central oversight making their own procurement decisions. Across the range of agencies and institutions there are sophisticated enterprise resource planning systems (ERPs) that are essentially financial management systems but may include a purchasing module. Few if any of these ERPs are able to send a purchase order electronically to suppliers. There are also a number of agencies with no ERPs that process purchases manually.

In May, 2000, the Department of General Services (DGS) was directed by Executive Order 65(00) (Appendix C) to implement a total electronic procurement solution to make procurement in the Commonwealth easier and faster, and to do business across the Commonwealth electronically over the Internet. This solution, know as *eVA*, is more than a purchasing module. It is a portal or gateway to connect buyers and suppliers to do business electronically. The *eVA* portal establishes a one face connection to suppliers and to agencies without having to change their systems. Additionally, *eVA* provides three purchasing tools over the Internet: an e Mall for shopping from supplier catalogs and statewide contracts; a Quick Quote small purchase buying tool for placing electronic orders from an electronic bidders list; and e Procurement for conducting electronic sealed bidding (Invitation for Bids) and electronic competitive negotiations (Request for Proposals). Other functions *eVA* provides on the Internet include: a Commonwealth single registration for suppliers; a single place for posting solicitations and all the Commonwealth's business opportunities (*Code § 2.2-4301*); push technology to notify suppliers by e mail of business opportunities; a purchasing data warehouse; and auctioning/reverse auctioning.

*eVA* provides the following benefits:

- easier and faster purchasing for buyers and suppliers
- reduces cost of goods and services through increased competition and leveraged buying power
- access to more business opportunities, especially for small, women, or minority businesses
- pushed e-mail notification of business opportunities
- less time-consuming administrative tasks associated with purchasing which reduces costs
- single supplier registration
- single source for procurement information

- improves quality of procurements resulting in faster payments

### **Review of the *Virginia Public Procurement Act* and Implementing Policy and Regulations**

A review of the *Virginia Public Procurement Act (VPPA)* identified no known legal barriers to implementing electronic procurement, including electronic sealed bidding. However, there are policy changes that have been identified by DGS. Some of these changes have been made and the others are in the process of being made by early 2002.

There is one policy change, outside of DGS authority, that is a barrier to e procurement and needs to be made by agencies, particularly those agencies that have audit or financial oversight. Policy needs to be revised to reflect that records for audit and financial review can be stored in electronic format and that electronic signatures are acceptable. This decision should not be difficult since the *Code* has already declared words such as “written,” “writing,” and “in writing” to include electronic documents and declared electronic records and signatures legally enforceable.

Electronic competitive sealed bidding is already being conducted in the Commonwealth without any legal barriers encountered. VDOT is successfully conducting electronic sealed bidding over the Internet for highway construction projects. *eVA*, the Commonwealth’s electronic procurement solution, including electronic sealed bidding, is approved and implementation proceeding successfully.

### **Technology and Security Limitations**

No technology or security issues have been encountered where solutions have not been identified. Today electronic procurement systems are available or being used that permit full implementation of electronic procurement, including electronic competitive sealed bidding, compliance with security requirements and compliance with the *Code of Virginia*.

Examples are *eVA*, the Commonwealth’s electronic procurement solution that is the result of a competitively awarded contract to American Management Systems (AMS), and VDOT's electronic competitive sealed bidding system for highway construction projects.

### **Recommendations**

1. Policies be revised to reflect that records for audit and financial review can be stored in electronic format and that electronic signatures are acceptable.

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SENATE JOINT RESOLUTION NO. 403

*Requesting the Departments of General Services, Transportation, and Technology Planning, in consultation with the Joint Commission on Technology and Science, to study the methods and technologies needed to implement competitive procurement via electronic means, including electronic sealed bidding.*

Agreed to by the Senate, February 22, 2001

Agreed to by the House of Delegates, February 22, 2001

WHEREAS, electronic commerce is the fastest growing segment of the United States economy; and

WHEREAS, the Department of General Services has contracted with a service provider for the Commonwealth's electronic procurement solution, in which the Commonwealth envisions electronic contracting involving competitive sealed bidding; and

WHEREAS, the Internet and electronic commerce pose new threats and vulnerabilities to the procurement process and a lack of sufficient controls could lead to a compromised competitive sealed bidding process; and

WHEREAS, bidders expect integrity and controls in the competitive sealed bidding process, whether it be in a manual or automated environment; and

WHEREAS, the *Code of Virginia* defines words such as "written," "writing," and "in writing" to include electronic documents and makes electronic records and signatures legally enforceable; and

WHEREAS, the *Uniform Electronic Transactions Act* (§ 59.1-479 et seq.) does not resolve all issues arising from the implementation of electronic transactions, particularly where other provisions of the Code of Virginia require a specific manner of delivery; and

WHEREAS, the *Virginia Public Procurement Act* (§ 11-35 et seq.) contains specific requirements concerning competitive sealed bidding and competitive negotiations that fall outside of the provisions of the Uniform Electronic Transactions Act; and

WHEREAS, the requirements under the *Virginia Public Procurement Act* and the move toward electronic bidding will significantly impact the operations and procurement processes of major purchasers such as the Department of Transportation; and

WHEREAS, the Auditor of Public Accounts, in his study of electronic commerce as required by Senate Joint Resolution No. 72 of the 2000 Session and as reported via Senate Document 10 of 2001, recommends that the Departments of General Services, Transportation, and Technology Planning study methods and technologies that the Commonwealth can use to implement electronic sealed bids and determine whether there are any modifications needed to existing sections of the *Code of Virginia*; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Departments of General Services, Transportation, and Technology Planning, in consultation with the Joint Commission on Technology and Science, be requested to study the methods and technologies needed to implement competitive procurement via electronic means, including electronic sealed bidding. In conducting this study, each Department shall also determine and recommend any changes to the provisions of

## Appendix A

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the *Code of Virginia* that are specific to that Department and are necessary to accommodate that Department's electronic competitive procurement, in light of the provisions of the Uniform Electronic Transactions Act under § 59.1-486 of the *Code of Virginia*.

