

Report to the Governor and the General Assembly of Virginia

Development and Management of State Contracts in Virginia

2016



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July 15, 2016

The Honorable Robert D. Orrock Sr., Chair
Joint Legislative Audit and Review Commission
General Assembly Building
Richmond, Virginia 23219

Dear Delegate Orrock:

In 2014, the Joint Legislative Audit and Review Commission (JLARC) passed a resolution directing the staff to review state contracting in Virginia. Our report, *Development and Management of State Contracts in Virginia*, was briefed to the Commission and authorized for printing on June 13, 2016.

On behalf of the JLARC study team, I would like to thank the Department of General Services, the Virginia Information Technologies Agency, the Office of the Attorney General, the Auditor of Public Accounts, the Virginia Department of Transportation, the Department of Small Business and Supplier Diversity, Virginia Correctional Enterprises, Virginia Industries for the Blind, and the many other agencies that provided contracting information to the study team for their cooperation and assistance with this study.

Sincerely,

A handwritten signature in cursive script that reads "Hal E. Greer".

Hal E. Greer
Director

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Summary

Development and Management of State Contracts in Virginia

WHAT WE FOUND

Some contracts deviated from original expectations

Approximately 10 percent of contracts analyzed for this study—12 contracts valued at \$1.8 billion—fell significantly short of meeting agencies’ original expectations. Some less significant deviation from original expectations is to be expected, especially with complex contracts. Almost two-thirds of the contracts were at least slightly behind schedule, over budget, or did not meet agencies’ needs. These contracts were procured under different state statutes and therefore under the authority of different oversight agencies. In some cases, the public was negatively impacted. Most performance problems appear to be within the control of agencies or vendors and may therefore be preventable through more robust contracting processes.

Some policies can limit agencies’ ability to make quality purchases at reasonable cost

Certain procurement policies do not help agencies maximize contract value because they do not factor in both cost and quality, or do not provide sufficient guidance on how to use the policies effectively. As a result, state agencies may overpay or receive poor quality goods and services from some contracts. In some cases, agencies have awarded contracts even when they knew the vendor would be unable to provide high-quality goods or services.

Purchases made through the small business set-aside program had a modest fiscal impact on the state. Agencies may spend more than necessary on the program because state policies do not provide sufficient guidance on how agencies should evaluate cost when making contract awards. Agencies may also be overpaying for purchases from mandatory sources, which, according to staff of multiple agencies, are not always of acceptable quality or competitively priced.

Some agencies limit competition for some state contracts, potentially increasing the cost or reducing the quality of what they purchase; without competition, businesses have less incentive to maximize quality and minimize price.

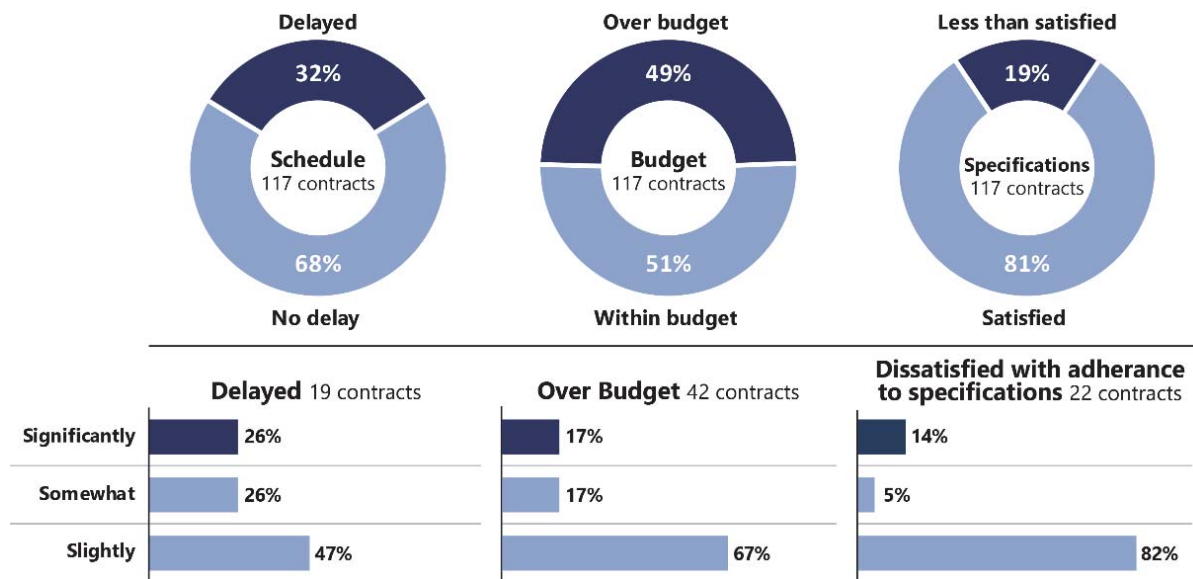
WHY WE DID THIS STUDY

In 2014 the Joint Legislative Audit and Review Commission (JLARC) directed its staff to review the development and management of state contracts. Interest in this topic was prompted by problems that arose from several recent high-profile contracts. Staff were directed to evaluate whether the state’s policies ensure that contracts provide good value to the state and mitigate the risks to agencies and the public.

ABOUT STATE CONTRACTING

State entities in Virginia spent more than \$6 billion through contracts in fiscal year 2015, mostly for goods and services related to transportation, construction, and information technology. Several laws and policies govern how agencies procure and use contracts, but the most prominent is the Virginia Public Procurement Act. The contracting process is decentralized, as most contracts are procured, developed, and managed by individual agencies.

Contracts deviated from original agency expectations in various ways



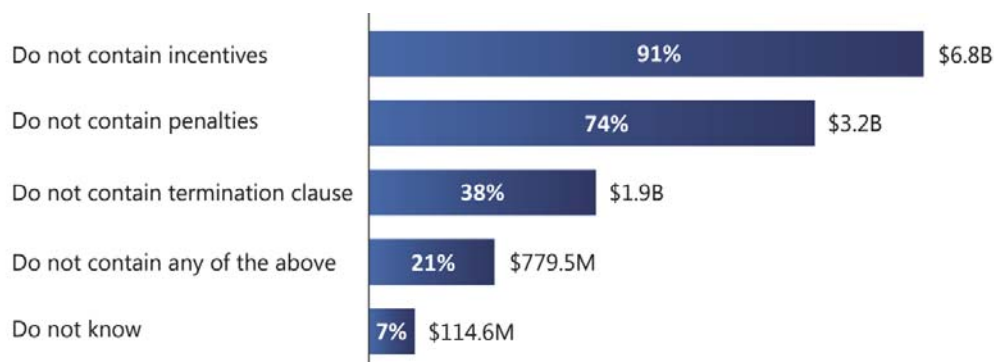
SOURCE: JLARC survey of contract administrators, 2015.

NOTE: Numbers may not add due to rounding. Pie charts include all analyzed contracts, dividing contracts between those that met expectations in each category as reported by the contract administrator and those that fell short of original expectations. Contracts in bar graphs are limited to contracts where contract administrators reported the extent of delays, budget overruns, or satisfaction with specifications.

Risk management is not sufficiently emphasized to adequately protect the state

The state is exposed to risk when something could go wrong with a contract that could negatively affect the state. State policies do not require agencies to formally manage contract-related risks, and state training courses on risk management are not widely available. As a result, procurement staff at most agencies do not adequately plan for contract-related risks. According to agencies' contract administrators, many of the state's highest-value contracts lack the penalties and incentives necessary to enforce contract provisions. Such contract provisions would give agencies more leverage to address poor contract performance in a manner that benefits the state.

Many contracts do not contain provisions to allow for contract enforcement



SOURCE: JLARC staff analysis of a survey of state agency contract administrators, 2015.

NOTE: Based on a sample of 117 contracts totaling \$8.1 billion.

Lack of focus on contract administration policies undermines adequate contract monitoring and enforcement

State contracting policies focus largely on the *procurement* of contracts and do not provide agencies with sufficient requirements or guidance regarding the effective *administration* of contracts. Agencies are therefore ill-equipped to monitor and enforce some of the state's largest and most complex contracts, which increases the likelihood of contract performance problems.

Agency staff are not monitoring contract performance and enforcing contract provisions effectively or consistently, within and across agencies. Vendors are not consistently held accountable for poor performance, and some complex, high-dollar contracts are administered by inexperienced and unprepared staff. The amount of time dedicated to contract administration varies widely and is often only a small percentage of a workweek, even for high-value contracts. Many agencies lack standard procedures for raising awareness about contract-related problems and do not have a clear sense for how their contracts are performing.

Vendors are generally satisfied with state contracting but have difficulties filing complaints when warranted

Most vendors expressed satisfaction with their general experience contracting with state entities but identified challenges with the complaint process. The Virginia Public Procurement Act sets out a formal complaint process for vendors, but it is used infrequently. Many vendors either are not aware of the complaint process or do not understand how to use it. Some vendors are reluctant to file complaints because they fear it could damage their chances of successfully competing for state contracts in the future.

Centralized oversight of state agency contracting is too limited

Contracting in Virginia is largely decentralized, as most agencies conduct contracting on their own. The Department of General Services (DGS) and the Virginia Information Technologies Agency (VITA) exercise oversight over agencies' contracting activities, but this oversight is focused on relatively few contracts and does not concentrate on certain aspects of contracting that pose significant risk to the state.

Comprehensive information on contract performance is lacking

Even though contracts account for a significant portion of state spending, the state does not maintain comprehensive information on how contracts are performing. This prevents individual agencies and state-level decision makers from assessing whether their investments in individual contracts have provided value to the state. It also prevents agency staff from avoiding problematic vendors and developing and administering contracts in a way that takes into account previous "lessons learned" at their own agency or other agencies.

WHAT WE RECOMMEND

Legislative action

- Develop criteria for identifying high-risk contracts and implement a process to oversee them.
- Direct DGS and VITA to develop a centralized approach to tracking contract performance.
- Direct DGS and VITA to develop a comprehensive training program on effective contract administration.

Executive action

- Develop tools and policies that allow agencies to balance cost with the quality of goods and services purchased.
- Develop mandatory training on effective risk management.
- Develop guidelines for assigning staff to administer contracts, particularly those that are high risk or high value.
- Develop guidelines for monitoring vendor performance, reporting performance problems, and using enforcement measures.
- Improve awareness of the vendor complaint process and make it easier to use.

The complete list of recommendations is available on page v.

Recommendations

Development and Management of State Contracts in Virginia

RECOMMENDATION 1

The Department of General Services and the Virginia Information Technologies Agency should provide guidance in their statewide procurement policy manuals and training on (i) the nature of performance problems relevant to declaring a vendor “non-responsible” during the procurement process, (ii) the specific types of documentation that can be used to declare a vendor “non-responsible,” and (iii) how agencies should document vendor performance problems. (Chapter 3)

RECOMMENDATION 2

The Department of General Services should modify its statewide procurement policy manuals to include the following requirements: (i) that criteria used to evaluate proposals include at least one measure of quality and (ii) that agencies include subject-matter experts as members of their proposal evaluation committees. The policy manuals should be modified to include a list of commonly used criteria for evaluating proposals, and guidance on how to select and weight criteria in order to balance cost and quality. (Chapter 3)

RECOMMENDATION 3

The Department of Small Business and Supplier Diversity (DSBSD) should develop regulations to require each agency to develop a formula to determine whether the cost of goods and services offered by a small business is “fair and reasonable” when compared to the same goods and services offered by other businesses. The formula would apply to purchases under \$100,000 that are set aside for small businesses. The Department of General Services and the Virginia Information Technologies Agency should collaborate with DSBSD to develop the regulations and guidance for agencies that request assistance in developing a “fair and reasonable” formula. (Chapter 3)

RECOMMENDATION 4

The General Assembly may wish to include language in the Appropriation Act directing the Department of General Services and the Department of Small Business and Supplier Diversity to collect data on awards made through competitive negotiations. The departments should use the data to evaluate the impact of the small business criterion on agencies’ use of certified small businesses, as well as on procurement more broadly, to determine whether the 20 percent criterion weight requirement should be adjusted or eliminated. (Chapter 3)

RECOMMENDATION 5

The Department of General Services should convene a working group made up of the director of the department's Division of Purchases and Supply and representatives from each state entity identified as a mandatory source for the purchase of goods and services. The working group should develop goals for quality control and price setting, and policies and procedures for granting exemptions to agencies, that will be used by all mandatory source entities. (Chapter 3)

RECOMMENDATION 6

The Department of General Services should modify the Construction and Professional Services Manual to clarify the requirement that vendor experience with project delivery method, such as construction-manager-at-risk or design-build, be considered by state agencies and higher education institutions when qualifying vendors to compete for construction contracts. The policy should state that agencies shall not automatically disqualify vendors during the Request for Qualifications stage of a procurement because of a lack of direct experience with the specific project delivery method to be used for the project. (Chapter 3)

RECOMMENDATION 7

The Department of Small Business and Supplier Diversity should prioritize certifying businesses as "micro" or "small" over certifying businesses as only "women-owned" or "minority-owned." The department should study the feasibility of automatically certifying businesses as "women-owned" or "minority-owned" if the business has been certified as such by other states, the federal government, or third-party certification entities. (Chapter 3)

RECOMMENDATION 8

The Department of Small Business and Supplier Diversity should send electronic notification of renewal to businesses certified as small, women-owned, or minority-owned at least 60 days prior to the expiration of their certification. (Chapter 3)

RECOMMENDATION 9

The Department of General Services should develop mandatory training for certified procurement staff on identifying, mitigating, and controlling contract-related risk through effective contract development and administration. (Chapter 4)

RECOMMENDATION 10

The Department of General Services and Virginia Information Technologies Agency should modify their statewide procurement policy manuals to state that agencies should implement a formal mechanism for identifying and managing contract-related risk. Manuals should be modified by July 1, 2017. (Chapter 4)

RECOMMENDATION 11

The Department of General Services and Virginia Information Technologies Agency should modify their statewide procurement policy manuals to state that contracts should contain the following provisions: (i) performance measures, to be used in contracts for services; (ii) quality assurance measures, to be used in contracts for goods; and (iii) penalties to impose when a vendor does not perform according to contract provisions. (Chapter 4)

RECOMMENDATION 12

The Office of the Attorney General should develop and publish information for agencies about the legal services it offers to assist with contract procurement. Information should include the types of assistance available to agencies and procedures for obtaining assistance. (Chapter 4)

RECOMMENDATION 13

The Office of the Attorney General should conduct a comprehensive legal review of all standard contract provisions that have been developed or recommended for agencies' use by the Department of General Services, the Virginia Information Technologies Agency, the Virginia Department of Transportation, and the Virginia Association of State College and University Purchasing Professionals. Reviews should be undertaken every five years, with the initial review to be completed by January 1, 2017. (Chapter 4)

RECOMMENDATION 14

The Virginia Information Technologies Agency (VITA) should identify the number of additional staff needed by its Supply Chain Management Division to effectively assist agencies with the planning and execution of procurements for IT contracts. The agency should submit a report to the Secretary of Technology, Department of Planning and Budget, and House Appropriations and Senate Finance Committees regarding its additional staffing needs. The report should include a description of the nature and scope of the assistance that VITA will provide to agency staff as well as a timeline that it will follow for having new VITA staff in place to provide such assistance. (Chapter 4)

RECOMMENDATION 15

The Virginia Information Technologies Agency (VITA) should seek the assistance of the Department of General Services to design a comprehensive training program for procurement and administration of IT contracts, which would be administered by VITA. (Chapter 4)

RECOMMENDATION 16

The General Assembly may wish to consider amending the Code of Virginia to add a definition of high-risk contracts and require that, before execution, all contracts that meet the definition of high risk be reviewed and approved by the Office of the Attorney General (all contracts), the Department of General Services (contracts for goods and non-professional and professional services that are not for information technology or road construction or design), and the Virginia Information Technologies Agency (IT contracts). (Chapter 4)

RECOMMENDATION 17

The Department of General Services and the Virginia Information Technologies Agency should modify their statewide procurement policy manuals to include guidelines for agencies on staffing the administration of contracts, particularly contracts identified as high risk. (Chapter 5)

RECOMMENDATION 18

The General Assembly may wish to include language in the Appropriation Act directing the Department of General Services (DGS) and the Virginia Information Technologies Agency (VITA) to (i) develop a comprehensive training program on the effective administration of contracts and (ii) modify their statewide procurement policy manuals to require the training for all agency staff who have primary responsibility for administering contracts identified as high risk. The language should direct DGS and VITA to develop an estimate of the cost of administering the program. (Chapter 5)

RECOMMENDATION 19

The Department of General Services and the Virginia Information Technologies Agency should collaborate to develop a certification program for contract administrators. Certification would require that agency staff complete contract administration training and demonstrate competence in effective contract administration practices. (Chapter 5)

RECOMMENDATION 20

The Department of General Services and the Virginia Information Technologies Agency should modify their statewide procurement policy manuals to include procedures for transferring responsibilities from procurement staff to contract administrators and orienting contract administrators to the contract and their responsibilities. Agencies should be required to use the procedures but allowed to supplement them with agency-specific procedures. (Chapter 5)

RECOMMENDATION 21

The Department of General Services and Virginia Information Technologies Agency should modify their statewide procurement policy manuals to state that agencies should include in all high-risk contracts, and contracts above a certain dollar value (as determined by individual agencies), an explanation of how performance monitoring will be conducted and an explanation of how vendor performance will be documented. (Chapter 5)

RECOMMENDATION 22

The Department of General Services and the Virginia Information Technologies Agency should modify their statewide procurement policy manuals to state that agencies should establish a formal process for contract administrators to regularly report to their agency's procurement office on the status and performance of their contracts. (Chapter 5)

RECOMMENDATION 23

The Department of General Services (DGS) and the Virginia Information Technologies Agency (VITA) should provide guidance in their statewide procurement policy manuals and staff training programs on how to effectively document unsatisfactory vendor performance, under which circumstances such problems should be brought to the attention of other staff in the agency or staff in the Office of the Attorney General, DGS, or VITA, and under which circumstances enforcement measures should be pursued. (Chapter 5)

RECOMMENDATION 24

The Department of General Services and the Virginia Information Technologies Agency should strengthen their ability to assist prospective and current vendors. The departments should assign to their staff clearly defined responsibilities that include (i) responding to vendor inquiries about state contracting policies and procedures; (ii) assisting vendors and agencies with the resolution of complaints; and (iii) recommending improvements to the contracting process based on vendor inquiries and complaints. (Chapter 6)

RECOMMENDATION 25

The Department of General Services and Virginia Information Technologies Agency should modify their statewide procurement policy manuals to state that agencies should include complaint procedures in each contract and with all written notifications of agency decisions that are not in a vendor's favor. Their statewide procurement policy manuals should be modified to include (i) guidance for agencies on the type and level of detail to include in their responses to vendor complaints and (ii) a detailed description of the process to be followed when vendors file complaints about ongoing contracts. (Chapter 6)

RECOMMENDATION 26

The Department of General Services should prioritize for Procurement Management Reviews agencies that frequently use (i) high-value contracts; (ii) IT, construction, or services contracts; and (iii) sole source procurements. The department should ensure that agencies identified as high priority are reviewed at least once every three years. (Chapter 7)

RECOMMENDATION 27

The Department of General Services should broaden its focus, and the focus of its Procurement Management Reviews, toward ensuring agency compliance with state laws and policies regarding the development and administration of contracts and implementation of best practices for all aspects of contracting, including professional services and construction contracts. The department should collaborate with the Auditor of Public Accounts (APA) to ensure that the elements of its reviews, and the review schedule, do not unnecessarily duplicate the work of APA staff. (Chapter 7)

RECOMMENDATION 28

The Department of General Services should identify the number of additional staff needed to effectively assist agencies with the development and administration of contracts and to include these aspects of contracting in their Procurement Management Reviews. The agency should submit a report to the Secretary of Administration, Department of Planning and Budget, and House Appropriations and Senate Finance Committees regarding its additional staffing needs. (Chapter 7)

RECOMMENDATION 29

The Virginia Information Technologies Agency (VITA) should identify, in its reviews of IT procurement proposals by agencies, procurements that appear to be high risk, regardless of dollar value. VITA should require that all contracts associated with these high-risk procurements be submitted to VITA for review before they are finalized. VITA's reviews should focus on ensuring that the contract provisions adequately protect the interests of the agency and the state. (Chapter 7)

RECOMMENDATION 30

The General Assembly may wish to include language in the Appropriation Act to require the Department of General Services, the Virginia Information Technologies Agency, and the Office of the Attorney General to collaborate on the development of a central database to collect information about high-risk state contracts. The information aggregated should be quantifiable, objective, and applicable to all contracts, so that it can be used to track the performance of high-risk contracts. The system would also act as a repository of documentation related to the performance of all vendors. The departments should provide a report to the House Appropriations and the Senate Finance Committees no later than September 1, 2017, that includes recommendations for the design of the system, implementation considerations, and a description of the resources that will be necessary to develop and implement it. (Chapter 7)

1 State Contracting in Virginia

SUMMARY State contracting is the purchase of goods and services from a third party through a contract. In Virginia, the contracting process is composed of four phases: planning, procurement and development, administration, and close-out. State entities spent more than \$6 billion through contracts in FY15. The majority of these contracting dollars were spent in the areas of transportation and education. State contracting in Virginia is governed by various statutes, regulations, and policies. For state agencies, the primary statute is the Virginia Public Procurement Act. Multiple agencies have administrative roles in state contracting, most prominently the Department of General Services and the Virginia Information Technologies Agency. However, because contracting in Virginia is largely decentralized, all agencies are directly involved in procuring and administering contracts. Contracting is typically done through procurement methods that seek to maximize competition. Non-competitive procurement methods are used under special circumstances, and some state policies require or encourage state entities to use specific vendors.

In September 2014 the Joint Legislative Audit and Review Commission (JLARC) adopted a resolution to review the development and management of state contracts (Appendix A). The resolution directs staff to evaluate whether the state's policies ensure that contracts provide good value to the state and mitigate the risks to which agencies and the public are exposed.

