

**REPORT OF THE  
SECRETARY OF ADMINISTRATION**

# **Proposed Changes to the Virginia Public Procurement Act**

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



## **SENATE DOCUMENT NO. 25**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
2005**



COMMONWEALTH of VIRGINIA

Office of the Governor

Sandra D. Bowen  
Secretary of Administration

(804) 786-1201  
Fax: (804) 371-0038  
TTY: (804) 786-7765

November 7, 2005

TO: The Honorable Mark R. Warner  
Governor of Virginia  
  
Members, General Assembly of Virginia

FROM: Sandra D. Bowen

RE: Virginia Public Procurement Act

Pursuant to Chapter 945 of the Acts of Assembly 2005, I herewith forward proposed changes to the Virginia Public Procurement Act. These changes result from discussions involving the Department of General Services and public institutions of higher education in Virginia.

All proposals contained herein require changes to the Code of Virginia, as indicated.

Attachment

**Proposed Changes to Virginia Public Procurement Act  
CHAPTER 945 of the Acts of Assembly 2005 (Senate Bill 1327)**

Enacting Clause- 5. That the Secretary of Administration shall work with public institutions of higher education and other interested persons to review proposed changes to the Virginia Public Procurement Act (§ [2.2-4300](#) et seq.) of the Code of Virginia and procurement regulations in order to enhance and improve the procurement process for all public bodies in the Commonwealth. The Secretary shall provide a copy of any recommended changes to the Virginia Public Procurement Act to the Governor and to the General Assembly no later than October 1, 2005.

Recommendation for changes to the VPPA

<u>Who</u>	<u>Code Section</u>	<u>Recommendation</u>	<u>Current Language</u>	<u>Marked up Proposed Language</u>
DPS  And  Higher Ed	§ 2.2-4301  Posting requirements	Provide that that public bodies may post on a designated electronic website <b>or</b> a public area. The eVA website is the designated electronic website for all state agencies, departments and institutions.  Under competitive negotiation change the mandatory requirement of advertising in newspaper to optional for State agencies, departments, and institutions that posted on eVA website.	Competitive negotiation (RFP) 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of proposals by posting in a public area normally used for posting of public notices and by publication in a newspaper or newspapers 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. Public notice may also be published on the Department of General Services' central electronic procurement website and other appropriate websites. Effective July 1, 2002, publishing by state agencies, departments and institutions on the public Internet procurement website designated by the Department of General Services shall be required. In addition, proposals may be solicited directly from potential contractors.	Competitive negotiation (RFP) 2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of proposals by posting <u>on the public body's designated electronic website or</u> in a public area normally used for posting of public notices and by publication in a newspaper or newspapers 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. Public notice may also be published on the <u>Commonwealth's Department of General Services'</u> central electronic procurement website <del>and other appropriate websites.</del> In addition, proposals may be solicited directly from potential contractors. <u>Any additional solicitations shall include businesses selected from a list made available by the Department of Minority Business Enterprise. Effective July 1, 2002, publishing by s</u> State agencies, departments and institutions <u>shall post</u> on the <u>Commonwealth's central</u> electronic <del>public Internet</del> procurement website <u>which is administered</u> <del>designated</del> by the Department of