All agencies of the Commonwealth shall provide assistance to the Departments of General Services, Transportation, and Technology Planning for this study, upon request.

The Departments of General Services, Transportation, and Technology Planning shall complete their work in time to submit their findings and recommendations by November 30, 2001, to the Governor and the 2002 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

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*Code of Virginia*

§ 2.2-1111. (Effective October 1, 2001) Purchases to be made in accordance with the *Virginia Public Procurement Act* (§ 2.2-4300 et seq.) and regulations of the Division; exempt purchases.

A. All purchases made by any department, division, officer or agency of the Commonwealth shall be made in accordance with the *Virginia Public Procurement Act* (§ 2.2-4300 et seq.) and such regulations as the Division may prescribe.

B. The regulations adopted by the Division shall:

1. Include a purchasing plan that shall be on file at the Division and shall be available to the public upon request;

2. Require that before any public body procures any computer system, equipment or software, it shall consider whether the proposed system, equipment or software is capable of producing products that facilitate the rights of the public to access official records under the *Freedom of Information Act* (§2.2-3700 et seq.) or other applicable law;

3. Establish the conditions under which a public body may use, as a basis for the procurement of goods and nonprofessional services, a particular vendor's contract-pricing that has been negotiated and accepted by the U.S. General Services Administration; and

4. Establish procurement preferences for products containing recycled oil (including reprocessed and rerefined oil products) and recycled antifreeze no later than December 31, 2002.

C. The Division may make, alter, amend or repeal regulations relating to the purchase of materials, supplies, equipment, nonprofessional services, and printing, and may specifically exempt purchases below a stated amount or particular agencies or specified materials, equipment, nonprofessional services, supplies and printing.

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COMMONWEALTH OF VIRGINIA

OFFICE OF THE GOVERNOR  
Executive Order 65 (00)

Part 2: Specific Initiatives

The Electronic Government Implementation Division shall work with other Executive Branch agencies, as necessary, to coordinate a successful implementation of the following electronic government initiatives, already in various stages of development. that will further the Commonwealth's e-government effort.

A. Electronic Procurement

There are few areas of government administration that the Internet is changing faster or more dramatically than procurement. Not only does web-based technology allow faster, more accurate purchasing and contracting, but also it allows for greater competition for goods and services and the ability to compare prices, offers, and value.

Last year, the Department of General Services inaugurated its E-Mall, a central procurement web site for the Commonwealth, offering information, links to state contracts and solicitations, access to a growing number of vendor catalogs, and the beginning stages of Internet purchasing capability. Virginia's E-Mall, one of the most comprehensive in the nation, is the first step toward a more comprehensive electronic procurement process available to all state agencies, universities, and local governments.

Virginia must continue to move aggressively to take advantage of the substantial benefits derived from widespread and regular use of the Internet for purchasing and procurement. Toward that end, I hereby direct the Department of General Services to implement the statewide electronic procurement system authorized by Item 75 (b) of the 2000 Appropriation Act by:

Issuing a Request for Proposals (RFP) for a web-based electronic procurement system to be implemented no later than March 1, 2001; Expediting the evaluation and review process for the RFP and its implementation to the extent possible within established guidelines and existing law; Working with the Council on Technology Services to encourage universal participation by Executive Branch agencies and institutions and to develop an educational program for those agencies, institutions of higher education, and local governments on how to most effectively incorporate electronic procurement into their business processes; Identifying barriers in regulation and in the Code of Virginia to continued expansion of the use of electronic procurement for purchasing and for establishing contracts.

The Secretary of Finance and the Departments of Treasury, Planning and Budget, and Accounts shall cooperate with the Department of General Services to explore and select the most viable financing options for developing the electronic procurement system, as required by Item 75 (B) of the 2000 Appropriation Act.

Upon completion of the statewide electronic procurement system, I hereby direct all Executive Branch agencies and institutions to take advantage of its benefits to the fullest extent possible.

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### *Code of Virginia*

§ 2.2-4300. (Effective October 1, 2001) Short title; purpose; declaration of intent.

A. This chapter may be cited as the *Virginia Public Procurement Act*.

B. The purpose of this chapter is to enunciate the public policies pertaining to governmental procurement from nongovernmental sources, to include governmental procurement that may or may not result in monetary consideration for either party. This chapter shall apply whether the consideration is monetary or nonmonetary and regardless of whether the public body, the contractor, or some third party is providing the consideration.

C. To the end that public bodies in the Commonwealth obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to public business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the General Assembly that competition be sought to the maximum feasible degree, that procurement procedures involve openness and administrative efficiency, that individual public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered. Public bodies may consider best value concepts when procuring goods and nonprofessional services, but not construction or professional services. The criteria, factors, and basis for consideration of best value and the process for the consideration of best value shall be as stated in the procurement solution.