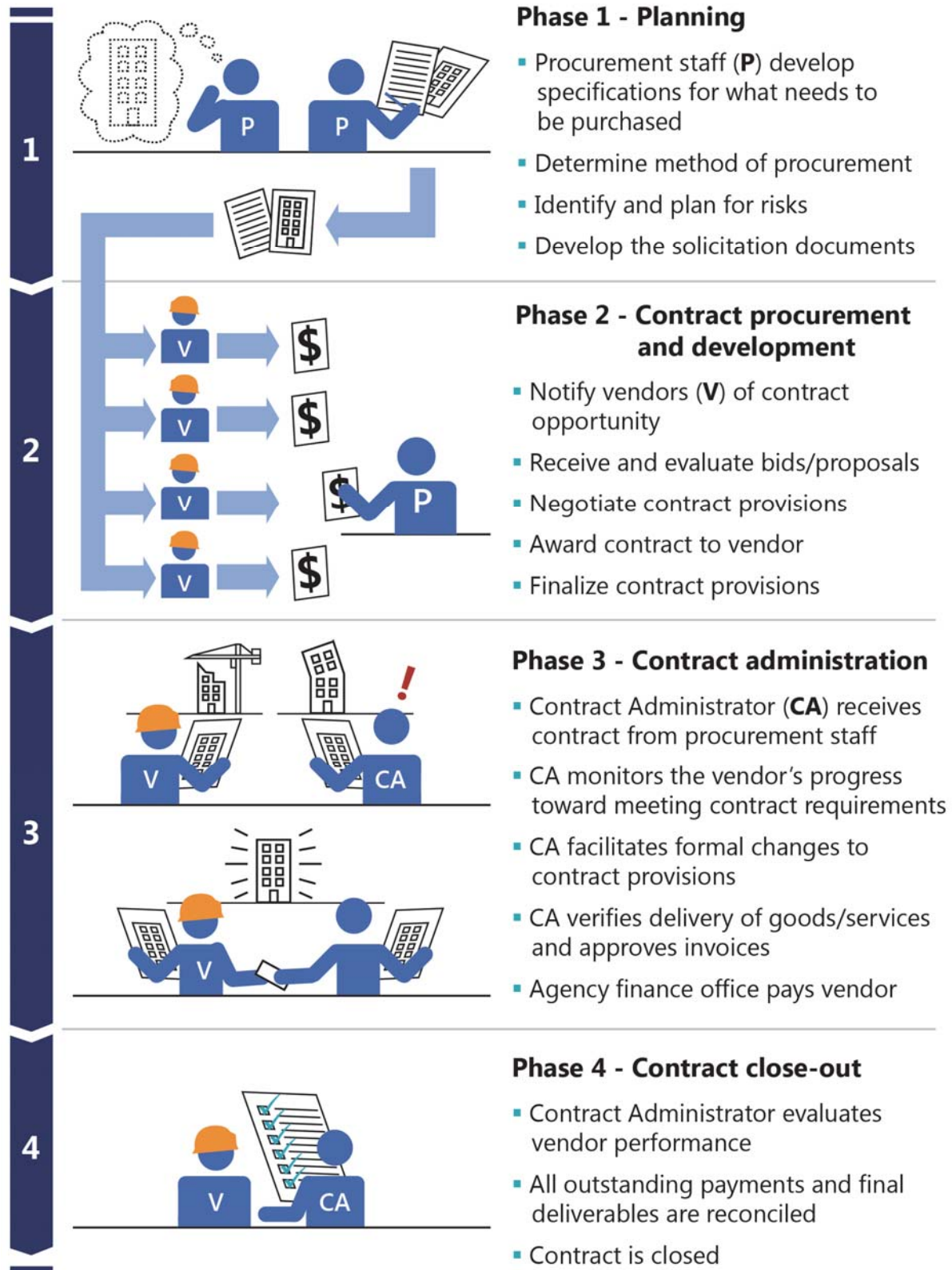
To address the mandate, interviews were conducted with procurement and contract administration staff at numerous state agencies with the greatest contracting activity and vendors who have recently contracted with the state or competed for state contracts. In addition, surveys were conducted of state procurement staff, state contract administration staff, procurement staff from other states, and vendors. Contracts and contracting data from state agencies were collected and analyzed. (See Appendix B for more detail on research methods used for this study.)

State contracting process and participants

State contracting involves the purchase of goods and services by state entities through contracts with third-party vendors, most frequently private-sector vendors. State contracting typically progresses through the same four phases regardless of the type of good or service being purchased or the procuring agency (Figure 1-1).

Different agency staff are involved to varying degrees in each of these phases. In most cases, procurement staff are responsible for planning and executing the procurement of

FIGURE 1-1
Four phases of a contract



the contract, and the ultimate users of the goods or services are responsible for administering the contract. Contract administration is usually the longest phase of the process.

In each phase of the contracting process, circumstances can arise that may affect how well contracts are executed and whether they produce good value for the state at a minimal degree of risk. Many of the state’s contracting policies and practices are designed to help agency staff manage or avoid circumstances that could affect the success of a contract.

Spending on state contracting

State contracts are used in numerous areas of government, including transportation, health care and information technology (IT), and are developed for a broad array of commodities, including capital construction and maintenance, consulting services, as well as health care and medical services, among many others. The sizes of state contracts vary widely and depend largely on the good or service procured and the specific entity procuring it.

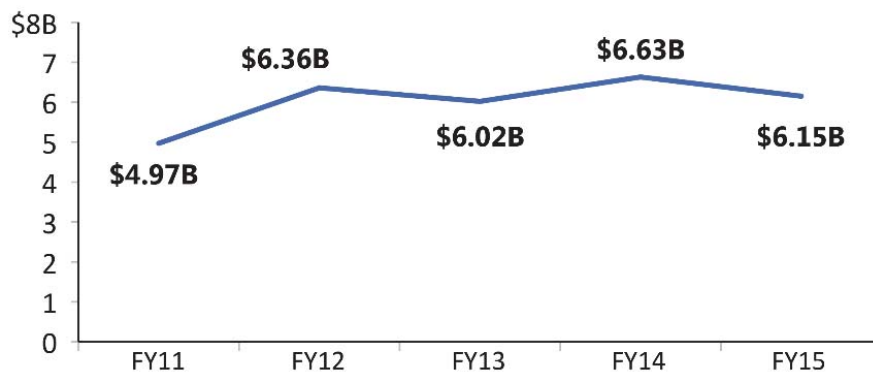
The spending figures that follow show data collected by the Department of General Services (DGS) through its electronic procurement system, eVA. eVA provides useful information about where the bulk of contracting dollars are likely spent, but it does have limitations. Because not all state agencies use eVA, the data is not comprehensive. In addition, eVA data shows dollar amounts *committed* by state entities to contracts, but does not show actual expenditures against those contracts. This is because the state’s system for tracking agency expenditures, Cardinal, does not link agencies’ expenditures to their contracts.

eVA – Virginia’s eProcurement system
 eVA is a web-based purchasing system that most state entities in Virginia use to conduct purchasing activities and post solicitations for goods and services.

State entities procured more than \$6 billion in contracts in FY15

State spending on contracts has increased slightly over time. In FY15, state entities procured goods and services through contracts worth \$6.2 billion, up from \$5.0 billion in FY11 (Figure 1-2).

FIGURE 1-2
State contracting commitments FY11–FY15 (\$B)



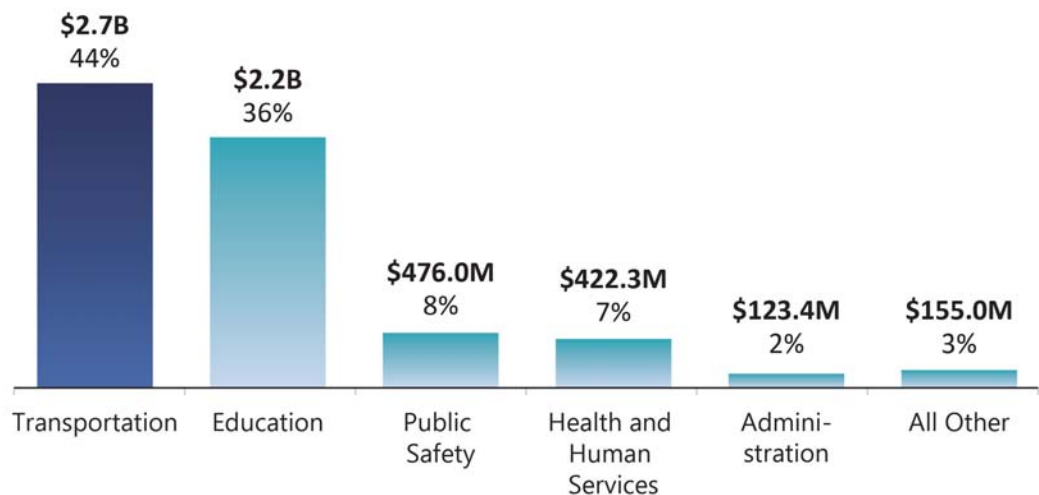
SOURCE: JLARC staff analysis of eVA data from DGS, FY15.

In FY15, most purchases made through contracts were low cost, with a median value of just \$88. Agencies do make high-cost purchases through contracts, but contract purchases valued at greater than \$50,000 represented only one percent of contract purchases in FY15. While high-cost purchases account for a small minority of contract purchases, they constitute about 80 percent of contract expenditures.

Transportation and education agencies spend the most in state contracts

The areas of transportation and education consistently have the greatest overall share of contracting expenditures. In FY15, agencies within the transportation and education secretariats accounted for approximately \$5 billion, or roughly 80 percent of contracting dollars spent by the state. The Virginia Department of Transportation (VDOT) and the state’s higher education institutions spent the large majority of these contracting dollars (Figure 1-3).

FIGURE 1-3
State contracting by secretariat, FY15



SOURCE: JLARC staff analysis of eVA data from DGS, FY15.

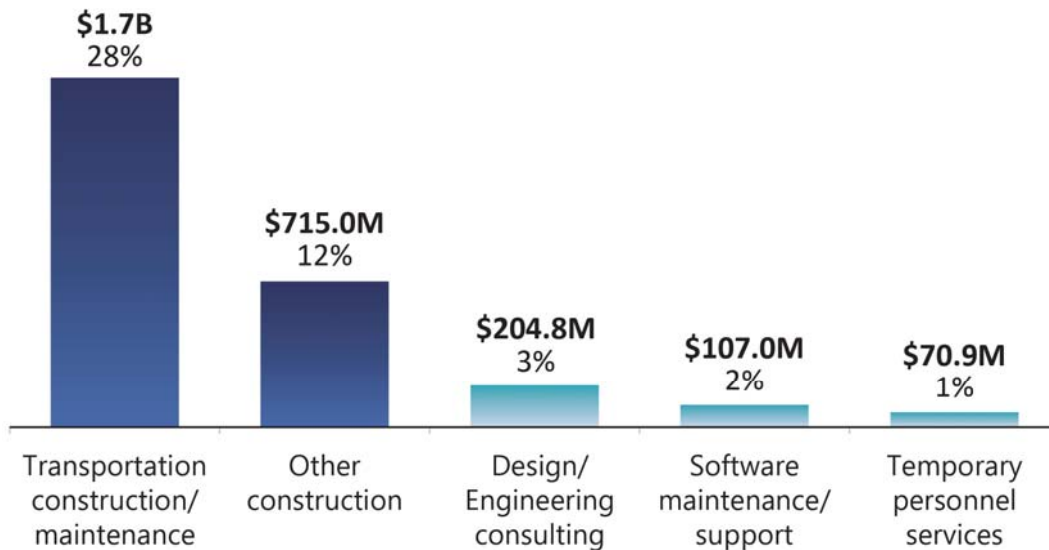
NOTE: Education spending includes contracting done by higher education institutions.

Majority of contracting dollars are spent on road and building construction, consulting services, and IT

The majority of contracting dollars are spent on several commodity types in the areas of transportation, construction, engineering consulting, IT services, and temporary personnel services (Figure 1-4). These commodity areas consistently ranked among the top 10 by contracting dollar commitments in each year between FY11 and FY15. Authority for these categories of contracts is exercised by VDOT (for transportation construction and maintenance), DGS (for other types of construction), and the Virginia Information

Technologies Agency (VITA) (IT services). VDOT, DGS, and VITA have separate policies related to the procurement of each type of commodity.

FIGURE 1-4
State contracting by commodity type, FY15



SOURCE: JLARC staff analysis of eVA data from DGS, FY15.

NOTE: Percentages do not add to 100 because these are only the top five commodity types purchased. The state's largest IT contract, with Northrop Grumman for IT infrastructure, is not available in eVA, but the value of this contract exceeds \$250 million.

Governance and administration of state contracting

Several statutes in the Code of Virginia govern the various procurement methods used by state entities. Most contracting is governed by the Virginia Public Procurement Act (VPPA); other laws govern contracting executed through public-private partnerships. Contracting policies and procedures are set out in several central documents according to the type of good or service to be procured. Procurement authority lies primarily with DGS for non-IT goods and services, and with the Virginia Information Technologies Agency (VITA) for IT goods and services. Several other agencies have oversight roles in the contracting process, including VDOT for contracts related to road construction and design.

Several state laws govern contracting

The VPPA governs the contracting done by most state entities. In setting out the state's policy regarding the purchase of goods and services by state entities, the VPPA articulates several primary goals:

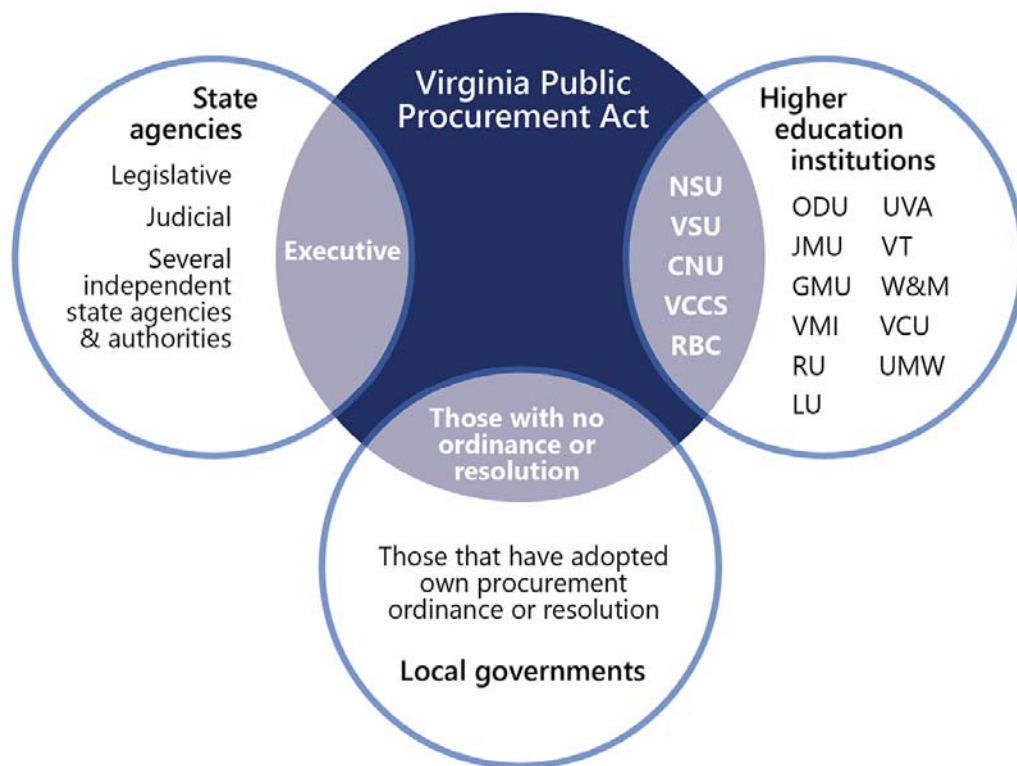
- that public bodies obtain high quality goods and services at reasonable cost;
- that competition be sought to the maximum feasible degree;

- that procurement procedures involve openness and administrative efficiency;
- that procurement procedures are conducted in a fair and impartial manner; and
- that qualified bidders have access to public business and no vendor is arbitrarily or capriciously excluded.

These primary goals guide the rules that the VPPA sets out for most state entities to follow when acquiring goods and services from non-governmental sources.

A number of state agencies and localities are exempt from the provisions of the VPPA, and therefore from oversight by DGS and VITA. These exempted agencies include several independent state agencies, such as the Virginia Retirement System, state authorities, such as the Virginia Port Authority, and agencies in the legislative and judicial branches (Figure 1-5). The Virginia Retirement System is exempted specifically for its

FIGURE 1-5
Summary of state entities covered by or exempt from the VPPA



SOURCE: Code of Virginia and information provided by DGS, 2015.

NOTE: According to a survey of local governments by DGS, 31 percent of local governments are subject to the VPPA. Norfolk State University and Virginia State University are the only two higher education institutions that are subject to VITA procurement authority.

procurement of investment services, actuarial services, and disability determination services. The Virginia Port Authority is exempted under the condition that it implements procedures to ensure fairness and competitiveness in its procurements and in the administration of its capital outlay program. The large majority of states exempt judicial and legislative agencies from their central procurement laws, as indicated by a 2015 survey conducted by the National Association of State Procurement Officials (NASPO). In addition, localities may become exempt from the VPPA by adopting alternative policies and procedures based on competitive principles, but they remain subject to certain portions of the VPPA. Finally, after enactment of the Restructured Higher Education Financial and Administrative Operations Act of 2005, certain higher education institutions were granted exemptions from the VPPA. These include William and Mary, Virginia Commonwealth University, the University of Virginia, Virginia Tech, Radford University, and Christopher Newport University, among others. In addition to being exempt from VPPA requirements related to competitive and transparent procurements, exempt agencies are not required to purchase goods and services through statewide contracts (sidebar).

Two laws, the Public-Private Education Facilities and Infrastructure Act and the Public-Private Transportation Act, were created to give state agencies the ability to engage in public-private partnerships on large projects, such as road and building construction. These two public-private partnership laws provide for unsolicited private-sector proposals to be presented to the state for projects that private entities believe will benefit the state. While these laws contain provisions to encourage a competitive process for awarding contracts, they lack the VPPA's prevailing emphasis on competition and transparency.

Authority over state agencies' contracting

Authority over the contracting performed by state agencies and institutions of higher education rests with different state entities. Analysis of eVA data on contracting expenditures and volume shows that DGS and VITA contracting regulations and policies apply to the majority of state agencies' contracting activities. However, the remainder of contracts are not subject to DGS and VITA authority, and these include those procured by the institutions of higher education that are exempt from the VPPA as well as the contracts procured by VDOT's construction division.

The policies that govern state agencies' contracting activities are dispersed among several different statewide policy manuals. DGS issues separate manuals that address contracting for non-IT goods and services, and for construction, while VITA has a manual for IT goods and services (Table 1-1). DGS also issues a manual that serves as a guide for vendors on contracting with the state. VDOT has two manuals for the management of road design and construction contracts.

The policy manuals focus primarily on the procurement side of contracting, and give comparatively little attention to the policies and procedures for the actual administration of contracts after they have been awarded to a vendor.

Statewide contracts

Contracts negotiated by DGS and VITA for state agency use and that are intended to leverage the state's buying power. Statewide contracts cover a broad range of goods and services and can be mandatory or optional.

TABLE 1-1
State-level policy manuals on contracting

Policy manual	Good and services covered	Issuing agency
Agency Procurement and Surplus Property Manual (APSPM)	Non-IT goods and services	DGS
IT Procurement Manual (BUY IT)	IT goods and services	VITA
Construction and Professional Service Manual (CPSM)	Professional design and construction services	DGS
Vendors Manual	Non-IT goods and services to state	DGS
VDOT Road and Bridge Specifications Design Build Procurement Manual Manual for Procurement and Management of Professional Services	Road design and construction	VDOT
Purchasing Manual for Institutions of Higher Education and their Vendors	Goods and services purchased by higher education institutions with procurement authority	VASCUPP

SOURCE: Various state-level policy manuals on the procurement and management of contracts.

NOTE: The APSPM and Vendors Manual have been adopted as regulations.

Procurement authority in Virginia is divided between DGS and VITA, for non-IT and IT goods and services, respectively. DGS has statutory authority to develop the policies and guidelines for the purchase of non-IT goods and services. DGS also establishes statewide contracts, manages eVA, trains state procurement staff, and conducts reviews of agencies' procurement activities to ensure compliance with state procurement laws and policies. In addition, DGS sets standards for building construction and related professional services and administers the state's capital outlay program. DGS does not, however, have the authority to procure such contracts for agencies. VITA has statutory authority to direct the policies and guidelines for the purchase of IT and telecommunications goods and services. VITA also establishes statewide IT contracts and reviews and approves agencies' IT procurements over \$250,000, as well as agencies' IT contracts over \$1 million. Several other agencies play significant roles in state contracting:

- Virginia's Office of Public-Private Partnerships is responsible for the development of projects through the Public-Private Transportation Act.
- The Office of the Attorney General represents the state in contract-related legal disputes, and reviews some contracts at the request of agencies.
- The Auditor of Public Accounts reviews agencies' procurement and contract administration practices, including the details of selected contracts, as part of their individual agency audits.
- The Department of Small Business and Supplier Diversity certifies vendors as small businesses so that they can qualify for contracts under the state's small business set-aside program.

Table 1-2 summarizes the key state government entities with state contracting authority and the relevant statutes.

TABLE 1-2
State procurement laws and oversight/authority entities

Agency	Procurement statute	Contracting responsibilities
DGS	Virginia Public Procurement Act	<ul style="list-style-type: none"> ▪ Conducts centralized procurement of non-IT goods and non-IT non-professional services ▪ Establishes statewide contracts ▪ Manages eVA ▪ Sets standards for building construction and related professional services ▪ Administers state's capital outlay program
VDOT	Virginia Public Procurement Act Public-Private Transportation Act	<ul style="list-style-type: none"> ▪ Conducts procurement of road and bridge construction and related architectural and engineering services
VITA	VITA statute Virginia Public Procurement Act	<ul style="list-style-type: none"> ▪ Conducts procurement of IT and telecommunication goods and non-professional services ▪ Establishes IT statewide contracts
Office of Public-Private Partnerships	Public-Private Transportation Act	<ul style="list-style-type: none"> ▪ Works with transportation agencies to develop projects that operate based on a public-private partnership
Individual colleges & universities exempt from VPPA	Higher Education Restructuring Act	<ul style="list-style-type: none"> ▪ Establish own procurement and contract management policies (Level II and Level III)
State and local entities	Public-Private Education Facilities & Infrastructure Act	<ul style="list-style-type: none"> ▪ Create public-private partnerships for a wide range of projects, including public buildings, facilities and infrastructure

SOURCE: DGS's "Procurement in the Commonwealth: A Primer," state agency websites, and Code of Virginia.

Contracting is largely decentralized

The state's two central contracting agencies, DGS and VITA, procure and manage only a small portion of the state's contracts because most contracting is performed by individual agencies. The Code of Virginia allows DGS and VITA to grant agencies the authority to procure certain types of contracts on their own, and all agencies have some degree of procurement authority. Agencies are also responsible for conducting all contract administration activities on their own. This model of central contracting agencies delegating contracting authority to individual state agencies is typical among other states.

The level of procurement authority that agencies have is based on the dollar value of contracts. For example, most agencies are authorized to procure their own non-IT goods contracts valued at less than \$50,000 on their own, but agencies routinely request and are granted the authority to independently procure higher-value contracts. In addition, most agencies have the authority to procure their own services contracts, regardless of

dollar value. (The exception is IT services contracts—agencies have been given authority from VITA to purchase IT services contracts valued at \$100,000 or less.)

Procurement of state contracts

The procurement method chosen to make a purchase depends on the type of good or service and the extent to which the state entity can precisely articulate its specifications. The Code of Virginia defines several procurement methods available to agencies and sets parameters for the circumstances under which they should be used (Table 1-3). The procurement method chosen by the entity affects a number of aspects of the contracting process, including its duration and the responsible parties involved.

Contracts are typically procured through competition, with some exceptions

In general, agencies are required to use procurement methods that allow multiple vendors to compete for state contracts, with two of the most common methods being Invitations for Bids (IFB) and Requests for Proposals (RFP). IFBs award contracts entirely on the basis of cost, while RFPs award contracts based on multiple factors, each of which is assigned a specific weight by the agency.

Under special circumstances state entities may employ procurement methods that require little or no competition among potential vendors, such as sole source procurements and emergency procurements. Sole source procurements are used when the good or service a state entity seeks is practicably available from only one vendor. For smaller sole source procurements, special approval must be obtained from the entity's head or a designee, in addition to documentation verifying that only one practicable source for the given good or service exists. Sole source procurements for non IT goods and services over \$50,000 must be submitted to DGS for approval.