<u>Who</u>	<u>Code Section</u>	<u>Recommendation</u>	<u>Current Language</u>	<u>Marked up Proposed Language</u>
		<p>This streamlines the procurement process and reduces administrative costs.</p>	<p>Competitive sealed bidding (IFB)  2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by posting in a designated public area, or publication in a newspaper of general circulation, or both. Public notice may also be published on the Department of General Services' central electronic procurement website and other appropriate websites. Effective July 1, 2002, posting by state agencies, departments and institutions on the public Internet procurement website designated by the Department of General Services shall be required. In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall include businesses selected from a list made available by the Department of Minority Business Enterprise.</p>	<p>General Services. <i>In the case of any solicitation posted on the Department of General Services' Commonwealth's central electronic procurement website <del>public Internet procurement website</del> after January 1, 2007 publication of the solicitation in a newspaper or newspapers of general circulation in the area in which the contract is to be performed shall be an option but shall not be required. shall be required. In addition, proposals may be solicited directly from potential contractors.</i></p> <p>Competitive sealed bidding (IFB)  2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by posting <i>on the public body's designated electronic website or</i> in a designated public area, or publication in a newspaper of general circulation, <del>or both</del>. Public notice may also be published on the <del>Department of General Services' Commonwealth's</del> central electronic procurement website. <del>and other appropriate websites.</del> <i>In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall include businesses selected from a list made available by the Department of Minority Business Enterprise. Effective July 1, 2002, publishing by s State agencies, departments and institutions shall post on the public Internet procurement Commonwealth's central electronic procurement website designated which is administered by the Department of General Services. shall be required. In addition, bids may be solicited directly from potential contractors. Any additional</i></p>

<u>Who</u>	<u>Code Section</u>	<u>Recommendation</u>	<u>Current Language</u>	<u>Marked up Proposed Language</u>
				<del>solicitations shall include businesses selected from a list made available by the Department of Minority Business Enterprise.</del>
DPS  And  Higher  Ed	§ 2.2-4301  Negotiation of other than professional services.	Change code to allow negotiations to be optional when using the competitive negotiation process for the procurement of other than professional services. This will benefit the state and provide contracting officers in the Commonwealth the flexibility to decide whether to use negotiation techniques based on the individual procurement. This change to the Code it will allow the Commonwealth to better utilize <b>Best Value Concepts</b> and expedite competitively negotiated procurements.	Competitive negotiation (RFP)  b. Procurement of other than professional services. 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. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole 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 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.	Competitive negotiation (RFP)  b. Procurement of other than professional services. Selection shall be <del>the</del> made of <del>two or more</del> offeror(s) 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. Negotiations <del>shall may then</del> be conducted with <del>each of</del> the offeror(s) so selected. Price shall be considered, but need not be the sole determining factor. <del>After negotiations have been conducted with each offeror so selected, the</del> <i>The</i> public body shall select the offeror which, in its opinion, has made the best proposal, 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. <del>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.</del>
Higher  Ed  And	§ 2.2-4303. Methods of procurement.	Remove the requirement to require an advanced written determination to use competitive negotiation as the method of	C. Upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, goods, services, or insurance may be procured by competitive negotiation. The writing shall document the basis for this	C. <del>Upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public,</del> <i>g</i> Goods, services, or insurance may be procured by competitive negotiation. <del>The writing shall document the basis for this</del>

<u>Who</u>	<u>Code Section</u>	<u>Recommendation</u>	<u>Current Language</u>	<u>Marked up Proposed Language</u>
DPS		procurement. This change to the Code it will allow the Commonwealth to better utilize <b>Best Value Concepts</b> and expedite competitively negotiated procurements.	<p>determination.</p> <p>Upon a written determination made in advance by (i) the Governor or his designee in the case of a procurement by the Commonwealth or by a department, agency or institution thereof or (ii) the local governing body in the case of a procurement by a political subdivision of the Commonwealth, that competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured through a licensed agent or broker selected in the manner provided for the procurement of things other than professional services in subdivision 3 b of the definition of "competitive negotiation" in § <a href="#">2.2-4301</a>. The basis for this determination shall be documented in writing.</p>	<p><del>determination.</del></p> <p>Upon a written determination made in advance by (i) the Governor or his designee in the case of a procurement by the Commonwealth or by a department, agency or institution thereof or (ii) the local governing body in the case of a procurement by a political subdivision of the Commonwealth, that competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured through a licensed agent or broker selected in the manner provided for the procurement of things other than professional services in subdivision 3 b of the definition of "competitive negotiation" in § <a href="#">2.2-4301</a>. The basis for this determination shall be documented in writing.</p>
DPS	§ 2.2-4303. Methods of procurement.	Add language to require that state agencies, departments and institutions shall post on the Commonwealth's central electronic procurement website: which is administered by the Department of General Services. This change will bring the sole source award posting requirement in-line with the existing language for Competitive	E. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The public body shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area or published in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first. Public notice may also be published on the Department of General	E. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The public body shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted <u>on the public body's designated electronic website</u> or in a designated public area or published in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first. Public notice may also be