TABLE 1-3
Primary procurement methods authorized by the Code of Virginia

Competitive procurement methods	
Invitations for Bids (IFB)	Sealed bids publicly opened simultaneously and awarded to the lowest bidder. IFBs are used when an agency can precisely describe the specifications or scope of work for the good or service it is buying.
Requests for Proposals (RFP)	Sealed bids resulting in negotiations and awarded based on initial criteria established in RFP. RFPs are used when precise specifications or scope of work cannot be prepared.
Public-Private Partnerships (P3)	Long-term contracts in which private entities develop, build, or maintain a public transportation, infrastructure, or building construction project

TABLE 1-3, *continued*
Primary procurement methods authorized by the Code of Virginia

Non-competitive procurement methods	
Emergency	Used when a serious and urgent need must be resolved immediately. Buyer must obtain competition where practicable and agency head or designee must approve in writing that emergency procurement was necessary.
Sole source	Product or service must be practicably available from only one business. Buyers must obtain and document quotes up to \$50,000, and approval by DGS is required for non-IT purchases over this threshold. IT sole-source procurements over \$100,000 must be submitted to VITA for approval.

SOURCE: Virginia Public Procurement Act.

Emergency procurements may be used when a serious and urgent need must be resolved immediately. As with sole source procurement, an emergency procurement requires approval from the entity's head or its designee. Competition still should be sought to the fullest extent possible given the conditions of the emergency. Documentation must be made of the nature of the emergency, as well as the basis for the selection of the particular vendor.

State entities can also enter into contracts through public-private partnerships (P3s), which are governed by Virginia's public-private partnership laws. In general, P3s are long-term contracts in which private entities develop, build, or maintain a public transportation, infrastructure, or building construction project. P3s differ from traditional procurement methods in that vendors can submit unsolicited proposals, and projects can be financed partially by users (such as through toll roads) or by the private entity in the contract, rather than entirely by the state. Overall, proponents of P3s assert that this ability to diversify funding sources lessens the effects of transportation and construction projects on the state's debt capacity and allows projects to move forward despite budget constraints. P3s can involve competition between vendors, but because P3s can arise from an unsolicited vendor proposal, they fall outside the guidelines on competition set forth in the VPPA.

Some statutes and policies require or encourage agencies to use certain vendors

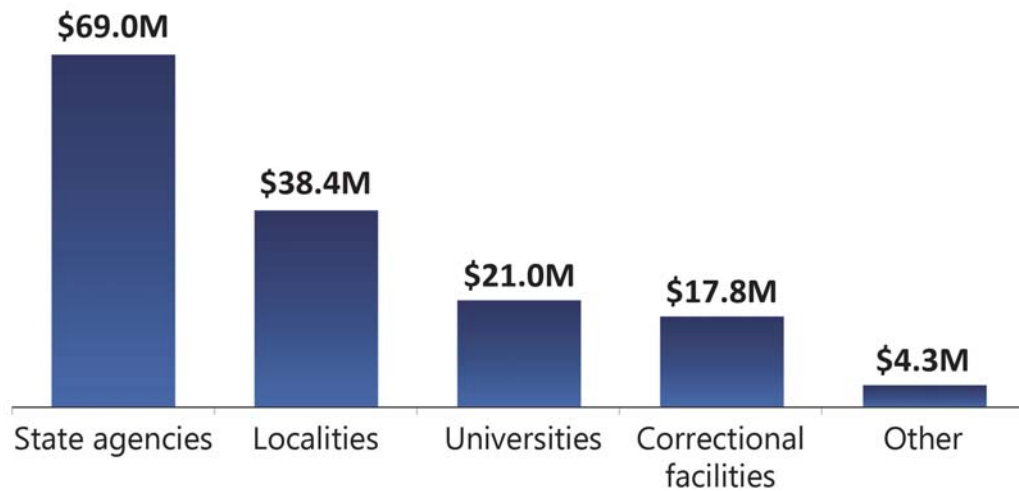
The state has several policies and statutes in place to either require or encourage state entities to use certain vendors. For example, statewide contracts, which are negotiated by DGS, cover a broad variety of goods and services, and are either mandatory or optional for state agencies, depending on the contract. Agencies are also required to use mandatory sources for specific goods and services. The state's small business set-aside requirement (referenced in the Agency Procurement and Surplus Property Manual as the "Small Business Enhancement Award Priority") requires the use of certain types of vendors for procurements below certain dollar thresholds.

Statewide contracts

In addition to procuring goods and services through their own agency-specific contracts, agencies can procure goods and services through statewide contracts that have already been awarded to vendors through DGS and VITA, for non-technology and IT goods, respectively. The increased buying power resulting from aggregating multiple agencies’ purchases into a single contract tends to reduce the costs of goods and services. In FY15, state entities purchased approximately \$150 million in goods and services from statewide contracts maintained by DGS. (Figure 1-7). In FY15, agencies spent the most on mandatory DGS statewide contracts for automobiles (31 percent), temporary personnel services (18 percent), and fuel (13 percent).

FIGURE 1-7
Expenditures on mandatory DGS statewide contracts in FY15

Expenditures by state entity type (\$M)



SOURCE: JLARC staff analysis of DGS data, FY15.

Mandatory sources

State agencies are required by statute to procure certain goods and services from mandatory sources (Table 1-4). These goods and services are procured outside the customary competitive procurement process. In FY15, agencies spent \$88 million on goods and services from mandatory sources.

TABLE 1-4
Mandatory sources listed by goods and services and total sales in FY15

Mandatory source	Primary goods and services	Sales to state FY15
Virginia Correctional Enterprises	Wooden and metal furniture, clothing, printing services, office systems	\$42.6M
Virginia Distribution Center	Staple goods, canned and frozen foods, cleaning supplies, paper products	\$25.2M
DGS/Office of Fleet Management	Purchase or lease of motor vehicles	\$15.9M
Virginia Industries for the Blind	Gloves, pens, spices, mattresses, mops	\$4.4M
DGS Office of Graphic Communications	Graphic design and production services	\$0.15M
	Total	\$88.25M

SOURCE: JLARC staff analysis of eVA data from DGS, and sales data from Virginia Correctional Enterprises, Virginia Industries for the Blind, and DGS Office of Fleet Management, FY15.

Small business set-aside and state goal

The state has two policies designed to help small businesses compete for state contracts: (i) a small business set-aside and (ii) a state goal to make 42 percent of its contracting expenditures from small businesses. Virginia’s small business policies are established in the Code of Virginia as well as by executive order.

Virginia’s small business set-aside policy requires that purchases below specific dollar thresholds be procured from businesses certified by the state as “small” or “micro” businesses, if available (sidebar). Agencies can award contracts to certified businesses under the small business set-aside, even if they cost more than other businesses, as long as procurement staff consider their prices to be fair and reasonable. Businesses pursue certification through the Department of Small Business and Supplier Diversity. The small business set-aside applies to all agency procurements for goods and non-professional services under \$100,000, and professional services under \$50,000. Purchases under \$10,000 are set aside for “micro” businesses specifically.

Although businesses can be certified as only “women-owned” or “minority-owned,” the state’s small business set-aside does not apply to these types of businesses. Instead, the state’s small business set-aside is race- and gender-neutral to comply with existing case law. The state tracks awards to businesses that are certified as only “women-owned” or “minority-owned,” but a business must have at least a “small” or “micro” business certification to qualify for the small business set-aside.

“Small business,” for purposes of this section, refers to businesses certified by the state as either small or “micro.” Small businesses may also be certified as women- and minority-owned.

Small business: 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over three years.

Micro business: certified small business with no more than 25 employees and no more than \$3 million average annual revenue over three years prior to certification.

Executive Order 20 (2014) implemented several changes to small business policies: (i) increased set-aside threshold to \$100,000 for non-professional services and \$50,000 for professional services, (ii) created “micro” designation, and (iii) increased state goal to 42%, which was the highest percentage of agency expenditures on small, women-, or minority-owned businesses attained since 2004.

In 2014 the state's small business policies were modified by executive order (sidebar), which established a goal that agencies purchase 42 percent of their goods and services from certified small businesses. Similar to the procurement set-aside, this policy applies to businesses certified by the state as "small" or "micro" businesses.

Agencies submit a report every year to the Department of Small Business and Supplier Diversity to document their progress towards meeting the state's 42 percent goal. Agencies also set internal goals for the percentage of goods and services that they intend to purchase from small businesses, which can be higher or lower than the state's goal.

In recent years, state agencies have fallen short of the state's 42 percent goal. In FY15 agencies spent approximately \$1.4 billion on contracts with small businesses, according to data reported to the Department of Small Business and Supplier Diversity. The proportion of agency spending with small businesses has decreased from 27 percent in FY11 to 25 percent in FY15. Because the state's goal is only aspirational, agencies are not penalized for not meeting it.

2 Performance of State Contracts

SUMMARY Contract performance is subject to many factors and can therefore be expected to deviate from original expectations to some extent, especially for complex or long contracts. Several contracts analyzed for this study deviated significantly from expectations. Poor contract performance undermines the efficiency and effectiveness of agencies and may, in some cases, negatively impact the health and safety of the public. Most of the circumstances that cause contracts to deviate from original expectations appear preventable. However, shortcomings in the state’s contracting practices and policies routinely allow preventable problems to negatively affect contract performance.

When a state contract meets the original expectations of the agency, goods and services are delivered on schedule, on budget, and according to specifications. But contracts do not always meet original expectations. When this happens, agencies experience project delays, end up spending more than they had planned, or receive goods or services that do not meet their needs.

Some contracts fell significantly short of original performance expectations

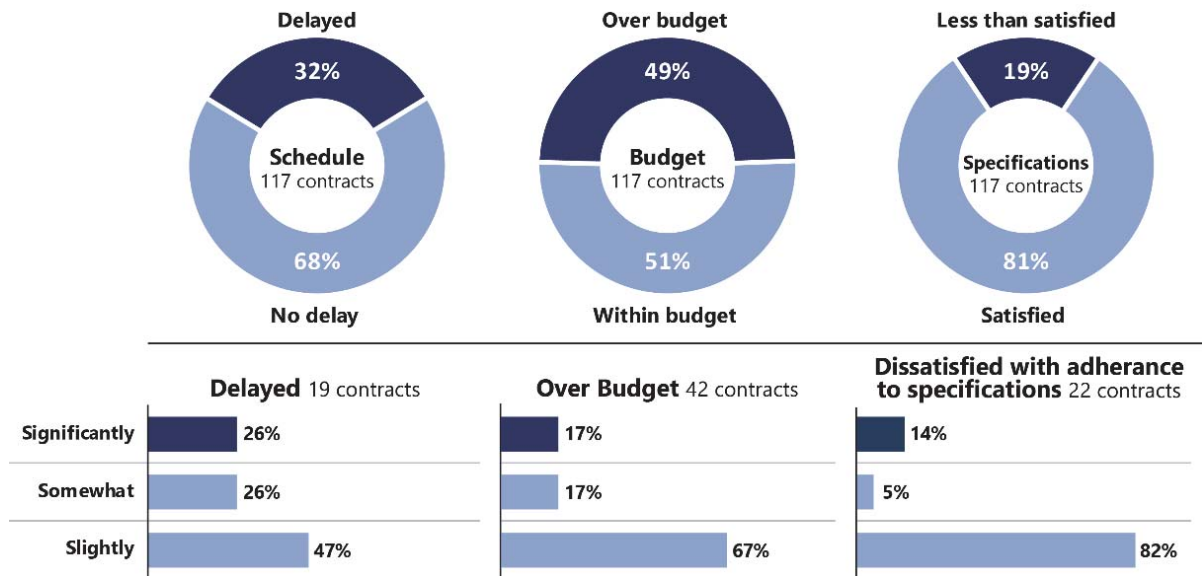
Successful contract performance depends on meeting expectations for time, cost, and quality. Approximately 10 percent of the contracts analyzed for this study (sidebar) fell significantly short of meeting the original expectations of the agency. Some deviation from original expectations is to be expected. At least a slight deviation was experienced by approximately two-thirds of analyzed contracts. Most often, contracts that did not perform as expected deviated at least slightly from original schedules and budgets (Figure 2-1). (See Appendix C for more information on individual contracts.)

The 12 contracts that fell significantly short of meeting agency expectations were valued at \$1.8 billion (Table 2-1). Many of these contracts are for information technology, road and facility construction, or health care services. These types of services and projects tend to be more complex and have longer durations, making them more prone to schedule and cost changes than other types of contracts.

Contract performance may negatively affect agencies and the public, and consequences can be serious. Examples of impacts that have occurred during the course of state agency contracts include the inability to implement mission-critical software or telecommunications systems, delay in the opening of public facilities, and excess tolls charged to commuters. An agency may still receive quality goods or services, albeit at a higher price or over a longer time frame than initially expected.

Data on contract performance was collected by JLARC staff through a survey of contract administrators responsible for high-value contracts at 23 state agencies. The 117 high-value contracts, totaling approximately \$8 billion, were either active at the time of review or had ended during 2015. (See Appendix B.)

FIGURE 2-1
Delays and cost overruns are the most common type of deviation from original agency expectations



SOURCE: JLARC survey of contract administrators, 2015.

NOTE: Numbers may not add due to rounding. Pie charts include all analyzed contracts, dividing contracts between those that met expectations in each category as reported by the contract administrator and those that fell short of original expectations. Contracts in bar graphs are limited to contracts where contract administrators reported the extent of delays, budget overruns, or satisfaction with specifications.

Nearly one-third of analyzed contracts—38 contracts valued at approximately \$2.4 billion—experienced at least a slight delay or were not expected by contract administrators to be completed on time. Contract administrators were able to estimate the magnitude of delay for 19 contracts and characterized five contracts as significantly delayed. Significant delays affected contracts for facility construction (three months behind schedule), road construction (at least three months behind schedule), and software development (two years behind schedule).

To mitigate the impact of a contract delay, an agency may have to expend additional financial and staffing resources, or the public may be inconvenienced if access to services is impeded. In one example, construction of a state university dormitory was delayed, preventing student occupancy at the start of the academic year. The delay required university staff to arrange temporary housing until the dormitory was completed. In another example, a vendor providing software development and implementation missed three important delivery milestones, resulting in a two-year delay of contract deliverables. The agency eventually terminated the contract and is providing contractual services in-house until another contract can be implemented.

Table 2-1 includes contracts that were procured under different state statutes and therefore the authority of different oversight agencies.

TABLE 2-1
Several contracts did not meet original expectations by significant margins

Value (\$M)	Purpose	Delayed schedule	Over budget	Unmet specifications	Contributing circumstances
\$485.0	Equipment maintenance and road maintenance supplies		✓		Statewide expansion of contract
\$378.2	Road construction		✓		Intentional increase in scope of contract due to availability of agency resources
\$367.5	Information technology, fiscal agent services		✓		Increase in scope of contract due to federal mandates
\$206.8	Road construction		✓		Intentional increase in scope of contract due to availability of agency resources
\$107.0	Information technology, case management system		✓		Increase in scope of contract due to stakeholder requests Modifications requested by vendor
\$95.0	Road construction	✓	✓		Increase in scope of contract due to stakeholder requests Vendor unable to obtain permits
\$74.1	Health care services		✓		Increase in number of individuals covered by the contract
\$72.0	Facility construction	✓		✓	Vendor provided a foundation that did not meet requirements, had to redo
\$5.0	Architectural and engineering services			✓	Vendor provided facility designs that did not meet building codes
\$0.3	Road construction and maintenance	✓			Agency's needs changed Modifications requested by vendor Weather affected schedule
\$0.3	Facility construction	✓			Agency's needs changed Vendor recommended change
\$0.3	Information technology, software development	✓		✓	Vendor unable to develop and deliver agreed-upon software
\$1,791.6		5	7	3	
<i>% of total</i>		<i>% of total</i>	<i>% of total</i>	<i>% of total</i>	
22%		4%	6%	3%	

SOURCE: JLARC staff analysis of survey of contract administrators, 2015 and contract administrator interviews.

NOTE: (1) Table includes only contracts that were significantly delayed or over budget or where contract administrators were "not at all" satisfied with specifications. Contract status (delayed or over budget) is as of June 30, 2015. (2) In addition to the significant deviations from performance expectations highlighted, some contracts included in table were also delayed, over budget, or had specifications that were unmet but not significantly so. (3) Other contracts were delayed, over budget, or had unmet specifications but are not included in table because contract administrators either indicated that performance deviated by a less significant margin or did not report the extent to which the contract was delayed or over budget. (4) Percentages are out of the total number and dollar value of all 117 analyzed contracts.

Nearly half of analyzed contracts—57 contracts valued at approximately \$5.3 billion—were at least slightly over the budget stipulated in the original contract or were not expected by contract administrators to be completed within the original budget. Of those, contract administrators were able to estimate the extent to which contracts exceeded their original budgets for 42 contracts and characterized seven contracts as significantly over budget. Significant cost increases affected several high-value road construction contracts, including one contract originally valued at \$236.4 million that was \$20.8 million over budget when the contract was closed. (The agency holding this contract does not consider the contract to be over budget based on internal allowances for cost overruns under certain circumstances.)

To mitigate the impact of cost increases, agencies may have to reduce the contract's scope and may not obtain all needed goods or services. In one example, a telecommunications contract incurred significant cost overruns, causing the agency to eliminate several components of the telecommunications system, reduce the use of new technologies, and take over some of the vendor's responsibilities. Agencies may not always take such steps, however. In another example, the contract administrator noted that more construction work was added to the contract at the request of other stakeholders, and the agency was unable to offset higher costs.

While vendors often adhere to contract specifications, contract administrators were at least partly dissatisfied with vendors' adherence to specifications for nearly one-fifth of contracts—22 contracts valued at approximately \$2 billion. Contract administrators reported being “moderately” satisfied with vendors' adherence to specifications for 18 of these contracts, however, and “not at all” satisfied for only three contracts.

Contracts that do not meet specifications may affect agencies financially, because agencies may still have to pay for goods or services that do not meet their needs if contract language is not sufficient to protect them. For example, one agency paid approximately \$25,000 for materials that a vendor never used and work that was never initiated, while another agency paid \$325,000 to a vendor for faulty equipment.

Several agencies expressed dissatisfaction with the ability of vendors to meet contract specifications for information technology contracts. Agency staff indicated that vendors might promise to deliver software with specific capabilities that they cannot ultimately provide. For example, a vendor hired to deliver a \$17 million telecommunications system originally agreed to (1) encrypt agency voicemails to enhance IT security and (2) provide a secure online chat feature that would allow agency staff to provide efficient, timely service to the public. However, the vendor has been unable to implement either functionality, even though the contract has been in effect for three years, and the agency is using its own resources to protect the security of communications.

More robust contracting policies and practices could help agencies prevent many contract problems

Contract performance may be affected by factors beyond the control of the agency or vendor. Among the contracts analyzed for this review, however, most deviations from original performance expectations were attributed by contract administrators to circumstances that were within the control of agencies or vendors and therefore preventable. For example, some contracts were delayed due to changes in agencies' needs. This happened during the course of a road construction contract that incurred higher costs because the agency requested that additional turning lanes be included. Some contracts failed to meet expectations because of problems with agencies' contract management practices or problems with vendor performance. For example, one state agency struggled with holding a vendor accountable to the specifications of an information technology contract, and the project was delayed by two years.

During each phase of the contracting process, problems may arise that will affect a contract's performance. More robust policies and processes during all phases may help prevent delays, budget overruns, and unmet specifications (Table 2-2, page 20). For example, in the procurement phase, careful planning could reduce the likelihood that an agency's needs will change during the course of the contract. More thorough review of vendor qualifications during this phase could prevent the awarding of contracts to unqualified vendors. In the contract administration phase, effective monitoring of vendor performance could contribute to earlier correction of performance problems and increase the likelihood that agency needs are met. This report identifies ways in which each phase of contracting can be made more effective through more robust state policies and agency practices so that contracts are more likely to be fulfilled on time, within budget, and according to agency specifications (Chapters 3, 4, and 5).

TABLE 2-2
Agencies have opportunities to prevent problems in each contracting phase

Contract deviation	<i>Illustrative</i>		Contracting phase	Report chapter
	Cause and impact	Prevention strategy		
Delayed schedule	Agency changes needs or expectations, causing project delay	Agency should develop accurate and comprehensive specifications	Procurement	3
Unmet specification	Vendor unable to perform, causing agency to procure new contract or perform work on its own	Agency should evaluate vendor qualifications comprehensively	Procurement	3
		Contract should include penalties for underperformance	Contract development	4
Over budget	Agency does not closely monitor vendor or enforce contract, causing agency to shift resources away from other priorities	Agency should ensure that contract administrators are familiar with the contract and able to monitor it	Contract administration	5

SOURCE: JLARC staff analysis of contracts with performance problems, 2015.

NOTE: Circumstances listed in the "Cause and impact" column could cause a contract to deviate from its original provisions in multiple ways. For example, unmet contract specifications or cost overruns may occur because an agency changed its needs or expectations.

3 Maximizing Contract Value

SUMMARY Agencies do not always procure contracts that produce high-quality goods and services at reasonable costs, although this is a contracting goal established in state statute. Some state policies do not provide agencies with the necessary tools or information to make contracting decisions that balance cost and quality. Further, state statute and state policies require agencies to contract with certain vendors, and in some cases agencies have been dissatisfied with the cost and quality of these purchases. Agencies' own practices have limited competition among vendors and have potentially kept them from maximizing the value of their contracts.

The Virginia Public Procurement Act directs agencies to “obtain high quality goods and services at a reasonable cost,” committing agencies to contract with vendors that provide the state with the best value. Maximizing contract value is a first-order priority in state contracting and begins during the procurement process. Various aspects of the procurement process can affect contract value, including the type of procurement method that agencies use and the level of vendor competition that they incorporate into procurement. Agencies are best able to maximize contract value when procurement staff are provided with the necessary guidelines and tools to purchase high-quality goods and services at a reasonable cost, and when agencies maximize vendor competition for contracts.

State procurement statutes and policies do not ensure agencies maximize contract value

Some procurement methods and policies do not enable agencies to purchase high-quality goods and services at a reasonable cost. The state has several procurement methods to fit different circumstances and numerous policies to help agencies determine when and how to use each method. Certain procurement methods and policies do not help agencies maximize contract value because they do not factor in both cost and quality, and some policies do not provide procurement staff with clear guidelines for making purchasing decisions.

Policies designed to protect against poor quality are not used effectively

Purchasing goods or services from vendors offering the lowest price does not always maximize quality. Statute requires agencies to award contracts to the lowest bidder when using competitive sealed bidding to purchase goods or services. Because the

quality of the goods or services is not a consideration under this procurement method, agencies may purchase poor quality goods or services that do not meet agency expectations.

Statute provides agencies with safeguards against poor quality purchases when they use competitive sealed bidding, but these safeguards are not always effective. Procurement staff are required to restrict contract awards to vendors they determine to be “responsible” (sidebar), but in practice this does not appear to enable agencies to avoid purchasing poor quality goods or services. Several agencies reported that they are sometimes unable to declare vendors to be non-responsible and exclude them from contract awards. In some instances, they have awarded contracts even when they knew the vendor would be unable to provide high-quality goods or services. According to procurement staff, these awards have resulted in poor contract value for the state.

Procurement staff underutilize their ability to declare vendors to be non-responsible for several reasons, including that agencies typically have insufficient evidence of poor vendor performance. According to the Department of General Services (DGS), formal documentation of poor vendor performance can consist of emails, cure letters, formal complaints, or contract terminations. These documents do not always exist, however, because many agency staff address performance issues verbally or fail to formally document issues when they arise. In addition, state policy is unclear regarding the type of documentation necessary to provide evidence of poor vendor performance. Without clear guidance, agencies interpret this state policy differently and underutilize it.

Agencies also currently lack a way to access other agencies’ documents related to vendor performance because the state does not have a central repository of data on contract performance. The lack of information on contract performance is discussed more fully in Chapter 7. Chapter 7 includes a recommendation for staff from DGS, the Virginia Information Technologies Agency, and the Office of the Attorney General to collaborate on the development of an IT system that can be used to measure the performance of vendors and contracts. Having such a resource could help agencies avoid problems like those illustrated in the following case study.

CASE STUDY

Agency could not avoid selecting a vendor with low-quality services

Background

In 2011, an agency procured roofing services valued at \$89,500 using competitive sealed bidding.

Problem

When procurement staff checked the references provided for the vendor that submitted the lowest bid, they learned through experiences shared by other agencies that the vendor likely would not be able to meet their contract requirements.

However, agency experiences, unless formally documented, are insufficient to declare a vendor

Responsible vendor

State policy defines a “responsible” vendor as

- (i) a regular dealer of the intended goods/services,
- (ii) able to comply with the required delivery or performance schedule,
- (iii) having a satisfactory record of performance and integrity, and
- (iv) having the necessary facilities, expertise, and financial resources.

Documentation to declare vendors unable to bid

In Nebraska, the receipt of two Vendor Performance Reports may be used to suspend a vendor from bidding on future solicitations for a set period of time.

“non-responsible.” Procurement staff were unable to declare the vendor “non-responsible” because the vendor met the requirements of the solicitation and there was insufficient documentation of past poor performance.

Consequences

Procurement staff had to award the contract to the vendor with the lowest bid, and the vendor failed to perform the requested roofing services.

Procurement staff had to cancel the contract and hire another vendor to complete the roofing services. The fiscal impact to the agency of canceling the contract was over \$12,000.

How problems could have been avoided

If the state had a central repository of data on vendor performance that was accessible to all procurement staff, and if agencies had clear guidance about how and when to document vendor performance problems, the agency would have had a central tool to research vendor performance prior to making contract awards. The agency would have the documentation necessary to provide evidence of past poor performance and exclude the vendor from competing for the contract.

According to procurement staff, there are several other safeguards against poor quality purchases, but these tools do not help in all circumstances. Statute allows agencies to prequalify vendors for certain contracts, but this requires procurement staff to spend additional time establishing qualification requirements and evaluating potential vendors. Statute also allows agencies to debar certain vendors due to poor performance, but this requires an agency to have sufficient evidence of poor performance and is therefore rarely used.

RECOMMENDATION 1

The Department of General Services and the Virginia Information Technologies Agency should provide guidance in their statewide procurement policy manuals and training on (i) the nature of performance problems relevant to declaring a vendor “non-responsible” during the procurement process, (ii) the specific types of documentation that can be used to declare a vendor “non-responsible,” and (iii) how agencies should document vendor performance problems.

Policies aimed at balancing cost and quality provide insufficient guidance

Agencies use competitive negotiation to select vendors based on the cost and quality of their goods or services, but they may not always use the most effective approach to evaluating competing proposals. When using competitive negotiation, procurement staff determine the criteria used to evaluate proposals and assign each criterion an evaluation weight. Procurement staff also select an evaluation committee to review proposals and make awards.

State policies do not provide sufficient guidance on which criteria to include for competitive negotiations. For purchases of goods and non-professional services, state pol-

Recommendation applicability

Many of this report's recommendations are directed at DGS and VITA because they are the state's central procurement agencies and oversee the majority of contracting transactions and expenditures.

Contracts procured by agencies that do not follow DGS's and VITA's contracting regulations and policies would not be impacted by these recommendations.

Examples include the higher education institutions that are exempt from the Virginia Public Procurement Act and the contracts procured by VDOT's construction division, which are governed by different policies.

Small business criterion

State policy refers to this as the “Small Business Subcontracting Plan” criterion. Vendors receive evaluation points based on whether the primary vendor or any of their subcontractors are certified “small” or “micro” business. Vendors document this information in a small business subcontracting plan for all procurements over \$100,000 unless agencies have determined that no subcontractor opportunities exist.

Other entities’ evaluation policies

The Federal Acquisition Regulations (§ 15.304) have five requirements that apply to proposal evaluation, including that every proposal have at least one quality criterion. Criteria weights are set to balance cost and quality.

VDOT’s Consultant Procurement Office has internal policies that guide the type and number of staff who participate in evaluation committees and require staff to be trained on evaluating proposals.

icy requires agencies to consider only the price and the small business status of vendors (primary and subcontractors) when evaluating proposals. Agencies are not required to include criteria related to quality, but they can do so at their discretion. Moreover, the state procurement policy manual for non-IT goods and non-professional services features only a few examples of criteria that are typically used for competitive negotiation.

State policy also provides minimal guidance on assigning weights to criteria. State policy leaves assignments of criteria weights to individual procurement staff, except for the 20 percent weight required for the small business criterion (sidebar). Therefore, agencies may assign weights to criteria that do not maximize contract value, as illustrated in the following case study.

CASE STUDY**Agency did not maximize contract value due to selection of criteria weights****Background**

In 2013, an agency conducted a \$76 million competitive negotiation to procure health care services. Procurement staff assigned a 20 percent weight to the small business criterion (as required by state policy), a 40 percent weight to the cost criterion, and a combined weight of 40 percent to the two criteria measuring quality.

Problem

The vendor that offered the lowest cost compared to the other vendors that had submitted proposals did not also offer the highest-quality services. However, because of the weight of the cost criterion, this vendor ranked highest among other vendors.

Consequences

Because of the weight given to the cost criterion, procurement staff awarded the contract to the lowest-cost vendor. However, the vendor was ultimately unable to provide high-quality services at the agreed-upon cost. The vendor terminated the contract, leaving the agency to re-procure the services under an emergency procurement.

How problems could have been avoided

If state procurement policy had clearer guidance on assigning weights to evaluation criteria, the weights assigned to quality may have been higher, and the agency may have chosen a vendor that would have delivered higher quality services.

State policy on the procurement of non-IT goods and non-professional services also provides very little guidance on selection of evaluation committee members, specifying only that the panel should have three to five members, to include a buyer or someone knowledgeable about the Virginia Public Procurement Act and state procurement policy manuals. It does not require a subject matter expert to participate in the evaluation panel. In the absence of specific requirements, evaluation committees could exclude key agency staff whose participation would help to ensure that the best proposal is selected.

By contrast, the statewide policy manual for the purchase of IT goods and services does recommend that subject-matter experts be included on evaluation panels, and it also includes a list of commonly-used evaluation criteria. This manual could be a resource to DGS.

RECOMMENDATION 2

The Department of General Services should modify its statewide procurement policy manuals to include the following requirements: (i) that criteria used to evaluate proposals include at least one measure of quality and (ii) that agencies include subject-matter experts as members of their proposal evaluation committees. The policy manuals should be modified to include a list of commonly used criteria for evaluating proposals, and guidance on how to select and weight criteria in order to balance cost and quality.

Policies aimed at supporting small businesses had a modest fiscal impact on agencies

The state's requirement that agencies award certain contracts to small businesses has a modest negative fiscal impact on the state because it results in higher spending for some purchases. For certain purchases, the state gives preference to businesses certified by the state as "small businesses" or "micro businesses" (sidebar). The requirement is intended to increase contracting opportunities for small businesses even though they may cost more than other businesses in some cases. Agencies are permitted to spend more on purchases from certified small businesses than they would on purchases from other businesses, but only in cases where they consider the additional amount to be "fair and reasonable."

Purchases through small business set-aside had modest fiscal impact on the state

The majority of purchases (58 percent) from certified small businesses cost less than what agencies would have spent on the same purchases from other businesses that submitted bids. The remaining purchases were higher by about 25 percent (Figure 3-1). This caused a modest fiscal impact to the state of approximately \$1.3 million over nearly two years, or approximately four percent of the cost of purchases for which agencies received bids from both certified small businesses and other businesses.

Agencies lack guidance on how much more they can spend on small businesses

Agencies typically receive bids from multiple vendors for a contract. The bids submitted by certified small businesses tend to be higher than those submitted by other businesses, and this creates the potential for agencies to spend more on contracts with small businesses. On average, small businesses' bids were nine percent higher than bids from other businesses across all purchases between July 2013 and March 2015. Bids submitted by small businesses were higher than bids submitted by other businesses for the same goods or services for a majority (62 percent) of purchases.

Small business refers to businesses certified by the state as "small" or "micro." Small businesses may also be certified as women-owned and minority-owned.

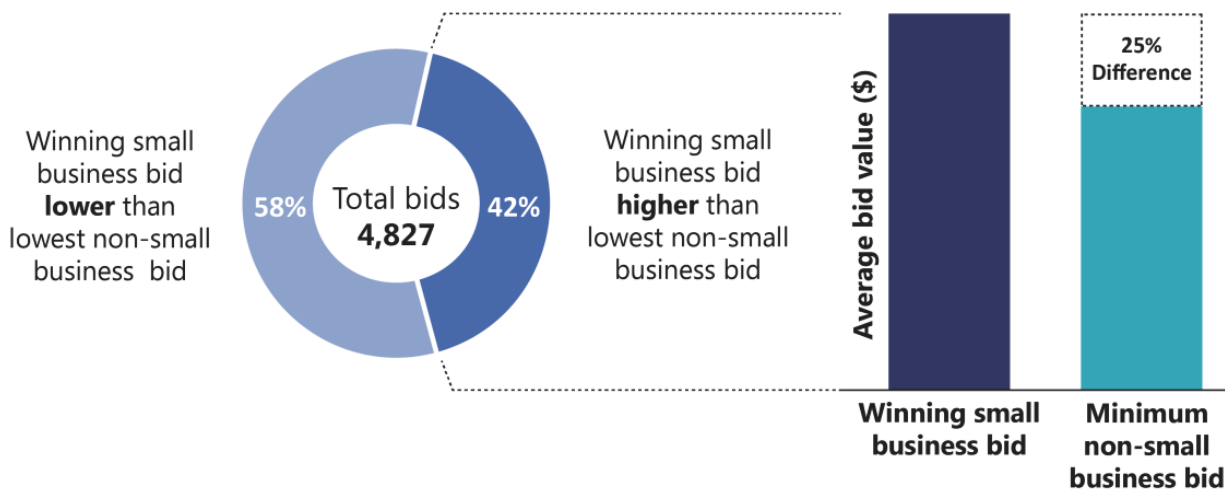
Small business: 250 or fewer employees, or average annual gross receipts of \$10M or less averaged over three years.

Micro business: certified small business with no more than 25 employees and no more than \$3M average annual revenue over three years prior to certification.

JLARC analysis of cost of set-aside

No Virginia state agencies appear to have formally assessed the cost of the small business set-aside. JLARC staff analyzed vendors' bids submitted for set-aside purchases from July 2013 through March 2015. JLARC staff analyzed 7,823 purchases that received bids from small businesses *and* non-small businesses.

FIGURE 3-1
State spent more on goods and services from small businesses in 42 percent of purchases



SOURCE: JLARC staff analysis of purchases processed through Quick Quote from July 2013 through March 2015. NOTE: Small businesses may have a “micro” designation and may also be certified as women-owned and minority-owned. The difference in the average bid value was calculated by determining the difference between the winning small business’s bid and the minimum bid submitted by other businesses for each purchase and then averaging the difference across all purchases. Analysis conducted on 4,827 purchases that were designated as set-asides, received bids from both small businesses and other businesses, and were awarded to small businesses.

“Fair and reasonable” is determined by procurement staff based on several types of analyses, including comparisons of prices previously paid, and comparisons of prices charged for similar items.

Agencies are permitted to spend more with a certified small business if the business’s bid is deemed by agency staff to be “fair and reasonable,” but state policy does not provide practical guidance for making this determination. State procurement policy manuals provide direction on the type of analyses that can be conducted to assess what is “fair and reasonable,” but they do not specify how to calculate it. The federal government, the National Institute of Governmental Purchasing, and many other states provide similarly broad guidance on determining whether bids are “fair and reasonable,” providing no specific dollar value or percentage for procurement staff to reference.

“How do we as an agency define reasonable pricing? . . . It is hard to determine reasonable if an agency thinks they will be dinged on an audit.”

— Staff
 Agency procurement office

In the absence of a standardized formula, agencies take different approaches to interpreting what constitutes “fair and reasonable,” and this can affect the cost of the small business set-aside requirement. Agencies interpret “fair and reasonable” differently, as shown by variations in the additional funds they are willing to spend to contract with small businesses. One reason that agencies select higher-cost bids from small businesses is to meet the state’s goal of expending 42 percent of contracting dollars with small businesses. Some agencies report considering their overall budgets and the time of year before deciding how much they can spend beyond the lowest bid. Others establish formulas for determining “fair and reasonable” that allow them to pay a set percentage above other bids. Procurement staff at several agencies have expressed the need for more guidance when determining how much more they should spend to contract with a small business. Such guidance could effectively stabilize or decrease the cost of the small business set-aside requirement.

To help agencies get the most value from contracts with businesses while furthering the state's small business set-aside requirement, agencies could be required to develop formulas to be consistently applied by their procurement staff for determining "fair and reasonable." This would allow each agency to develop a formula based on the unique nature of their purchases and budgets. The formulas should have (i) a lower limit based on the percentage difference between bids from certified small businesses and other businesses and (ii) an upper limit based on the dollar difference between bids. For example, the formula could be set so that the winning small business's bid should be within 25 percent or \$2,000 (whichever is lower) of the lowest bid submitted by a responsible non-small business. These parameters encompass the majority of purchases made by agencies under the set-aside requirement between July 2013 and March 2015. (Appendix D provides data to inform formula options for agencies.) DGS, VITA, and DSBSD should collaborate to develop guidance that can be provided to agencies that request assistance.

RECOMMENDATION 3

The Department of Small Business and Supplier Diversity (DSBSD) should develop regulations to require each agency to develop a formula to determine whether the cost of goods and services offered by a small business is "fair and reasonable" when compared to the same goods and services offered by other businesses. The formula would apply to purchases under \$100,000 that are set aside for small businesses. The Department of General Services and the Virginia Information Technologies Agency should collaborate with DSBSD to develop the regulations and guidance for agencies that request assistance in developing a "fair and reasonable" formula.

Weight of small business criterion can skew evaluations toward lower quality, and cost impact is unknown

The small business status of the primary vendor or its subcontractors is also considered for larger contracts, including those valued above \$100,000. It is one of two criteria that agencies are required to include in proposal evaluations for non-IT goods and services, and it is the only criterion with a prescribed weight (20 percent) in state policy manuals. The small business requirement is designed to help agencies reach the state's goal of making 42 percent of purchase expenditures from small businesses.

Assigning a required weight to any aspect of a proposal that is not related to cost or quality, including small business status, could impact the value of awards. Although 83 percent of respondents to JLARC's survey of state procurement staff expressed satisfaction with the quality of goods or services they purchased from small businesses, procurement staff at several agencies reported that applying a 20 percent weight to the small business criterion can skew awards toward less qualified vendors. As shown in the following case study, the weight of the small business criterion can result in the selection of a poor quality vendor because it can outweigh other quality-related criteria.

North Carolina's preference policy allows businesses whose bids are within five percent or \$10,000 (whichever is lower) of the lowest qualified bid to price-match the lowest qualified bid and secure the contract award. The preference applies to in-state vendors, and only to purchases of goods. Although it is not structured like Virginia's small business set-aside, this preference is another approach to providing an advantage to a subset of businesses.

JLARC staff surveyed procurement staff at all state agencies and higher education institutions. Procurement staff were asked about various topics, including their approach to contract development and their satisfaction with the cost and quality of certain types of purchases. 382 procurement staff from 134 agencies and institutions responded to the survey, a response rate of 62 percent.

(See Appendix B.)

CASE STUDY

Weight of small business criterion negatively affected agency's competitive negotiation

Background

An agency conducted a \$7,000 competitive negotiation to procure video production services.

Problem

Procurement staff assigned a 20 percent weight to the small business criterion (as required by state policy). A small business won the award even though the vendor did not appear to have the expertise necessary to perform the required services.

Consequences

The vendor's performance ultimately did not meet the agency's expectations.

How problems could have been avoided

If state policy had not required the agency to apply a 20 percent weight to the small business criterion, the agency could have assigned it a lower weight and possibly selected another vendor.

The state collects limited data on awards made to certified small businesses through competitive negotiations, and no data on the costs of proposals submitted by certified small businesses compared to those submitted by other businesses. It is therefore not possible to evaluate the fiscal impact of the small business criterion on the state or agencies' performance related to the state's 42 percent goal. DGS could collect data on agencies' awards to certified small businesses through competitive negotiations in order to assess the impact and necessity of this requirement, as well as determine whether the 20 percent weight is effective and reasonable.

RECOMMENDATION 4

The General Assembly may wish to include language in the Appropriation Act directing the Department of General Services and the Department of Small Business and Supplier Diversity to collect data on awards made through competitive negotiations. The departments should use the data to evaluate the impact of the small business criterion on agencies' use of certified small businesses, as well as on procurement more broadly, to determine whether the 20 percent criterion weight requirement should be adjusted or eliminated.

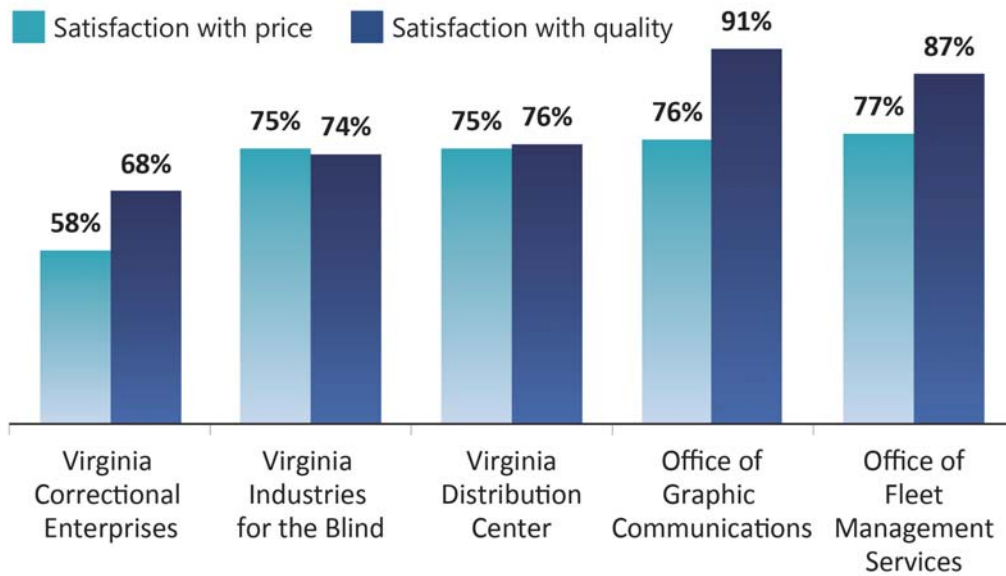
Mandatory source programs have not developed standard policies for setting prices and controlling quality of goods and services

The Code of Virginia requires state agencies to purchase certain goods and services from several mandatory sources. (See Chapter 1.) Two such mandatory sources are Virginia Correctional Enterprises (VCE) and Virginia Industries for the Blind (VIB).

While the majority of agency staff were satisfied with the goods and services purchased from mandatory sources (Figure 3-2), many agency procurement staff expressed dissatisfaction, particularly with VCE and VIB.

Unlike most traditional vendors, VCE and VIB serve a two-fold purpose: to furnish state agencies with goods and services and to provide certain groups with economic or vocational-training opportunities they would otherwise lack. VCE and VIB have comparable goals and production processes, and each is self-funded and dependent on revenue from its own sales. VCE provides work and job training opportunities to incarcerated offenders within the Department of Corrections. These opportunities are intended to minimize recidivism rates because the skills acquired by incarcerated offenders through VCE’s operations can assist them with obtaining post-release employment. VIB provides gainful employment to Virginians who are blind or visually impaired. In many cases, the individuals employed by VIB’s facilities play a role in manufacturing the final products that are sold to state agencies. Despite the similarities in their vocational aims, however, the policies for pricing and quality control differ between the two entities.

FIGURE 3-2
Majority of agency staff expressed satisfaction with the price and quality of purchases from mandatory sources



SOURCE: JLARC survey of procurement staff from Virginia state agencies and select higher education institutions.
 NOTE: “Satisfied” combines respondents who answered that they were either “satisfied” or “very satisfied” and who had purchased from mandatory sources within the past 12 months.

Virginia Correctional Enterprises

State agency procurement staff expressed lower levels of satisfaction with the price and quality of VCE goods and services compared to other mandatory sources. A number of staff expressed complaints regarding the price and quality of a wide range of VCE's goods and services, as well as VCE's slow delivery times and poor responsiveness to customer service inquiries. State procurement staff perceived VCE's prices to be 50 to 100 percent higher than market prices for comparable products. However, it may be difficult to find products that exactly match VCE's. In some cases, therefore, procurement staff's perceptions that VCE's prices are higher may not be based on accurate comparisons.

VCE does not apply a uniform policy for quality control to all of the goods and services it sells. VCE does reportedly apply quality control measures at various stages of its production processes, but these measures vary across products and across facilities. Variation may be reasonable due to product and facility differences. However, given the level of dissatisfaction expressed by procurement staff and the nature of complaints they expressed, VCE's approach to quality control could be improved.

To set its prices, VCE relies on a formula derived from materials and labor costs, overhead costs, administrative costs, and a profit margin (Table 3-1). VCE states that it is "exploring transforming our pricing strategy" by introducing market price research and keeping its prices within five percent of those of its competitors. However, VCE does not benchmark its prices against the broader marketplace, leading to agencies' complaints about high costs.

State agencies can request a release from purchasing from VCE and do so in high volume. Releases are processed by VCE and the DGS Division of Purchases and Supply. In FY15, VCE processed 2,031 release requests, 93 percent of which were approved. Fifty-two percent of justifications were based on VCE's inability to provide the sought-after goods, while 23 percent deemed VCE's products incompatible with the agency's needs. The release is useful to agencies, because it allows them to avoid purchasing products that do not meet their needs, but it creates an administrative burden that could be partially addressed through improvements to VCE's quality control and pricing policies.

Virginia Industries for the Blind

Agency procurement staff were about as satisfied with purchases made from VIB as they were with purchases from other mandatory sources, but procurement staff had specific complaints about some of VIB's goods. The majority of respondents to JLARC's survey of state procurement staff expressed satisfaction with the price (75 percent) and quality (74 percent) of the goods and services they purchased from VIB. However, some agency procurement staff had specific complaints about VIB's pens and examination gloves, which accounted for \$2.5 million (57 percent) of its sales to state agencies in FY15.

ISO 9001 quality certification

The International Organization for Standardization (ISO) is a Geneva-based body that establishes international industrial and commercial standards. The ISO 9001 is a standard for quality management systems. Certifications are conducted by accredited independent auditing bodies.