<u>Who</u>	<u>Code Section</u>	<u>Recommendation</u>	<u>Current Language</u>	<u>Marked up Proposed Language</u>
		<p>negotiation and Competitive sealed bidding.</p> <p>The purpose of advertising sole source awards is to ensure openness and public visibility.</p>	<p>Services' central electronic procurement website and other appropriate websites.</p>	<p>published on the <del>Department of General Services'</del> <u>Commonwealth's</u> central electronic procurement website and other appropriate websites. <i>State agencies, departments and institutions shall post on the Commonwealth's central electronic <del>public Internet procurement website which is designated</del> administered by the Department of General Services</i></p>
DPS	§ 2.2-4303. Methods of procurement.	<p>Add language to require that state agencies, departments and institutions shall post on the Commonwealth's central electronic procurement website- which is administered by the Department of General Services. This change will bring the emergency award posting requirement in-line with the existing language for Competitive negotiation and Competitive sealed bidding.</p> <p>The purpose of advertising emergency awards is to ensure openness and public</p>	<p>F. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The public body shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area or published in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may also be published on the Department of General Services' central electronic procurement website and other appropriate websites.</p>	<p>F. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The public body shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted <u>on the public body's designated electronic website or</u> in a designated public area or published in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. Public notice may also be published on the <del>Department of General Services'</del> <u>Commonwealth's</u> central electronic procurement website and other appropriate websites. <i>State agencies, departments and institutions shall post on the Commonwealth's central electronic <del>public Internet procurement</del></i></p>

<u>Who</u>	<u>Code Section</u>	<u>Recommendation</u>	<u>Current Language</u>	<u>Marked up Proposed Language</u>
		visibility.		<i>website <del>designated</del> which is administered by the Department of General Services</i>
Higher Ed	§ 2.2-4303. Methods of procurement.	Increasing the value to \$50,000 will bring it in-line with small purchase procedures of goods and non-professional services.	H. A public body may establish purchase procedures, if adopted in writing, not requiring competitive negotiation for single or term contracts for professional services if the aggregate or the sum of all phases is not expected to exceed \$30,000; however such small purchase procedures shall provide for competition wherever practicable.	H. A public body may establish purchase procedures, if adopted in writing, not requiring competitive negotiation for single or term contracts for professional services if the aggregate or the sum of all phases is not expected to exceed <del>\$50,000</del> <u>\$30,000</u> ; however such small purchase procedures shall provide for competition wherever practicable.
DPS	§ 2.2-4326. Preference for recycled paper and paper products used by state agencies.	Remove the requirement that DGS procure paper by competitive sealed bidding.  This change will allow DGS to utilize the VaPP program initiatives in the procurement of paper and paper products. The requirement to procure using competitive sealed bidding was applied only to DGS,	A. In determining the award of any contract for paper and paper products to be purchased for use by agencies of the Commonwealth, the Department of General Services shall procure using competitive sealed bidding and shall award to the lowest responsible bidder offering recycled paper and paper products of a quality suitable for the purpose intended, so long as the bid price is not more than ten percent greater than the bid price of the low responsive and responsible bidder offering a product that does not qualify under subsection B.	A. In determining the award of any contract for paper and paper products to be purchased for use by agencies of the Commonwealth, the Department of General Services shall <i>adopt written procedures for applying a preference to a bidder/offeror</i> <del>procure using competitive sealed bidding and shall award to the lowest responsible bidder</del> offering recycled paper and paper products of a quality suitable for the purpose intended, <del>so long as the bid price is not more than ten percent greater than the bid price of the low responsive and responsible bidder offering a product that does not</del> qualifies <del>y</del> under subsection B.