The quality control measures used by VIB appear to be more structured and effective than those used at VCE. The measures are established through VIB’s ISO 9001 quality assurance rating certification for its production facilities in Charlottesville and Richmond, which is updated annually. VIB sends out customer surveys twice a year and tries to identify widespread agency complaints and respond to these accordingly. In addition, VIB employs a quality supervisor and customer service staff who are accessible to customers by a toll-free number.

Unlike VCE, VIB has practices in place to ensure that its product prices are market competitive. VIB managers conduct a “market basket study” by comparing online prices charged by other sources, including large retailers. Each product price is in turn approved by VIB’s general manager. To set its prices, VIB accounts for material and labor costs, overhead costs, and a mark-up (Table 3-1). VIB strives to keep its product prices below market price.

As with VCE, agencies can request a release from purchasing VIB goods. The conditions for these requests, however, are much broader than those for VCE. Agencies can request releases based on convenience or emergency. In FY15, VIB processed 400 release requests, 89 percent of which were approved. Of the release requests VIB received, 95 percent cited the fact that the state agency was specifically seeking to purchase a good that VIB did not carry. The remaining five percent cited VIB’s inability to deliver the desired product on time.

Arizona approach to mandatory sources

Arizona has a set-aside committee composed of officials from that state’s mandatory sources and central purchasing office which convenes quarterly to: (i) determine which goods and services are provided by Arizona Industries for the Blind and Arizona Correctional Industries, (ii) determine whether these goods and services satisfy state government needs, and (iii) establish a fair-market price for all approved materials and services offered for sale that meet these needs.

TABLE 3-1
Differences in pricing, quality control and release practices of VCE and VIB

	VCE	VIB
Pricing formula	<p>Formula includes</p> <ul style="list-style-type: none"> ■ Manufacturing and administrative overhead ■ 8 to 14% profit margin ■ No market research 	<p>Formula includes</p> <ul style="list-style-type: none"> ■ Manufacturing and administrative overhead ■ 5 to 40% profit margin ■ Market research to keep price below market
Quality control	<ul style="list-style-type: none"> ■ Raw materials and post-delivery inspection ■ Informal end-user feedback 	<ul style="list-style-type: none"> ■ Annual ISO certification ■ Customer surveys sent out twice a year
Conditions in Code for agency release	<ul style="list-style-type: none"> ■ Available VCE goods do not meet agency reasonable requirement ■ Identical good or service available at lower price ■ VCE cannot provide good or service 	<ul style="list-style-type: none"> ■ When agency’s convenience or emergency requires it

SOURCE: Code of Virginia and JLARC interviews with VCE and VIB staff.

Lack of uniform policy for mandatory sources on pricing and quality control

Differences in the quality control and pricing practices of VCE and VIB reflect the absence of a uniform approach for mandatory sources in these areas. Establishing similar goals for quality control and pricing could help these entities set competitive prices and implement more standardized quality control measures. Moreover, the establishment of similar goals and objectives in these areas for VIB and especially VCE could improve these mandatory sources' ability to ensure their product offerings better match state agency needs. DGS has recently begun convening a group of representatives from the mandatory source agencies to discuss certain procurement policies. Establishing similar goals and objectives for pricing and quality control across mandatory sources could be a new priority for this group. The working group could meet at least once per year to review the effectiveness of the policies and procedures and modify them as necessary.

RECOMMENDATION 5

The Department of General Services should convene a working group made up of the director of the department's Division of Purchases and Supply and representatives from each state entity identified as a mandatory source for the purchase of goods and services. The working group should develop goals for quality control and price setting, and policies and procedures for granting exemptions to agencies, that will be used by all mandatory source entities.

Competition

The Virginia Public Procurement Act expresses the intent of the General Assembly that "competition be sought to the maximum feasible degree." According to state policy, maximizing competition ensures that procurement "responds to user needs . . . and generally brings the most favorable prices."

Agency practices can reduce contract value by limiting competition for contracts

When businesses compete for state contracts, they have an incentive to offer the highest possible quality at the lowest possible price. For this reason, statute encourages agencies to allow businesses to compete for contracts (sidebar). However, statute allows agencies to procure contracts without using competition in certain circumstances, and it does not sufficiently limit agencies' ability to avoid competition in this way. Although agencies appear to mostly procure contracts using competition, avoiding competition appears routine in certain circumstances and at certain agencies.

Agencies sometimes avoid competitive process

Agencies limit competition by including narrow specification requirements and by conducting sole source procurements. According to procurement staff, these practices are justified when the pool of vendors is insufficient to compete for a particular contract or when agencies need to ensure the quality or continuity of goods and services.

Overly specific criteria allow higher education institutions to limit competition for construction contracts

Vendors assert that some agencies restrict competition by developing overly specific criteria to ensure selection of the favored business, which was identified prior to procurement. Twenty-seven percent of vendor survey respondents that had submitted a bid or proposal for a state contract reported that, for some solicitations, either the winning vendor seemed to be predetermined by the agency or the agency's selection criteria prevented the vendor from qualifying to even submit a bid or proposal.

Some vendors reported being unfairly disqualified for construction contracts with some of the state's public four-year higher education institutions because the selection criteria were so specific that only a small number of vendors could be considered for the contract. According to staff at several higher education institutions, there have been instances when institutions have used very specific or narrow selection criteria particularly when using the "construction manager at risk" project delivery method. According to state statute, this method is intended to be used as an alternative to competitive sealed bidding, in which only price is considered, for highly complex construction projects.

In some cases, universities allow only pre-qualified vendors that have had experience with this project delivery method to submit proposals. Some higher education institutions have imposed even stricter criteria on vendors, requiring them to have been involved in projects nearly identical to the project being advertised in order to qualify for the contract. One university evaluated proposals based on several criteria that restricted competition: the vendors' experience working with the state as well as on a college campus, their experience conducting construction manager at risk projects, and their proximity to the campus. While these criteria appear reasonable given the high cost and risk of construction projects, vendors assert that institutions use the criteria to unfairly reduce competition.

The Construction and Professional Services Manual, developed by DGS and followed by most universities, establishes minimum required criteria for agencies and universities to use when prequalifying vendors for construction projects. One factor that is included in DGS's required criteria is previous experience with the project delivery method that is to be used for the project, such as the construction manager at risk method. Some vendors report that they are excluded from competition in the prequalification stage because they lack this very specific type of experience, and because they are always excluded, they are prevented from gaining the necessary experience. They may have sufficient relevant experience from other projects and other roles (for example, as a sub-contractor). While previous experience with this project delivery method is a valid consideration, using this criterion to prevent vendors from qualifying to even submit a proposal appears to unnecessarily narrow the pool of potential vendors for the contract.

Construction Manager at Risk is a method that agencies can use for executing a construction project. It is an alternative to the traditional design-bid-build method. (See Appendix E for the differences between the two methods.)

JLARC staff surveyed all vendors who had contracted with the state since January 2014. Vendors were asked about their experiences contracting with the state and responding to solicitations, as well as challenges experienced during contracting. 1,457 vendors responded to the survey, a response rate of 7.5 percent. (See Appendix B.)

DGS should clarify in state policy that agencies should not automatically disqualify vendors from competing for construction contracts solely because they do not have previous experience with the specific project delivery method. It should also discourage all agencies and institutions from using this criterion to penalize vendors who are seeking prequalification for construction projects. Additionally, DGS should review evaluation criteria to ensure that they do not unnecessarily limit competition. Staff can do this in their capacity as participants on the project committees formed by agencies and institutions to select vendors for construction projects and review the documents agencies and institutions use to advertise and award projects.

RECOMMENDATION 6

The Department of General Services should modify the Construction and Professional Services Manual to clarify the requirement that vendor experience with project delivery method, such as construction-manager-at-risk or design-build, be considered by state agencies and higher education institutions when qualifying vendors to compete for construction contracts. The policy should state that agencies shall not automatically disqualify vendors during the Request for Qualifications stage of a procurement because of a lack of direct experience with the specific project delivery method to be used for the project.

Sole source procurement

Contracts procured without competition when only one vendor is practicably available. Agencies complete a request form for all sole source procurements for goods and services above \$5,000. Sole source procurements up to \$50,000 are approved by an agency head, and those for non-technology goods and services over \$50,000 are approved by DGS. Sole source procurements under \$5,000 do not need to be approved.

Sole source procurement is disproportionately used by higher education institutions, mostly for low-cost purchases

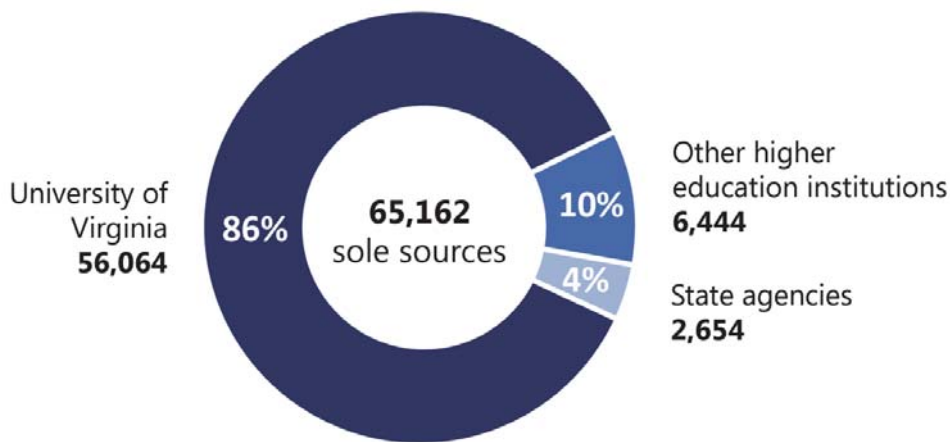
Some state contracts are procured without competition as sole source procurements, but this does not appear to be a common practice. The use of sole source procurement is concentrated in a small number of state agencies, and the purchases are typically small—valued under \$1,000. The University of Virginia, which follows the procurement policies established by the Virginia Association of State College and University Procurement Professionals, spent \$40 million on sole source procurement and was the largest user of sole source procurement in FY14 (Figure 3-3). In total, all agencies spent approximately \$157 million on sole source procurement.

The Auditor of Public Accounts (APA) and DGS have identified several agencies that used sole source procurement without sufficient justification in recent years, including the University of Virginia, Virginia State University, the Department of Motor Vehicles, the Department of Conservation and Recreation, and the Virginia Department of Health. In FY14, the APA found that the University of Virginia had made several sole source procurements without sufficient justification, approval, or documentation. The following year, the APA found similar problems, including for several construction contracts. The University of Virginia has committed to altering policies related to sole source justifications to ensure that they are properly documented going forward.

Because sole source procurement limits competition, state agencies should not use it unnecessarily. According to procurement staff, there are two main reasons for the use of sole source procurement. The first reason is that procurement staff have identified

only one practicably available source for a particular good or service. Procurement research may not identify all possible qualified vendors, though, and opportunities for competition may be limited unnecessarily. The second reason is that agencies need to preserve the continuity of certain mission-critical purchases, such as specialized computer software or materials for laboratory testing. Data are not available to determine which of these two circumstances most frequently lead to agencies' use of sole source procurement. However, audits by DGS and the APA are designed to identify misuse of sole source procurement, and available data indicate that, collectively, agencies do not frequently use this procurement method.

FIGURE 3-3
University of Virginia conducted most sole source procurements in FY14



SOURCE: JLARC staff analysis of purchase order data from eVA, FY14.
 NOTE: Includes all two-year and four-year public higher education institutions.

Certification procedures limit competition for small businesses

Barriers to state certification for small, women-owned, and minority-owned (SWaM) businesses can keep agencies from maximizing contract value if too few SWaM businesses are eligible to compete for state contracts under the state's small business set-aside requirement. The requirement is that agencies must purchase certain goods and services from businesses that are certified through the Department of Small Business and Supplier Diversity (DSBSD). Competition is enhanced when vendors achieve and renew their certifications and agency procurement staff can identify the maximum number of certified businesses that are eligible to respond to their procurements.

Inefficient and ineffective processes limit number of certified small businesses

DSBSD is currently unable to address the volume of certification requests that it receives, resulting in a backlog of businesses that cannot be certified. DSBSD receives about 200 applications for new certifications or recertifications from businesses each

week. DSBSD has a goal of processing applications within 60 days, but staff reported a backlog of 181 applications that had not been processed within 60 days as of April 2016. These applications are for women-owned and minority-owned businesses. Staff reported having a total of 276 applications for small businesses that have been awaiting certification for up to 30 days. One-fourth of vendors that were certified as SWaM businesses reported, when surveyed, that they were less than satisfied with the certification process, most commonly because the certification process took a long time.

DSBSD does not effectively prioritize certifications; according to staff, certifications are processed on a first-come-first-served basis, with no differentiation between new applications and recertifications or different types of SWaM businesses. For example, because the state’s small business set-aside requirement applies only to businesses with a “micro” or “small” business designation, certifications for these businesses could be given higher priority than other types of SWaM businesses. Better prioritization and faster processing of micro and small business certifications could increase the pool of businesses that are eligible to compete for set-aside contracts.

Furthermore, DSBSD’s certification process lacks critical capabilities for issuing certifications. According to DSBSD staff, the certification system currently does not alert businesses when their certification is close to expiring. This causes some businesses to let their certification expire, which can delay agencies’ procurement awards. For example, in survey responses, 227 certified businesses indicated that they have had their certification expire before it was renewed. Fifty-four percent of these businesses said that they were not aware that their certification needed to be renewed. According to DSBSD staff, new certification technology with the ability to send expiration alerts to businesses will be operational as of July 1, 2016. DSBSD should ensure that this function is implemented as part of the new certification technology, and that businesses are electronically notified that their certifications need to be renewed at least 60 days prior to expiration.

Some eligible businesses do not pursue certification at all. In total, 80 percent of surveyed businesses reported being eligible for SWaM certification, but 21 percent of those were not certified. Among the top reasons these businesses gave for not pursuing certification were lack of knowledge of the certification and reluctance to deal with the complexity of the process. Some businesses indicated that they were not certain that certification would improve their ability to compete for state contracts.

Administrative challenges could be alleviated through DSBSD improvements

Agency staff indicated that they are spending more time administering the state’s SWaM policies in recent years. About three-fourths of procurement staff indicated that the time they spend on the state’s SWaM policies increased during the past five years. Most of those staff indicated that they were concerned by the increase. According to agency staff, the additional time tends to be spent assisting businesses with obtaining SWaM certifications and with identifying small or micro businesses for set-aside contracts. A

Certification best practice

DGS staff send multiple electronic alerts to agency procurement staff when their procurement certifications are close to expiring.

“*In November and December we had one person working 8 hours a day to help vendors get certified. There was a change of leadership at DSBSD and it couldn’t provide any help. But this has always been the case. If you walk vendors through the process they’ll get certified.*”

— Procurement staff member

more efficient certification process could reduce the time that agency staff spend administering the state's SWaM policies and assisting businesses.

RECOMMENDATION 7

The Department of Small Business and Supplier Diversity should prioritize certifying businesses as “micro” or “small” over certifying businesses as only “women-owned” or “minority-owned.” The department should study the feasibility of automatically certifying businesses as “women-owned” or “minority-owned” if the business has been certified as such by other states, the federal government, or third-party certification entities.

RECOMMENDATION 8

The Department of Small Business and Supplier Diversity should send electronic notification of renewal to businesses certified as small, women-owned, or minority-owned at least 60 days prior to the expiration of their certification.

4 Protecting the State from Contract-Related Risk

SUMMARY Managing the risks associated with contracts is essential to protecting the state from negative consequences when contracts do not perform as planned, but risk management is not sufficiently emphasized in Virginia. State policies do not require agencies to manage contract-related risks, and training courses on risk management are not widely available. In practice, procurement staff at most agencies do not adequately plan for contract-related risks, and they routinely omit provisions from contracts that could help protect the state from contract problems. Moreover, most agencies do not routinely use available legal or subject-matter experts when developing contracts. A few agencies and other states have implemented practices that could improve Virginia’s management of contract-related risks if replicated statewide.

The state is exposed to risk when something could go wrong with a contract that could negatively affect the state. According to national experts, risk management should be a key part of state contracting, and effective risk management entails identifying and assessing the impact of potential risks, responding to risk through contract provisions, and ensuring that risks are managed sufficiently during the course of the contract.

Several of the state’s recent high-profile contracts did not adequately manage risk, which led to financial losses. In 2014, for example, the state had to terminate a \$1.4 billion contract to construct a segment of U.S. Route 460 because the project failed to receive the necessary environmental permits. Even though no site work was done, contract provisions that required the state to make regular payments to the vendor ultimately cost the state over \$250 million. This contract was procured by the Virginia Department of Transportation. In 2012, the state entered into a contract for use of the Wallops Island spaceport facility that did not require the vendor to provide insurance for the facility during rocket launches. An explosion in 2014 caused \$15 million in damage to the facility, and the state was responsible for funding a portion of the repairs. This contract was procured by the Virginia Commercial Space Flight Authority.

Risk is the possibility that an event will occur and adversely affect the achievement of objectives (definition, National Association of State Procurement Officials).

State contracting laws, policies, and training courses do not emphasize risk management

Although national experts recommend that risk management be a key component of contracting, Virginia’s contracting laws and policies mostly do not address the subject. The Virginia Public Procurement Act does not contain specific guidance or requirements related to risk management. For example, the Act does not discuss the various types of risk that contracts can present or provide guidance to agencies on strategies

to control risk. By extension, the state’s policy manuals pertaining to the procurement of goods, services, and construction also do not contain specific guidance or requirements related to management of contract-related risk. Although the state’s policy manual for information technology (IT) procurements refers to contract-related risk and provides a template that agency staff can use, it does not require use of the template for all contracts.

State contract training courses

The state has several training courses for agency staff. Required courses are only for certain procurement staff.

Required courses

Virginia Contracting Associate

Virginia Construction Contracting Officer

Virginia Contracting Officer

Optional courses

Basic Information Technology Procurement

Contract Management

Virginia Contracting Master Certification Program

In addition, most of the contracting training courses that the state provides do not address risk management. The state’s Virginia Contracting Associate and Basic Information Technology Procurement courses, for example, do not address the management of contract-related risk at all. The Virginia Contracting Associate course is the state’s introductory procurement certification course, and IT contracts are one of the state’s riskiest types of procurement, making it important for staff attending these two courses to learn about risk management. The state’s Virginia Construction Contracting Officer certification course indirectly addresses the management of risks associated with construction contracts by outlining the state’s construction project processes; this course does not explicitly cover risk management either.

There are two state contracting training courses that address risk management, but they are not widely available to agency staff. The state’s Virginia Contracting Officer certification and Contract Management courses both provide strategies to identify and address contract-related risk. However, not all procurement staff are eligible to attend the Virginia Contracting Officer certification course, and the Contract Management course is only offered up to twice per year for only about 25 people, some of whom work for local government entities rather than state agencies.

The Department of General Services (DGS) should examine various approaches for delivering the training and determine which approach would best ensure that training is widely and regularly available to agency staff. Training should be tailored to different types of contracts, including IT and construction contracts.

“
There is a lack of meaningful training available. Most training . . . does not really get into the real and/or complex issues encountered in everyday operations.
 ”

— Staff

Agency procurement office

RECOMMENDATION 9

The Department of General Services should develop mandatory training for certified procurement staff on identifying, mitigating, and controlling contract-related risk through effective contract development and administration.

Most agencies do not adequately perform risk management

Few state agencies have established internal policies and practices for management of contract-related risk. Even though the chief procurement officer at each agency with delegated procurement authority is required to attend the certification training course that features materials on risk management, some agencies do not routinely identify

and assess the impact of contract-related risks. In addition, agencies do not routinely or consistently include provisions in contracts that could protect the state from risks.

Contract-related risks are not routinely identified during contract development

Nearly one-fifth of procurement staff (19 percent) indicated that they do not employ any strategies at all to identify contract-related risks (Figure 4-1), according to the JLARC survey. Some of these staff are from large agencies that frequently conduct complex procurements. In interviews, several agency staff also reported procuring large state contracts without using any strategies to identify contract-related risk before signing the contract. Examples included a \$76 million health services contract and a \$7 million IT contract.

FIGURE 4-1
Nearly one-fifth of procurement staff do not routinely use any strategies to identify contract-related risk



SOURCE: JLARC survey of procurement staff from Virginia state agencies and select higher education institutions.
 NOTE: Agencies highlighted in graphic represent three of 45 agencies from which some procurement staff reported that they used no risk management strategies.

A risk management plan template for assessing the impact of various types of contract-related risk is included in the state’s Virginia Contracting Officer and Contract Management courses, but most agencies do not use the template. The template requires agencies to identify the various types of risk that pertain to a particular contract and then assign a numeric value to each type of risk (Figure 4-2). In interviews, most staff, including those who have attended the training courses, indicated that they were unfamiliar with the template. Even DGS staff who procure goods and services through statewide contracts were unfamiliar with it. Only six percent of procurement staff who responded to a JLARC survey indicated that they formally document contract-related risk through mechanisms like risk management plans.

JLARC staff surveyed procurement staff at all state agencies and higher education institutions. Procurement staff were asked about various topics, including their approach to contract development and their satisfaction with the cost and quality of certain types of purchases. 382 procurement staff from 134 agencies and institutions responded to the survey, a response rate of 62 percent.

(See Appendix B.)

FIGURE 4-2
DGS risk management template has two steps

Step 1	Step 2	
Identify types of risk	Determine risk level	Rate 1 through 5
<ul style="list-style-type: none"> ▪ Technical ▪ Programmatic ▪ Supportability ▪ Cost ▪ Schedule 	<ul style="list-style-type: none"> ▪ Probability of occurrence ▪ Severity or impact 	<div style="display: flex; justify-content: space-around; width: 100%;"> 1 2 3 4 5 </div>

SOURCE: Department of General Services' risk management template.

RECOMMENDATION 10

The Department of General Services and Virginia Information Technologies Agency should modify their statewide procurement policy manuals to state that agencies should implement a formal mechanism for identifying and managing contract-related risk. Manuals should be modified by July 1, 2017.

VDOT uses formal risk management strategies for Tier II VDOT projects and for all projects considered high risk by the VDOT Commissioner.

Penalty: Provision that levies a fee or other penalties on vendors who do not meet contract requirements.

Incentive: Provision that awards compensation or other benefits to vendors that meet or exceed contract requirements.

Performance measure: Provision that requires collection and/or reporting of data measuring performance of vendors relative to contract requirements.

Agencies do not always manage risk by adequately specifying requirements and outcomes in contracts

During contract development, agencies do not always adequately describe the goods or services that they intend to purchase, which increases the risk that vendors will not fulfill agency expectations and agencies will receive goods or services that do not meet their needs. State policy manuals refer to specifications as “the most important part of every solicitation” and advise agencies to stipulate the needs of the agency clearly and completely. Several state agencies reported that developing accurate specifications was sometimes difficult, and several vendors characterized the procurement specifications of some state contracts as “vague or confusing.”

The clarity and completeness of agencies’ contract specifications could be improved by implementing Recommendation 10, because more robust risk planning would inform the development of contract specifications.

Agencies routinely omit contract provisions that could protect the state from contract-related risks

In part because they do not identify contract-related risks during planning, state agencies do not routinely incorporate risk management provisions—penalties, incentives, and performance measures—in their contracts. These types of provisions protect the state against contract problems by tracking progress and holding vendors accountable. Penalties, incentives, and performance measures are not included in the state’s standard

contract provisions, and they are not necessary for all contracts, such as some contracts for the purchase of goods. But for other contracts, risk management provisions should be used routinely and consistently; otherwise the state is exposed to unnecessary risk.

It is especially important for contracts to contain provisions like penalties, incentives, and performance measures to hold vendors accountable because agencies seldom use the standard contract provision that would allow them to terminate contracts for default when vendors fail to perform. Although agencies are required to include a termination provision in contracts, they avoid using it because terminating a contract can be time-consuming, lead to costly legal cases with vendors, and cause agencies to have to re-procure contracts. Provisions like penalties, incentives, and performance measures enable agencies to hold vendors accountable without pursuing contract termination.

Nearly half of agencies do not have penalties or incentives tied to vendor performance in any of their active contracts, and 17 percent of agencies have no performance measures in any of their active contracts (Figure 4-3). Further, contract administrators reported that most of their agencies' highest value contracts lack the penalties and incentives necessary to enforce contract provisions and that this has undermined their ability to enforce the contracts.

“There is no rhyme or reason as to why some contracts contain penalties or performance measures and others do not.”

— Staff
Agency procurement office

Data on contract terminations was collected by JLARC staff from procurement staff at 22 agencies, who reported that contract terminations are relatively infrequent. Less than 1% of these agencies' active contracts were terminated in a given year. (See Appendix B.)

FIGURE 4-3
Many state agencies did not include penalties, incentives, or performance measures in any of their active contracts



SOURCE: JLARC survey of procurement staff from Virginia state agencies and select higher education institutions.
NOTE: Chief procurement officers representing 96 agencies responded to survey questions on penalties/incentives and performance measures.

Sometimes risk management provisions are incorporated in contract drafts but removed or modified during negotiations with vendors. According to procurement staff, key provisions can be negotiated out of contracts, either mistakenly or on purpose, as a part of the “push and pull” that occurs between the state and the vendor. This happened recently with a \$102 million IT contract, when negotiations removed a “hold back” provision that allowed the agency to withhold funds from the vendor to incentivize corrective action. This also occurred with the state’s contract for the spaceport

facility at Wallops Island. The proposed contract included a provision requiring the vendor to insure against damages to the spaceport, but the provision was removed during contract negotiations. As a result, the state had to pay to repair a portion of the damages that occurred during an explosion in 2014.

CASE STUDY

Agency's contract for case management services lacks penalties, which could impede ability to correct poor vendor performance

Background

In 2010, an agency procured a case management system through a competitive negotiation valued at \$27.5 million.

Problem

According to the contract administrator, the provisions of this contract do not include any penalties or incentives tied to vendor performance

Consequences

The contract administrator lacks the tools necessary to make the vendor address high-priority requests that arise in a timely manner. Although this has not caused any problems to date, the contract administrator noted that any future issues would be difficult to address efficiently due to the lack of these provisions.

How problems could have been avoided

When developing the contract's provisions, agency staff should have included provisions to encourage the vendor to meet performance expectations.

RECOMMENDATION 11

The Department of General Services and Virginia Information Technologies Agency should modify their statewide procurement policy manuals to state that contracts should contain the following provisions: (i) performance measures, to be used in contracts for services; (ii) quality assurance measures, to be used in contracts for goods; and (iii) penalties to impose when a vendor does not perform according to contract provisions.

Agencies underutilize state experts to manage contract-related risk

The state has legal and subject-matter experts who can assist agencies with developing contracts that effectively manage contract-related risk, but agencies are not required to use these resources. Procurement staff can consult with the Office of the Attorney General (AG), DGS, and the Virginia Information Technologies Agency (VITA) when developing contracts. However, procurement staff have complete discretion about whether and how to use legal and subject-matter experts, even for particularly large or complex contracts.

Most procurement staff do not consult legal experts when developing contracts

Procurement staff at most agencies do not voluntarily seek assistance from AG staff when they develop contracts, even though many agency staff add non-standard provisions to contracts that may not have undergone legal review and therefore could expose the state to risk. AG staff review contracts only at the request of an agency. Only 21 percent of procurement staff who responded to a JLARC survey reported seeking assistance from AG staff with developing contract provisions.

To manage contract risk, agencies should seek assistance from AG staff when they develop high-risk contracts with non-standard provisions. State policy permits agencies to use non-standard provisions in contracts, which can come from state procurement manuals, past contracts, or other agencies' contracts. Agencies can also draft non-standard provisions on an ad hoc basis when unique provisions are warranted. Using non-standard provisions without the assistance of legal staff exposes the state to risk because provisions may conflict with one another or inadequately protect the state. Several procurement staff reported confusion regarding the meaning and appropriate use of non-standard contract provisions.

Agencies should also request AG staff to review both the legality and substance of provisions for high-risk contracts. When agencies seek input from legal staff on developing contracts, they typically only ask staff for an assessment of the legality of contract provisions, not whether they are sufficient to achieve agencies' objectives. Agencies rarely ask legal staff to review the soundness of contract provisions beyond their legality, partially because they often develop contracts under time constraints and do not build in time for in-depth legal reviews. According to AG staff, when an agency requests assistance with contracts, the agency's main concern is usually to ensure that contract provisions are sufficient to complete a procurement—not to maximize the state's contract value.

To ensure that agencies are aware of the types of contract-development assistance available from the AG and the process that should be followed to have contracts undergo a thorough review, the AG should develop written guidelines on its role in contract development and make them available to all agencies. The guidelines should include a description of the aspects of solicitation and contract development with which legal staff can provide assistance, the specific types of assistance legal staff can provide, and the procedures that agencies should follow to obtain assistance.

Greater use of AG staff during the development of high-risk contracts might reduce the state's exposure to contract-related risks, but it appears that the AG does not always have enough staff to assess aspects of contracts beyond their legality. AG staff reported that they sometimes do not have the capacity to review the substance of contract provisions, especially when agencies do not involve AG staff until the end of contract development. To limit the demand on AG staff, contract review

VDOT and DMAS use of legal experts

VDOT staff are required to consult with Attorney General staff when altering the agency's internal contract provision template or adding special provisions to contracts that go beyond the VDOT template. VDOT staff also routinely include Attorney General staff in the negotiations of complex contracts.

DMAS staff routinely receive feedback on contract provisions from Attorney General staff when they are conducting competitive negotiations with new contract language.

services could be required only for contracts that are deemed to be particularly high risk. (See Recommendation 16 regarding identification of high-risk contracts.)

RECOMMENDATION 12

The Office of the Attorney General should develop and publish information for agencies about the legal services it offers to assist with contract procurement. Information should include the types of assistance available to agencies and procedures for obtaining assistance.

Comprehensive and routine review of contract provisions by legal experts is needed

“
[My agency’s] template and special terms and conditions do not always correspond with the Agency Procurement and Surplus Property Manual. It’s confusing to work with two different ones.
”

— Staff
Agency procurement office

The state does not have a single centralized repository of standard contract provisions that agencies can use when developing contracts. To develop contract provisions, agencies consult state procurement policy manuals, internal agency templates, and specific provisions developed for previous contracts. According to the Attorney General’s office, these sources of contract provisions were developed over time on an ad hoc basis by various state entities. There has not been a deliberate cohesive effort to develop a single set of contract provisions that meet the objectives of all agencies for various types of goods and services. According to procurement staff, the fragmented nature of these contract provisions can create confusion, especially among inexperienced staff.

Given the manner in which the state’s standard and non-standard contract provisions have been developed, they should be reviewed by Attorney General staff to protect state interests. However, because of the lack of routine or comprehensive legal review, provisions may not adequately protect the state’s interests or may conflict with other provisions, especially when new provisions are introduced. Staff at the Attorney General’s office report having identified problems with contract provisions in the past, including standard contract provisions.

RECOMMENDATION 13

The Office of the Attorney General should conduct a comprehensive legal review of all standard contract provisions that have been developed or recommended for agencies’ use by the Department of General Services, the Virginia Information Technologies Agency, the Virginia Department of Transportation, and the Virginia Association of State College and University Purchasing Professionals. Reviews should be undertaken every five years, with the initial review to be completed by January 1, 2017.

VITA could be more effective in helping agencies to mitigate contract-related risks

Contracting for information technology services carries a high degree of risk relative to other goods and services, and procurement staff at many agencies have little experience or training in contracting for these services. The Code of Virginia gives

VITA oversight authority over agencies' IT procurements and contracts to help ensure that these procurements and contracts are in the state's best interest.

VITA staff are well positioned to help agencies procure and administer IT contracts, but VITA staff do not always meet agencies' need for assistance. VITA staff indicated that they are frequently contacted by agencies seeking IT procurement advice, but staff only respond to such requests when time and resources permit. According to agency procurement staff, VITA has been reluctant to assist agencies with problems that arise during active IT contracts procured by the agencies.

Most agency procurement staff responding to the JLARC survey who had relied on assistance from VITA were satisfied with VITA's help, but some staff provided specific examples of problems they had experienced over the past 12 months. In interviews, staff at multiple agencies indicated that VITA staff characterized problems encountered with agency IT contracts as agency problems and did not proactively assist the agencies in resolving them. Other staff reported that VITA was slow to respond to requests for assistance, or simply nonresponsive.

The oversight that VITA currently performs helps ensure that the largest IT contracts include effective provisions, but some IT contracts are missing provisions that would ensure satisfactory delivery of goods and services. Most of the IT contracts reviewed for this study lacked one or more of such provisions, including one with no performance measures specified, one with no monitoring methods specified, and nine with no penalties or incentives.

Greater use of VITA staff expertise might improve state agency contracts for IT services, but it appears that VITA currently does not have enough staff to meet the need for assistance. According to VITA staff, the procurement division, Supply Chain Management, was originally designed with 41 positions, and this type of assistance was intended to be one of its responsibilities. But the division currently has 20 employees, none of whom are fully dedicated to assisting agencies with IT procurements.

VITA has broad statutory authority over the execution of agencies' IT contracts, and VITA was originally envisioned to be a central repository of IT expertise and assistance for agencies. To be consistent with legislative intent, VITA should dedicate some staff to assisting agencies with the development and management of their IT contracts. VITA should assess its staffing needs and identify the numbers and cost of new staff that would be needed to better assist agencies. VITA currently has staff dedicated to helping agencies manage their largest IT projects, and a similar approach could be taken to helping agencies with the procurement of their IT contracts. At a minimum, VITA should assist agencies with developing contract provisions that clearly describe (i) how the vendor's performance will be monitored by the agency and (ii) penalties or incentives tied to vendor performance. To minimize the number of additional staff that would be needed, VITA should also identify ways in which its current staff could be utilized more efficiently.

Data on IT contracts was collected by JLARC staff on the performance and provisions of 16 different IT contracts with an estimated value of \$1.2 billion.

RECOMMENDATION 14

The Virginia Information Technologies Agency (VITA) should identify the number of additional staff needed by its Supply Chain Management Division to effectively assist agencies with the planning and execution of procurements for IT contracts. The agency should submit a report to the Secretary of Technology, Department of Planning and Budget, and House Appropriations and Senate Finance Committees regarding its additional staffing needs. The report should include a description of the nature and scope of the assistance that VITA will provide to agency staff as well as a timeline that it will follow for having new VITA staff in place to provide such assistance.

If additional staff are needed for contracting assistance, the state could cover the additional personnel costs by changing the allocation of the Acquisition Sourcing and Special Fund. The Fund receives revenues from fees charged to vendors, and these fees are based on purchases made against VITA's state contracts. Under statute, the Fund is to be used "to finance procurement and contracting activities and programs unallowable for federal fund reimbursement" (Code of Virginia; 2015 Appropriation Act). In practice, \$1.8 million of the Fund is used to pay for the IT operations of the governor's office (Table 4-1). If the Fund were restricted to VITA operations, this \$1.8 million would be available to cover the costs of additional assistance with IT contracts. This action would change a long-standing practice over several administrations of using the Fund to pay for the governor's office IT operations, and would require other funding sources to be identified to pay those expenses.

TABLE 4-1
Budgeted expenditures for Acquisition Services Special Fund

	FY16 budgeted expenditures (\$M)	Percent of total budgeted expenditures
Procurement expenditures		
VITA procurement services & oversight	\$3.5	
VITA IT services sourcing project	0.8	
Subtotal procurement expenditures	4.3	58%
Federal reimbursements		
	--	
Other expenditures		
IT support for the governor's office	1.8	
VITA non-procurement expenses	1.3	
Subtotal other expenditures	3.1	42%
Total	\$7.4	

SOURCE: Virginia Information Technologies Agency budget data.

NOTE: The 2016 Appropriation Act increased budgeted Acquisition Services Special Fund expenditures to \$10.1 million per year in FY17–FY18. Half of the increase is for procurement expenditures, and half is for other expenditures. The increase is funded from surplus revenues collected from fees charged to vendors for sales made under VITA-managed contracts.

Another way in which VITA could be a more effective contracting resource for agencies would be to develop and provide comprehensive training on IT contracting. Procurement staff from several agencies expressed a desire for an IT-focused training. DGS offers a training course on buying IT through eVA and basic delegation guidance, but it does not cover some essential topics such as how to develop effective requests for proposals and contracts and how to identify and manage contract-related risks. Moreover, this training is offered far less frequently and is much shorter in duration than other procurement trainings. VITA staff could collaborate with DGS staff to develop a more comprehensive IT contracting training program, to be required for agency staff who procure and administer IT contracts. The training program should focus on all aspects of effective contract procurement and administration, including the development of contract provisions, the identification and management of contract-related risks, effective performance monitoring, and enforcement of contract provisions. Agency staff who are conducting IT procurements should be required to complete the training program.

RECOMMENDATION 15

The Virginia Information Technologies Agency (VITA) should seek the assistance of the Department of General Services to design a comprehensive training program for procurement and administration of IT contracts, which would be administered by VITA.

Virginia should develop definition and review process for high-risk contracts

Unlike other states, Virginia lacks a standard definition and oversight process for “high-risk” contracts. Several state entities, including the Auditor of Public Accounts, DGS, and VITA, have internal definitions for contracts they consider to be high risk. However, neither the Virginia Public Procurement Act nor state policy manuals contain a standard definition of high-risk contracts. This enables agencies to approach the development of these contracts differently. Several other states have formal definitions for high-risk contracts that could be beneficial if replicated statewide in Virginia. For example:

- Colorado has a Central Contracts Unit that is part of the state’s Office of the State Controller and is required to review and approve contracts defined as high risk. These include contracts for IT goods or services, financial systems, and debt collection.
- Texas has a Legislative Budget Board that collects and uses data to identify the risks of certain contracts. The board collects data on contracts that are (1) valued over \$10 million, (2) emergency or noncompetitively procured contracts valued above \$1 million, (3) major information system contracts valued above \$100,000, (4) construction contracts valued above \$14,000, or (5) professional services contracts valued above \$14,000.

- In contrast to other states, Virginia also currently lacks a standard process for managing high-risk contracts. In the absence of a standard process, the state's interests are not always adequately protected. Other states have formalized oversight processes for high-risk contracts. Although the designs of these processes differ, they share a common goal of requiring additional reviews of high-risk contracts. For example:
- Texas has a Contract Advisory Team that reviews and makes recommendations on the solicitations for contracts valued at or above \$10 million. The team also performs risk assessments to determine the appropriate level of management and oversight of contracts by state agencies.
- North Carolina's Division of Purchase and Contract has a Contract Management Section that reviews the provisions of all contracts over \$1 million to verify that contracts (1) are in proper legal form, (2) contain all required clauses, (3) are legally enforceable, and (4) will accomplish their intended purposes. The Contract Management Section participates in the solicitation and development of these contracts and helps establish formal contract administration procedures.
- Colorado's Central Contracts Unit monitors contracts initiated by state entities to ensure that they are properly executed and risks are adequately addressed. The unit also provides contract training opportunities to state entities.

If Virginia had used a process to identify and oversee high-risk contracts that was similar to other states' approaches, some of the negative consequences of the state's past problematic contracts might have been avoided. For example, such a process might have helped the state negotiate a better IT contract with Northrop Grumman in 2005.

CASE STUDY

Northrop Grumman contract was high risk, and risks were not sufficiently managed

Background

In 2005, VITA entered into a 10-year, \$2 billion public-private partnership with Northrop Grumman to acquire IT infrastructure services.

Problem

Prior to awarding the contract, VITA and the Information Technology Investment Board did not have a formalized process for reviewing the risks (financial and other) associated with procuring IT infrastructure services through Northrop Grumman using a public-private partnership.

Contract provisions did not provide a sufficient means of ensuring vendor performance, as many were unclear or difficult to enforce, and contract penalties and incentives for poor vendor performance were inadequate.

Consequences

The state's partnership with Northrop Grumman cost more than the state expected and had service delays, performance issues, and contractual disputes.

How problems could have been avoided

If the contract had been identified as high risk and therefore subject to a formalized risk assessment process during its development, the risks that the state was exposed to might have been more thoroughly addressed through the final contract provisions.

As part of the new process to identify and oversee high-risk contracts, Virginia should develop a definition for what constitutes a high-risk contract. This definition should take into consideration the nature of the goods and services being purchased, the number of agencies procuring or using the contract, how atypical the contract is, the duration of the contract, and the dollar value of the contract.

RECOMMENDATION 16

The General Assembly may wish to consider amending the Code of Virginia to add a definition of high-risk contracts and require that, before execution, all contracts that meet the definition of high risk be reviewed and approved by the Office of the Attorney General (all contracts), the Department of General Services (contracts for goods and non-professional and professional services that are not for information technology or road construction or design), and the Virginia Information Technologies Agency (IT contracts).

New advisory committee was established to evaluate risks of public-private partnerships

Recent legislation has increased the level of scrutiny applied to the procurement of contracts through the Public-Private Transportation Act, and the advisory committee created by the legislation could have a meaningful impact on the state's use of these contracts. The Public-Private Partnership Advisory Committee determines whether a public-private partnership approach to completing a transportation project would serve the public interest to a greater extent than an approach that uses only public funds. If a majority of the committee members determine that a public-private partnership is in the public's interest, then agencies can proceed with the procurement process established in the Public-Private Transportation Act.

The new advisory committee met for the first time in 2015 and convened twice to review the advantages and disadvantages of procuring a public-private partnership to complete improvements to I-66 in Northern Virginia. At its first meeting, the committee was tasked with determining whether a public-private partnership for the I-66 project would be in the public's best interest. However, some committee members did not appear to be sufficiently informed about the project's details to confidently make this determination. Some details about the project were unknown, including the amount of public financing needed and the risk that would be shifted from the state to the private sector. For future projects, the committee could be formally convened more than once in order to be fully briefed about the project and to have the opportunity to ask pertinent questions before voting on the project's public interest.

5 Monitoring and Enforcing Contracts

SUMMARY State contracting policies focus far less on the effective administration of contracts than on procurement, which has left agencies ill-equipped to monitor and enforce contracts. In many cases, agency staff are not effectively monitoring contract performance or enforcing contract provisions, and some complex high-dollar contracts are administered by inexperienced and unprepared staff. In many agencies, there are no standard procedures for alerting key agency staff about contract-related problems, and procurement staff at most agencies—as well as agency leadership—do not have a clear sense of how their contracts are performing. Even if staff follow best practices for contract monitoring, vendors may not meet contract requirements. Contract enforcement is important in these instances, and state agencies do not uniformly use effective practices for enforcing contract provisions and do not consistently hold vendors accountable for poor performance. The state should develop policies to guide agencies’ contract administration practices, require contract administrators to meet training requirements, and strengthen contract administration guidance from the state’s central procurement agencies, the Department of General Services, and the Virginia Information Technologies Agency.

Effective contract administration supports the effort and resources put into procuring and negotiating contracts by ensuring that the value achieved through procurement is realized and that risks addressed through contract development are monitored and managed. Contract administration, which includes monitoring performance and enforcing contract provisions if performance does not meet expectations, is the longest phase of a contract in many cases. Ensuring that contracts deliver what agencies need is particularly important for high-value and mission-critical contracts. Contract administration is decentralized in Virginia, however, and monitoring and enforcement is inconsistent across and within agencies, and at times insufficient. Agency staff would be able to more effectively protect the state’s interests when administering contracts—particularly agencies’ highest value and highest risk contracts—with clear policies and procedures in place and more training opportunities.

State has placed limited focus on effective contract administration

State law is mostly silent on contract administration, and by extension, state policy manuals and training programs do not emphasize its importance. State agency staff receive too little guidance on how to effectively monitor and enforce the contracts they are responsible for (Table 5-1), and state law and policies set no goals or objectives for

“
An agency’s effort should not stop after the procurement process because [contracts] may not stay on track without proper management.
”

— Staff
Central procurement agency

“
Many agencies look at the contract as something to turn to when problems are occurring, not as something to actively manage.
”

— Staff
Attorney General’s office

TABLE 5-1

Virginia's contract administration policies lack key elements to protect state's interests

Recommended elements in contract administration	In Virginia state policy?
Highest priority elements	
Contract administration staff attend formal training and obtain certification	No Recommendation 18 Recommendation 19
Agencies allocate contract administration resources and select monitoring methods based on complexity, value, and length of contracts, as well as the risk associated with unperformed contract work	No Recommendation 17
Agencies have a formal contract handoff between procurement staff and contract administrators, including a discussion of monitoring methods	Partially Recommendation 20
Contracts contain distinct and measureable performance metrics	No Recommendation 11
Contracts contain concrete enforcement provisions to be used when contract performance measures or other provisions are not being met	No Recommendation 11
Other recommended elements	
Contract administrator develops and follows a contract administration plan, which tracks performance and identifies monitoring methods and staff responsible for monitoring activities	Partially
Contract administrator develops contingency plans detailing how to respond in the event that goods are not delivered or services are not provided	No
Agencies maintain a log of payments and deliverables, and contract administrators have invoice approval	No
State has formal guidelines on communication with vendors, including documentation of all interactions	Partially

SOURCE: Best practices identified by the Georgia Department of Audits and Accounts; the National Association of State Procurement Officials; the National Contract Management Association; the Office of Management and Budget's Office of Federal Procurement Policy; and the Texas Procurement and Support Services Division.

effective contract administration. For example, the Virginia Public Procurement Act does not emphasize the contract administration stage but focuses almost entirely on the procurement stage of contracting.

State policy manuals do not explain the importance of effective contract administration and provide minimal direction on key contract administration practices. This lack of comprehensive contract administration policies is in contrast to the multitude of rules, regulations, and policies governing the procurement process. The Agency Procurement and Surplus Property Manual (APSPM), Construction and Professional Services Manual, and the Virginia Information Technologies Agency (VITA)'s Buy IT manual each contain only one chapter explicitly on contract administration. The information that is included in these policy manuals is general and does not focus on the

differences in monitoring activities required for contracts of varying complexities, value, or risk. In general, it appears that agencies do not have appropriate tools or direction to administer contracts—particularly the largest and most complex contracts.

Some states place greater emphasis on contract administration than Virginia does. One common approach has been to improve the quality and accessibility of guidance for contract administrators. Several states—including California, Iowa, North Carolina, and Texas—have either improved existing procurement manuals or developed contract administration-specific manuals. These statewide manuals detail the responsibilities of the agency and vendor, explain the benefits of monitoring, with examples of common monitoring activities, and provide comprehensive and specific guidance on how to handle performance problems.

Virginia state policy does not require that contract administrators have specific qualifications, regardless of the value or complexity of the contract. There are no state training requirements on contract administration, and optional training opportunities are targeted to procurement staff rather than contract administrators. Moreover, agency staff typically serve as contract administrators on a part-time basis and view contract administration as secondary to their other responsibilities. This is in contrast to the emphasis placed on the training and preparation of procurement staff, who are responsible for contract procurement on a full-time basis, are required to have state certifications and prior experience in order to conduct high-dollar or complex procurements, and are required to complete training courses at regular intervals.

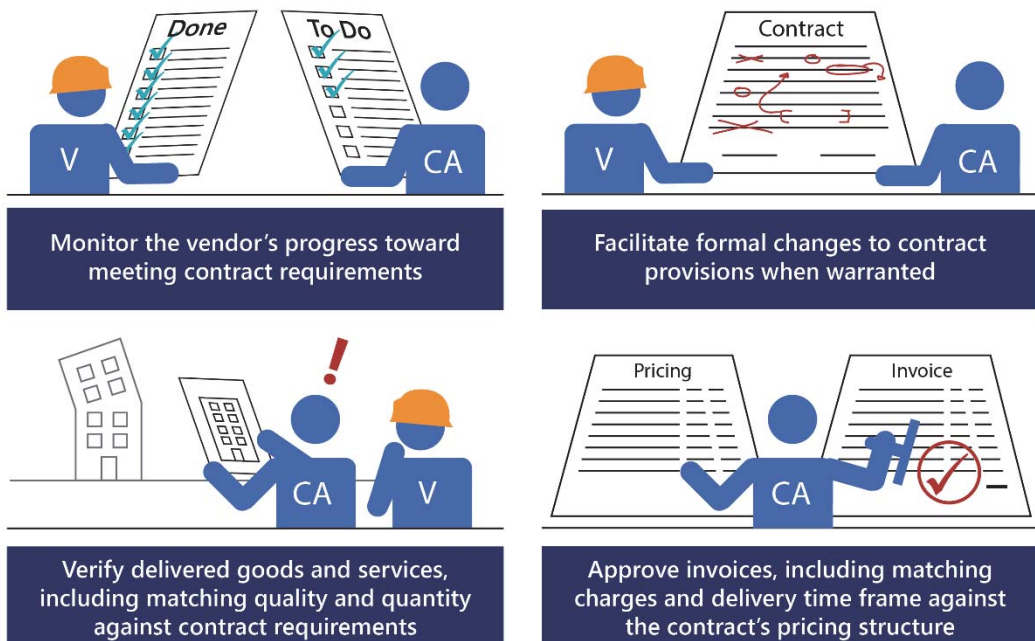
Some states—such as Florida, North Carolina, and Texas—have implemented mandatory training or certification requirements for contract administration staff. For example, Texas requires that contract administration staff go through three formal training programs and receive state certification. Several other states—including Hawaii and Washington—offer formal training on contract administration.

Virginia has weak statewide contract administration policies, few contract administration resources at central procurement agencies, and minimal contract administration training opportunities, which is partially due to the decentralized structure of the state's contracting functions. Decentralization of contracting provides agencies with benefits, such as the ability to customize contract administration practices to particular types of goods and services. However, decentralization also creates the potential for agencies to utilize variable, and potentially ineffective, contract administration practices, underscoring the need for effective statewide contract administration policies. The recommendations that follow are designed to ensure that agencies consistently and uniformly apply effective contract administration practices. They would also help ensure that contract administrators are adequately prepared for their responsibilities and have sufficient support from other agency staff when monitoring and enforcing high-value and complex contracts. These recommendations provide a foundation for effective and consistent contract administration practices to be applied across agencies, and they would not prevent agencies from customizing their practices to meet their unique contracting needs.

Agencies inconsistently and, in some cases, inadequately monitor contracts

The level of sophistication of agencies' practices for monitoring contracts varies widely and can lead to inadequate monitoring. This is due to a combination of inadequate policies, unprepared staff, insufficiently detailed contract provisions, and the lack of a formal reporting process about contract performance between contract administrators and procurement staff. In the absence of adequate contract monitoring, agencies cannot ensure that vendors are meeting all contract provisions and requirements, they are aware of any performance problems, and that they obtain information about the effectiveness and quality of the goods or services procured (Figure 5-1).

FIGURE 5-1
Agencies' contract monitoring practices should include several key elements



SOURCE: Virginia Public Procurement Act, the Agency Procurement and Surplus Property Manual, the Construction and Professional Services Manual, and information from the National Association of State Procurement Officials and the National Contract Management Association.

Agencies often lack contract monitoring policies

While some chief procurement officers reported that their agencies had developed policies that compensate for the inadequacy of statewide monitoring policies, many agencies have not. For example, almost half of chief procurement officers (44 percent) reported either that their agency does not have a formal policy on monitoring vendor performance or that they are unsure if their agency has such a policy. Several of these chief procurement officers work for large and mid-size agencies with contracts that have recently experienced performance problems, such as cost overruns or delays.

Although there are some statewide contract monitoring policies, many agencies have not been implementing or following these policies. For example, some agencies do not use checklists or similar tools to monitor performance as recommended by the APSPM. Instead, agencies tend to address performance problems as they arise and rely on vendors to report on their own progress.

Agencies can better protect state interests when they implement structured, comprehensive contract monitoring policies for staff to follow, as illustrated in the following case study.

JLARC staff surveyed procurement staff at all state agencies and higher education institutions. Procurement staff were asked about various topics, including their approach to contract development and their satisfaction with the cost and quality of certain types of purchases.

382 procurement staff from 134 agencies and institutions responded to the survey, a response rate of 62 percent. (See Appendix B.)

CASE STUDY

DMAS implementation of formal policies on contract monitoring

Background

The Department of Medical Assistance Services (DMAS) has implemented its own contract monitoring policies for staff to follow.

Frequency of monitoring activities

DMAS contract administrators determine whether there would be a significant impact to the agency or public if any given contract requirement is unmet. DMAS staff then determine how frequently to monitor a vendor's progress towards meeting contract requirements in order to protect the state's interests. (High-risk contract requirements often require daily monitoring.)

Verifying vendor performance

Contract administrators use detailed checklists to ensure that both the vendor and agency meet the contract requirements.

Staff responsible for a health services contract noted that one staff member is responsible for ensuring the vendor meets all contract requirements by checking off performance reports as the agency receives them from the vendor and for tracking progress toward meeting deadlines for deliverables.

Administration of another contract for IT services involves weekly monitoring and verification of vendor-reported performance metrics and shifting weights on performance metrics to place more emphasis on problem areas.

Contract monitoring practices vary not only across but also within agencies. Within one agency, for example, contract monitoring varies from contract to contract. For one contract, staff monitor performance daily and match deliveries against pictures of materials ordered. For another contract, monitoring is ad hoc and relies on field staff, who may not be familiar with contract requirements.

These inconsistencies will be reduced if adequate state policies are developed and are implemented uniformly across agencies as recommended in this chapter.

Some contract administrators lack time, experience, and preparation

The state's approach to staffing contract administration increases the likelihood that agencies will have contract performance problems. Staff who administer contracts often have little experience and time to devote to these responsibilities and are not prepared to take over after contracts have been procured. This negatively affects the monitoring and enforcement of contracts of all levels of complexity and cost, and has resulted in poor contract performance.

Most contracts are administered on a part-time basis

The amount of time that staff spend on contract administration varies widely and is often only a small percentage of their workweek, even for high-value contracts. Half of sampled contracts were actively administered for fewer than 10 hours per week, according to staff responding to JLARC's contract administrator survey.

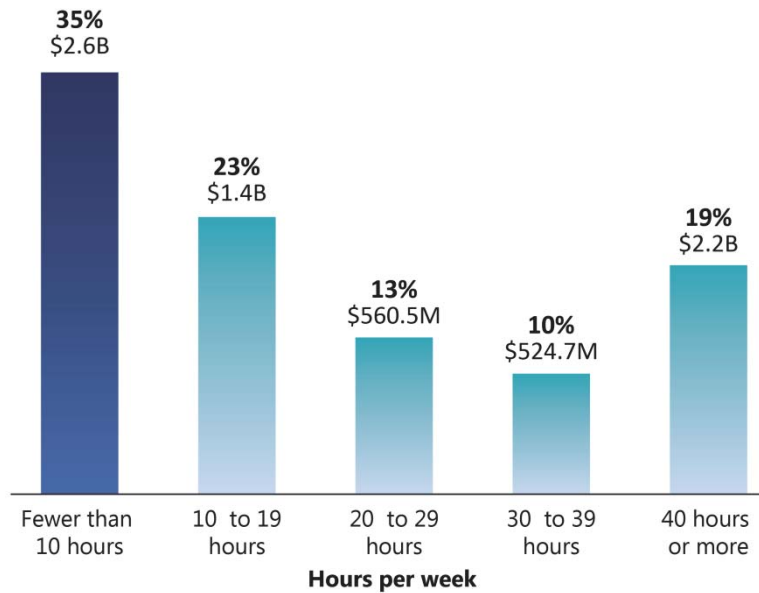
Agency staff who administer contracts on a part-time basis indicated that, in some cases, they do not have enough time or resources to conduct performance monitoring and ensure contract compliance. Without such time and staff support, contract administrators take a reactive approach to monitoring, rather than proactively engaging with the vendor, comprehensively monitoring key performance measures, and assessing the quality of deliverables in detail. For example, one contract administrator noted that she was still unfamiliar with some contract requirements and provisions for a goods contract even after administering it for five months. Because she is pressed for time, she relies on field staff to inform her about performance problems. Unless she is notified to the contrary, she assumes that the vendor is meeting performance expectations.

The limited amount of time that staff spend administering contracts, especially high-value contracts, is particularly concerning. A large proportion of multi-million dollar contracts are administered on a part-time basis, and slightly more than one-third of analyzed contracts valued above \$50 million were administered for less than 10 hours per week (Figure 5-2). For example, one agency assigned only one staff member to an important IT contract, which was actively administered for only two hours per week.

JLARC staff surveyed contract administrators at 23 agencies that had high contracting activity in FY14. Contract administrators were generally responsible for one or more of agencies' highest value contracts and were asked about various topics, including contract performance and factors hindering effective administration.

92 agency staff—a response rate of 85%—provided information on 117 contracts valued at \$8.1 billion. (See Appendix B.)

FIGURE 5-2
One-third of high-value contracts are actively administered for fewer than 10 hours per week



SOURCE: JLARC survey of state agency contract administrators, 2015.

NOTE: Numbers may not add due to rounding. Percentages based on the number of contracts in each category. Analysis is limited to 31 contracts valued above \$50 million.

Many contract administrators have minimal experience and training

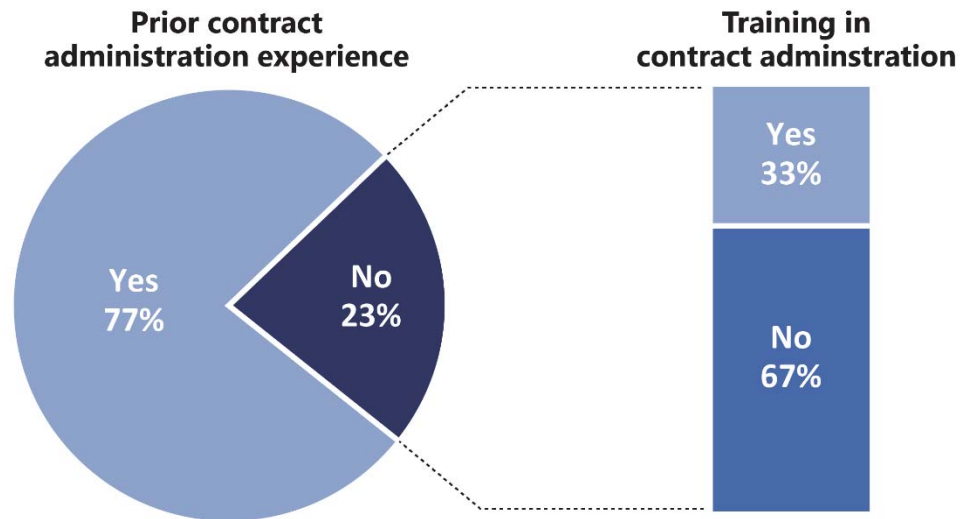
Many agency staff have no prior contract administration experience or training. When contract administrators have minimal experience and training and insufficient time for their responsibilities, the effectiveness of contract monitoring is likely diminished. About one-fourth of surveyed contract administrators (23 percent) indicated that they had no prior contracting experience. Inexperienced staff managed 25 contracts, including five contracts each valued over \$50 million.

RECOMMENDATION 17

The Department of General Services and the Virginia Information Technologies Agency should modify their statewide procurement policy manuals to include guidelines for agencies on staffing the administration of contracts, particularly contracts identified as high risk.

Formal contract administration training could compensate for a lack of experience, but almost one-third of contract administrators reported that they had never received any such training. Respondents without any formal training managed 33 contracts, including seven contracts each valued over \$50 million. Further, most of the surveyed contract administrators who lacked prior experience also lacked formal

FIGURE 5-3
Most staff without prior contract administration experience are also untrained



SOURCE: JLARC survey of state agency contract administrators, 2015.

NOTE: Percentages based on the number of contract administrators in each category.

“ Contract administrators are not required to attend training, which makes it difficult to influence the decision of assigning a qualified staff person as a contract administrator. ”

training (Figure 5-3). These staff managed 18 contracts, including three contracts each valued over \$50 million. Experience and training of contract administrators are essential for successful contract monitoring because experienced or trained staff may be better able to monitor and enforce challenging contracts than inexperienced or untrained staff. Further, many procurement staff noted that it is difficult to choose qualified contract administrators when the available staff are largely inexperienced and untrained.

— Staff
 Agency procurement office

Mandatory training for contract administrators

Florida requires that contract administrators who manage contracts valued at or above \$100,000 complete a certification program consisting of eight online training modules, a two-day in-person training session led by instructors, and a final assessment.

Both procurement staff and contract administrators indicated that formal training was needed on contract administration topics as well as contract development and negotiations. Agency staff noted the importance of such training, given the value, scope, and necessity of some contracts administered by untrained or inexperienced staff. Such training could be offered by the central procurement agencies—the Department of General Services (DGS) and VITA—or by individual agencies with many high-risk contracts. Topics of the training should include interpreting and utilizing contract provisions, monitoring and recording vendor performance, and involving other staff to assist when problems arise. Training materials should contain specific considerations for IT and construction contracts.

An agency’s delegated procurement authority could be contingent on compliance with training requirements, as is currently done with procurement training. DGS and VITA should also develop a condensed, online training course on effective contract administration that agency staff responsible for lower-risk contracts are required to complete before the start of a new contract. The guidance covered in these new training sessions

could be incorporated into state procurement manuals under a section focused on contract administration.

DGS charges agencies a fee for sending staff to its training courses, and some procurement staff have observed that training costs have hindered their agency's ability to send staff to procurement training. According to DGS staff, the training fees cover the cost of the training program in lieu of general funds. If agencies were charged similar fees for sending staff to a new contract administration training program, they might be deterred from participating in the program. General funds could be used to offset the cost of the new training program, which could help ensure that the state's contract administrators acquire the knowledge and skills needed to effectively administer high-risk contracts. DGS should provide a report to the House Appropriations Committee and the Senate Finance Committee on the amount of general funds that would be needed to minimize the cost of a comprehensive contract administration training program.

RECOMMENDATION 18

The General Assembly may wish to include language in the Appropriation Act directing the Department of General Services (DGS) and the Virginia Information Technologies Agency (VITA) to (i) develop a comprehensive training program on the effective administration of contracts and (ii) modify their statewide procurement policy manuals to require the training for all agency staff who have primary responsibility for administering contracts identified as high risk. The language should direct DGS and VITA to develop an estimate of the cost of administering the program.

In addition, DGS and VITA should collaborate to develop a contract administration certification that would be conferred upon agency staff who complete the comprehensive contract administration training program and demonstrate competence in effective contract administration practices. This certification would be consistent with DGS's requirement that procurement officers possess a procurement certification in order to conduct higher-risk procurements.

RECOMMENDATION 19

The Department of General Services and the Virginia Information Technologies Agency should collaborate to develop a certification program for contract administrators. Certification would require that agency staff complete contract administration training and demonstrate competence in effective contract administration practices.

Procurement staff do not adequately prepare contract administrators in many agencies

Contract handoff

Once a contract has been procured, procurement staff hand over responsibility for the contract to the contract administrator. At this point, procurement staff generally have minimal involvement with managing the contract.

Procurement staff in many agencies do not adequately orient contract administrators to their responsibilities or to contract provisions when they hand off contracts (sidebar). Contract administrators may not have been involved in the procurement stage and may be unfamiliar with contract provisions. Some contract administrators noted that they were uncertain as to whether their contracts specified how to measure or monitor vendor performance. One first-time contract administrator reported receiving no orientation to the multi-million dollar contract he would be administering and no orientation to his responsibilities. As a result, monitoring for his contract depends solely on individual motivation to ensure the state achieves the value negotiated during procurement.

State policy provides detailed guidance on conducting handoffs, but agencies do not consistently follow this guidance. The APSPM requires that contract administration be “delegated in writing . . . designating a specific individual . . . highlighting important aspects of the contract, and distinguishing between the administrator’s authority and that which must remain a function of the purchasing office.” However, contract administrators at some agencies indicated that they had never signed such a document, never received guidance on how to carry out their responsibilities, or never even received a copy of the contract. Internal audits at the Virginia Department of Transportation (VDOT) confirm that some contract administrators never review contract provisions before the vendor commences work. (See Appendix F for information about contract administration at VDOT.)

Given the low levels of experience held by many contract administrators and the lack of state guidance, it is particularly important that procurement staff provide a complete and thorough orientation to contract provisions for every contract, along with clear expectations for the administration of the contract. The central procurement agencies—DGS and VITA—should develop a framework that agencies would be required to use when conducting the handoff process. At a minimum, contract handoffs should provide the contract administrator with a description of the contract’s provisions related to monitoring and documenting the vendor’s performance, as well as information on how to enforce compliance with the contract’s terms and conditions and issue payments to the vendor. This information should be included in a contract administration section within the state procurement manuals.

RECOMMENDATION 20

The Department of General Services and the Virginia Information Technologies Agency should modify their statewide procurement policy manuals to include procedures for transferring responsibilities from procurement staff to contract administrators and orienting contract administrators to the contract and their responsibilities. Agencies should be required to use the procedures but allowed to supplement them with agency-specific procedures.

Contracts do not consistently specify how to monitor performance

Not all contracts specify how the agency will monitor performance, and this has allowed for inadequate or improvised monitoring by inexperienced and untrained contract administrators. Slightly more than one-third of contracts analyzed for this study (35 percent) were ambiguous about performance: contract language either did not specify how agencies would monitor vendor performance or did not contain formal performance measures (sidebar), or contract administrators were unsure of contract requirements (Figure 5-4).

Even when contract provisions prescribe monitoring methods, the provisions may not adequately protect state interests. Some contracts do not prioritize between all areas of performance being monitored, leaving contract administrators to determine how to allocate their time across monitoring activities. In a few cases, contract administrators made decisions that were not well-considered. For example, when monitoring the performance of a contract that included safety patrol services, staff placed disproportionate emphasis on workplace cleanliness, when the focus of performance standards should have been safety patrol outcomes. (Chapter 4 addresses shortcomings in agencies' use of performance measures in contracts in more detail.)

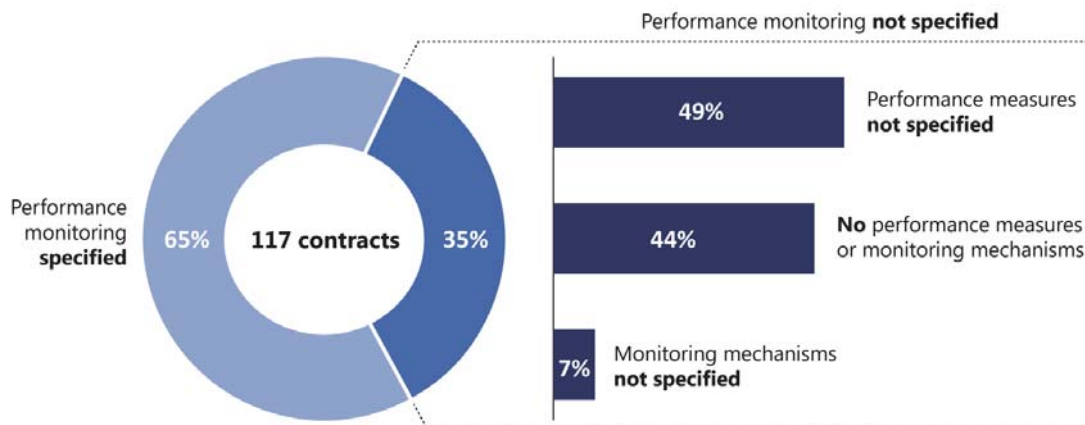
Monitoring vendor performance: Contract administrators may monitor a vendor's performance through a variety of activities, including matching delivered goods against contract specifications or verifying data reported by the vendor.

A performance measure is a provision that requires collection and/or reporting of data measuring performance of vendors relative to contract requirements.

RECOMMENDATION 21

The Department of General Services and Virginia Information Technologies Agency should modify their statewide procurement policy manuals to state that agencies should include in all high-risk contracts, and contracts above a certain dollar value (as determined by individual agencies), an explanation of how performance monitoring will be conducted and an explanation of how vendor performance will be documented.

FIGURE 5-4
Contracts do not always specify performance measures or mechanisms



SOURCE: JLARC survey of state agency contract administrators, 2015.

NOTE: Numbers may not add due to rounding. Percentages based on the number of contracts in each category. Analysis of contracts where performance monitoring was not specified is limited to 41 contracts where contract administrators indicated that the contract either did not contain the specified provisions or they did not know.

“Procurement staff don’t always know how things turn out because they don’t track contract performance. It’s the contract administrator’s job to monitor the contract. Procurement staff have other responsibilities.”

— Staff
Agency procurement office

“We currently also get little feedback on contracts from end users. Even though we do annual surveys, the contract administrator will often not note any issues. Ultimately, [a performance problem] will happen, and they’ll then tell us that it’s been a constant problem.”

— Staff
Agency procurement office

A **cure letter** is a formal letter sent by an agency to a vendor as performance problems occur. The cure letter informs the vendor of potential consequences that may result—including contract termination for default—unless the vendor “cures” specific areas of non-compliance or makes progress towards contract compliance within a specified period of time.

Lack of formal reporting process between contract administrators and procurement staff impedes resolution of performance problems

Procurement staff and agency leadership are generally unaware of how contracts are performing unless there have been significant problems, because neither the state nor agencies have implemented a formal reporting process for the contract administration stage. There is no requirement that contract administrators report performance problems to anyone at an agency, including procurement staff. There is also no requirement that procurement staff request information on contract performance from contract administrators at regular intervals. Additionally, agencies generally have not implemented central databases to store and track information on contract performance. (See Chapters 3 and 7.) The lack of centralized information contributes to a general lack of awareness of contract performance and outcomes, even on such basic measures as whether contracts are on schedule or on budget.

To better address contract performance problems as they arise, and to enhance awareness of contract performance generally, agencies should implement a formal reporting process during contract administration. At a minimum, contract administrators should provide procurement staff with quarterly reports that focus on any contract administration challenges and the extent to which there are any unfulfilled or partially met contract requirements. This reporting process should be included in a contract administration section within the state procurement manuals.

RECOMMENDATION 22

The Department of General Services and the Virginia Information Technologies Agency should modify their statewide procurement policy manuals to state that agencies should establish a formal process for contract administrators to regularly report to their agency’s procurement office on the status and performance of their contracts.

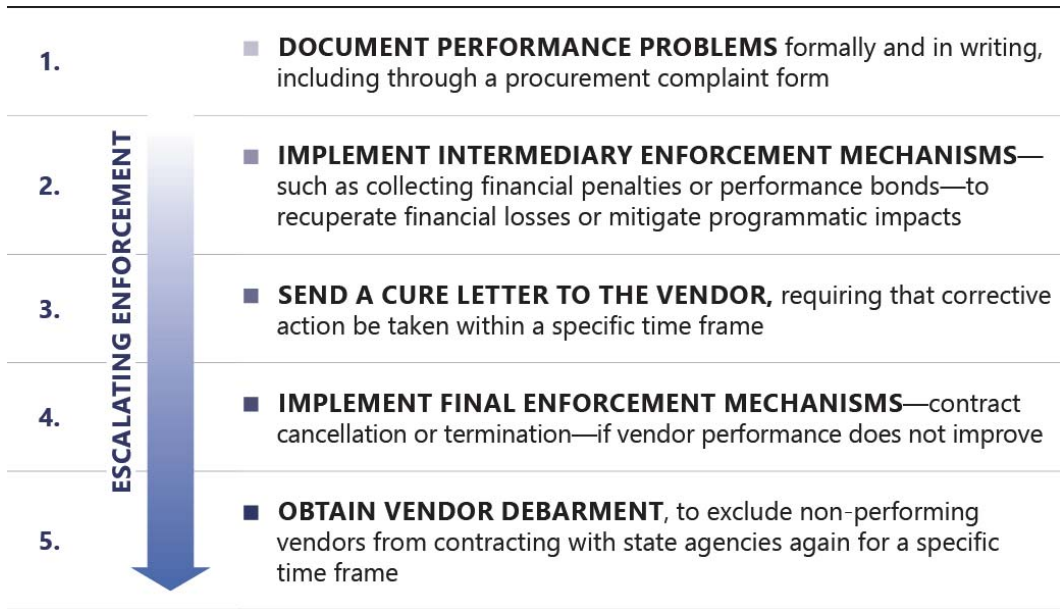
Enforcement of contract provisions is inconsistent across agencies and often inadequate

When problems arise during a contract, contract administrators often do not use effective practices to enforce contract requirements. Contract administrators tend to address problems informally rather than take formal action or invoke contract provisions to hold the vendor accountable as recommended in state policy (Figure 5-5). Staff responding to the JLARC contract administrator survey reported using enforcement mechanisms—including financial penalties and cure letters (sidebar)—in only 15 percent of contracts that did not meet performance expectations.

There are a number of factors that impede contract enforcement. Agency staff may be reluctant to take action for fear of damaging relationships with vendors. One chief procurement officer noted that contract administrators often have trouble “pushing over the first domino” to initiate a complaint because staff want to avoid conflict.

Additionally, agencies may not offer sufficient guidance on enforcing contract provisions; contract provisions may not be adequate to hold vendors accountable; and agency staff may not adequately document vendor performance problems.

FIGURE 5-5
Contract enforcement should escalate as performance problems remain unresolved



SOURCE: Virginia Public Procurement Act, the Agency Procurement and Surplus Property Manual, the Construction Professional Services Manual, and information from the National Association of State Procurement Officials and the National Contract Management Association.

Many agencies do not provide guidance on contract enforcement

Although contract administrators may informally address performance problems under certain circumstances, such an approach by inexperienced and untrained staff may result in performance problems that persist or are left undocumented. At many agencies, contract administrators do not receive guidance on when to elevate performance problems or how to enforce contract provisions. Nearly half of chief procurement officers reported that their agency either does not have a policy on identifying and addressing problems with performance or they were unsure if their agency had such a policy. However, some agencies—like DMAS—are ensuring that contract administrators receive proper guidance on enforcing contract provisions.

CASE STUDY

DMAS implementation of formal agency policies on contract enforcement

Background
 The Department of Medical Assistance Services (DMAS) has implemented its own contract enforcement policies for staff to follow.

Documenting poor performance
 DMAS staff routinely document performance problems in issue logs and require vendors to develop corrective action plans when serious performance problems occur.

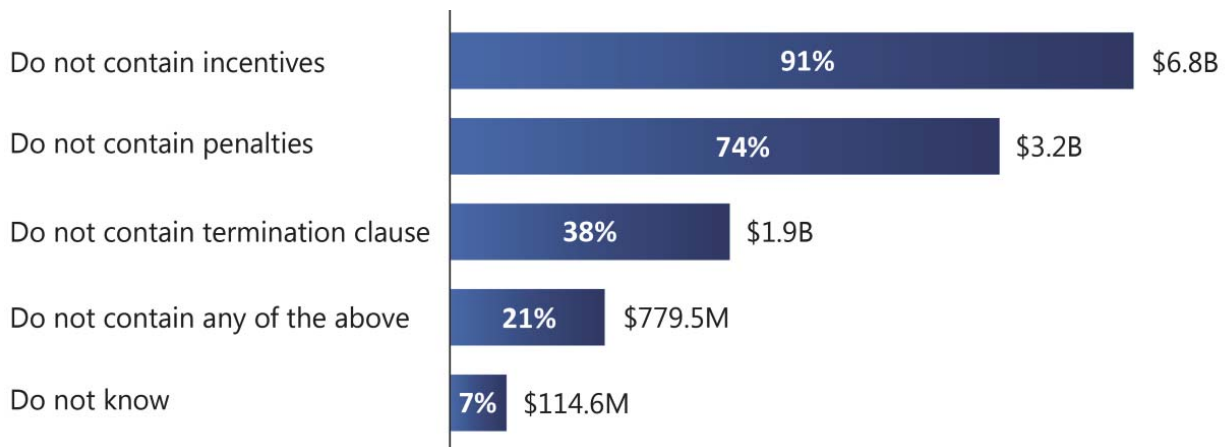
Notifying vendors of performance problems
 Contract administrators ensure that vendors receive formal notification of performance problems by sending cure letters through certified mail.

Implementation of intermediary enforcement mechanisms
 DMAS staff go through an approval process before collecting liquidated damages, a step that requires multiple staff to sign off on the use of that particular enforcement mechanism.

Contract provisions sometimes do not facilitate enforcement

Many contracts do not contain provisions that agencies can leverage to incentivize or compel vendors to address poor performance. About three-fourths of high-value, high-risk contracts analyzed for this study did not contain penalties, and about 20 percent of contracts contained none of the common provisions that would protect the state: a termination clause, penalties, or incentives (Figure 5-6).

FIGURE 5-6
Many contracts do not contain provisions to allow for contract enforcement



SOURCE: JLARC survey of state agency contract administrators, 2015.
 NOTE: Percentages based on the number of contracts in each category.

Without adequate contract provisions, agencies are not always able to work out a solution to poor contract performance in a manner that benefits the state. For example, a vendor claimed to be unable to provide certain contractual services to an agency due to federal health privacy laws. Because the contract contained no financial or other penalties that could be levied against the vendor, the agency had to provide those services in-house but still had to pay the vendor the full contract costs.

For some agencies, the inclusion of incentives and disincentives has proven effective. For example, VDOT recently began consistently using incentives and disincentives in road construction contracts. A district staff member noted that, although these provisions have only been in place for a short time, he has already seen improvement in on-time delivery and not at the expense of quality.

Documentation of poor performance is lacking

Without proper documentation of performance problems, agencies may be unable to hold vendors accountable, and other agencies may be unable to avoid entering into future contracts with the vendor. Contract administrators do not receive training or guidance on the importance of documenting performance problems, and this has contributed to negative contract outcomes in some cases. For example, an agency experienced performance problems with a janitorial contract, but the agency was unable to terminate the contract for vendor default because the performance issues had not been documented.

Contract termination is difficult to achieve without proper documentation of performance issues. For example, one agency's janitorial contract was experiencing performance problems for approximately three to six months. The vendor did not provide cleanings that met the standards outlined in the agency's contract, but because there was no formal documentation, the procurement officer indicated that the agency may have difficulty filing a complaint or even requesting corrective action from the vendor.

RECOMMENDATION 23

The Department of General Services (DGS) and the Virginia Information Technologies Agency (VITA) should provide guidance in their statewide procurement policy manuals and staff training programs on how to effectively document unsatisfactory vendor performance, under which circumstances such problems should be brought to the attention of other staff in the agency or staff in the Office of the Attorney General, DGS, or VITA, and under which circumstances enforcement measures should be pursued.

6 Vendors' Experiences with State Contracting

SUMMARY Most vendors are generally satisfied with their experiences contracting with the state, rating them the same or better than their experiences with other government entities and in the private sector. Still, a majority of vendors reported having experienced some difficulty with a specific aspect of the state's procurement or contract administration practices. A particular area of concern was the formal process for complaints: many vendors are unaware of the complaint process, find it difficult to use, or are reluctant to use it. When vendors have filed formal complaints, most have been dissatisfied with how those complaints were handled, citing a lack of objectivity and transparency in agencies' decisions.

Vendors' experiences with state contracting are a valuable source of information on the potential shortcomings of state policies and practices. In particular, vendors' experiences can be used to evaluate whether state agencies are effectively and efficiently meeting the goals established in the Virginia Public Procurement Act: fairness, access to public business, and openness and transparency. In addition to the requirements established in state law, vendors expect the state to have clear and easily understandable contracting policies and practices. From a vendor's perspective, an effective contracting process would be fair, transparent, and easy to navigate. Vendors should be able to easily participate in the procurement process, understand why they may not receive a contract award, and implement contracts that meet agency needs.

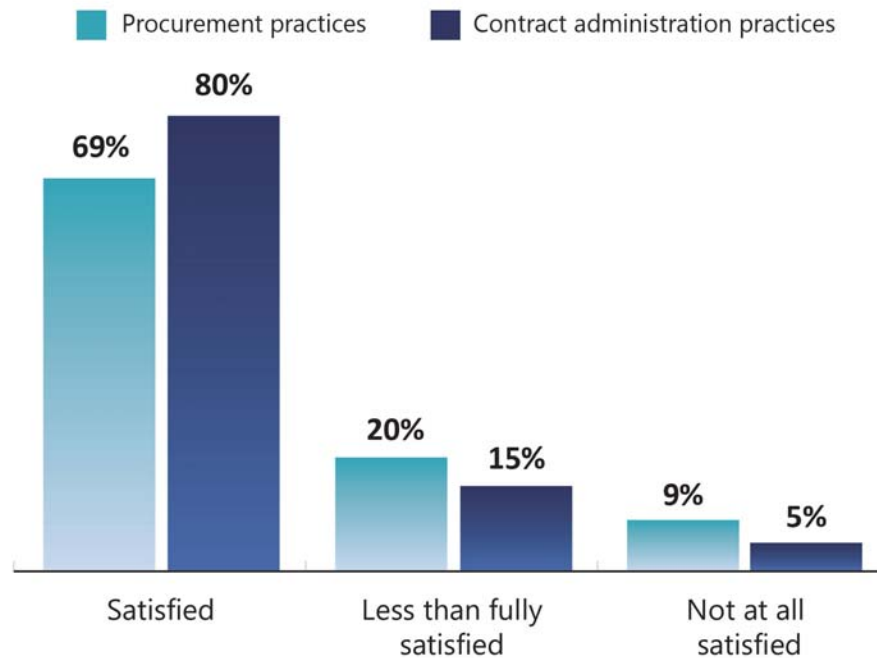
Vendors expressed general satisfaction with contracting practices

Most vendors responding to the JLARC survey expressed satisfaction with their experiences contracting with state entities, particularly compared to their experiences contracting with other entities. Vendors described their contracting experiences with state entities and public higher education institutions to be as good as (62 percent) or better than (16 percent) contracting experiences with other governmental and non-governmental entities. These satisfaction levels carried through all phases of the contracting process. Roughly 70 percent of vendors were satisfied with the procurement process up through the contract award, and 80 percent were satisfied with state entities' post-award contract administration practices (Figure 6-1).

JLARC staff surveyed all vendors who had contracted with the state since January 2014. Vendors were asked about their experiences contracting with the state and responding to solicitations, as well as challenges experienced during contracting. 1,457 vendors responded to the survey, a response rate of 7.5 percent.

(See Appendix B.)

FIGURE 6-1
Vendors were generally satisfied across contracting phases



SOURCE: JLARC survey of vendors contracting with the state, 2015.

NOTE: Analysis limited to 1,215 vendors who responded regarding the procurement phase and 1,321 vendors who responded regarding the contract administration phase. Numbers do not add to 100 because some respondents answered "do not know."

Although most vendors reported general satisfaction with their experiences contracting with the state, a majority (62 percent) reported that they had experienced difficulties with specific aspects of either procurement or contract administration or both. These vendors expressed concerns about a lack of information during the procurement process, unfairness of competition among vendors for contracts, and difficulty navigating the contracting process generally given the complexity of policies and procedures governing the process. However, vendors expressing concerns in each of these individual areas were among the minority of vendors who responded to the survey.

Vendors most commonly expressed frustration with a lack of information during the procurement process and perceived there to be unfair competition among vendors. Specifically, one-fifth of vendors indicated that agencies' solicitation specifications were too vague; others indicated that agencies did not provide sufficient information about how they evaluated bids and awarded contracts. With respect to competition, almost one-fifth of vendors had experienced situations where the winning vendor appeared to be predetermined.

Many vendors reported some difficulty with understanding and navigating the state's contracting processes, and in some cases this has led to reluctance to participate in the procurement process. A majority of vendors (54 percent) indicated that they had

passed up opportunities to respond to solicitations for which their businesses were qualified to compete. These vendors pointed to difficulties in contracting with the state as one reason for their lack of participation in the procurement process. Confusion stems from the multiple sources of information about state and agency contracting policies, and a lack of clear and consistent answers to contracting questions. Agency staff sometimes provide inconsistent instructions and guidance, and central points of contact are not staffed to address these concerns.

To improve vendors' understanding of state contracting policies and processes, the Department of General Services (DGS) and the Virginia Information Technologies Agency (VITA) could strengthen their vendor relationship functions and assign staff to oversee these functions with clearly defined responsibilities that include responding to vendor inquiries about state contracting policies and procedures and suggesting possible improvements to the contracting process based on vendor inquiries and complaints. This would supplement, not replace, the formal complaint procedures that have already been established. Other states have implemented resources for vendors that could also serve as a model for Virginia. For example, Florida has a Vendor Ombudsman, whose responsibilities include assisting vendors who have problems obtaining timely payment from state agencies. Arizona and Georgia offer informal training for vendors, to familiarize them with state procurement laws and policies.

RECOMMENDATION 24

The Department of General Services and the Virginia Information Technologies Agency should strengthen their ability to assist prospective and current vendors. The departments should assign to their staff clearly defined responsibilities that include (i) responding to vendor inquiries about state contracting policies and procedures; (ii) assisting vendors and agencies with the resolution of complaints; and (iii) recommending improvements to the contracting process based on vendor inquiries and complaints.

Vendors do not have an effective means to report negative contracting experiences

The Virginia Public Procurement Act establishes a formal complaint process for vendors, but many vendors either are unaware that they can file complaints or underutilize the process. Because the complaint process is used infrequently, it does not serve as an effective check on agencies' contracting practices. As structured, the process allows vendors to

- appeal agency decisions that adversely affect the ability of the vendor to be considered for or awarded a contract and
- seek financial or other relief for problems experienced during the contract.

VITA's formal complaint process is stipulated in the agency's own contracts, according to VITA staff.

Data on vendor complaints was collected by JLARC staff through a data request to 22 state agencies with a high volume of contracting activity: over 7,000 active contracts as of FY15.

The state has no central repository of vendor complaints; data used for this study represents only a small proportion of complaints filed by vendors against state agencies.

(See Appendix B for more information.)

“There’s no consistency across agencies in how they implement their complaint process.”

“For example, [Agency X] has changed rules constantly. [Agency Y] also works differently, even though [both perform similar public functions].”

— Vendors

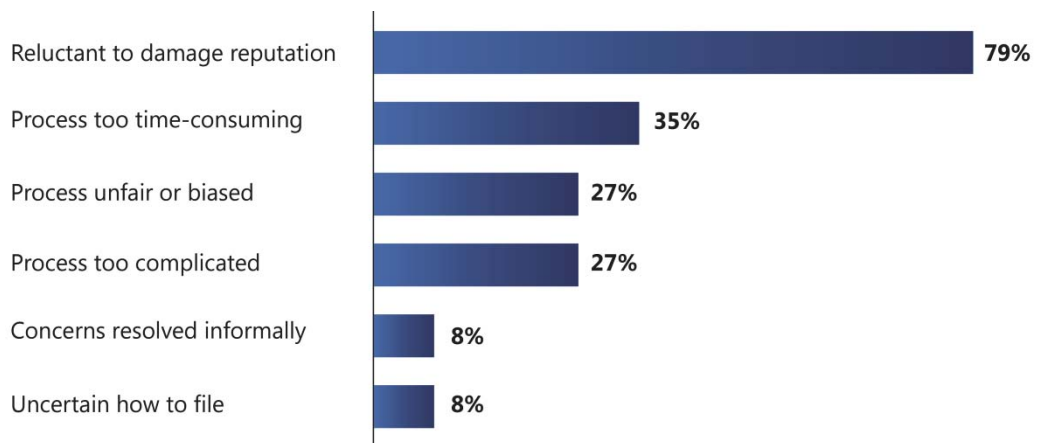
Complaints related to the procurement process are submitted to the agency issuing the solicitation, and procurement staff evaluate and make a determination about the validity of the complaints. Complaints related to ongoing contracts are submitted to DGS or VITA. State policy manuals do not specify who is responsible for evaluating or responding to complaints.

Vendors appear to file complaints infrequently. Agencies that have the highest volumes of contracting activity reported that vendors had filed 80 complaints since FY12 (sidebar). Only two percent of vendors responding to JLARC’s survey indicated that they had ever filed a complaint.

Vendors are reluctant to use the state’s complaint process

Many vendors who have difficulties during the contracting process do not bring their concerns to the attention of state agencies. Among vendors who were aware of the state’s complaint procedures, almost one-fifth indicated that they had decided not to file a complaint, even though doing so seemed warranted. A majority of these vendors pointed to a reluctance to damage their reputation with the state, while many other vendors were critical of the process itself (Figure 6-2).

FIGURE 6-2
Vendors cited various reasons for not using the complaint process



SOURCE: JLARC survey of vendors contracting with the state, 2015.

NOTE: Analysis limited to 149 vendors who (1) were aware that the state had a complaint process, (2) had not used the process (during procurement or contract administration), and (3) cited reasons for not using the process.

Vendors are unaware of, or confused by, the complaint process

The state does not ensure that vendors are aware of the complaint process or know how to use it, which limits its effectiveness as a means to identify and track problems in state contracting. Half of vendors responding to JLARC’s survey were unaware that the state has a process for vendors to file formal complaints.

Even when vendors know that a complaint process exists, they are often confused about how it works. Existing state policies lack sufficient information, and they are contradictory or confusing for certain aspects of the process. Policies on complaints related to procurement focus on the timeline that should be followed, but there is little guidance about what information vendors should submit and how agencies should respond. Policies on complaints related to ongoing contracts provide even less guidance (Table 6-1).

Table 6-1
State provides little guidance to vendors on filing complaints about ongoing contracts against agencies

Action	Guidance on procurement process complaints	Guidance on ongoing contract complaints
Vendor files complaint	✓	✓
Agency evaluates complaint	✓	✗
Agency issues decision	✓	✗
Vendor exercises options for appeal or legal action	✓	✗

SOURCE: Virginia Public Procurement Act; Agency Procurement and Surplus Property Manual; Vendors Manual.

For example, state policy

- states that vendors may file complaints “to communicate any non-compliance issues” but does not provide further information on what actions should be taken by vendors or agencies;
- does not provide information on where to obtain the complaint form or how to send the form to DGS; and
- is unclear about which agency—a central procurement agency or the issuing agency—is responsible for handling different types of complaints.

Guidance on the appeals process for complaints is also confusing. The Virginia Public Procurement Act notes that appeals hearings must be held before a disinterested party, who shall not be an employee of the entity against whom the complaint is filed. Neither statute nor policy specifies who this party should be, however. The state had a neutral administrative board to hear appeals regarding the procurement of non-information technology goods, but it was disbanded in 2011 due to low utilization.

Central procurement agencies should take steps to improve vendor awareness and understanding of the complaint process. DGS could also improve accessibility by including a template of the complaint form in the Vendors Manual.

“The appeals board used to serve the role of liaison between vendors and agencies, but in its absence, vendors have no recourse if they disagree with an agency’s final resolution [of a complaint], other than to go to court.”

— Staff
 Central procurement agency

Vendors expressed dissatisfaction with complaint process

Vendors who filed complaints with the state are dissatisfied for a number of reasons with the current process for resolving complaints. A majority of vendors surveyed who had filed a complaint (60 percent) were not at all satisfied with how their complaints were handled. Most vendor dissatisfaction seems to be related to perceived unfairness, insufficient guidance, slow response, or lack of transparency. Several vendors indicated that, as a result, they would be reluctant to file complaints in the future.

Concerns about partiality and lack of objectivity

Some vendors expressed concern that their complaints would not be handled in a neutral or objective way and indicated that this was one reason they might hesitate to file a complaint. The biggest concern was lack of objectivity: half of vendors were less than satisfied with the impartiality of agency decisions. In one case, a vendor observed that agency staff did not handle a complaint objectively because they wanted to avoid creating problems with the procurement.

Frustration with the process and concerns about lack of explanations

Vendors who filed complaints noted that insufficient information was conveyed through agency decisions. One-third of vendors who indicated that they were less than satisfied with how their complaints were handled were dissatisfied because of the lack of a clear explanation for agency decisions. Agencies do not have guidance on how to review and respond to vendor complaints. No policy manual provides guidance on how agencies should evaluate most types of vendor complaints or how much information agencies should provide to vendors when responding to complaints. State training programs also do not provide guidance.

Some vendors who filed complaints were less than satisfied with the length of time it took agencies to respond. Almost one-third of these vendors (30 percent) indicated that agencies either took too long to respond or did not respond at all. The state has clear guidelines in place regarding the promptness of agencies' responses to vendor complaints. Neither central procurement agencies nor individual agencies evaluate the promptness of responses, however, so there is no data to show whether agencies are in compliance. To enhance transparency, agencies could make sure that vendors are aware of the time standards as the agency is developing responses to complaints.

Improving the way in which agencies respond to vendor complaints could both address vendor concerns about the lack of transparency in the process and help agencies reach objective decisions. The National Association of State Procurement Officials provides guidance on what should be included in decisions regarding procurement-related complaints. These guidelines could be used as a framework to update Virginia's process. The Association recommends that agencies' written responses to vendor complaints include a facts section that "explicitly makes findings on relevant facts" and a discussion section that "relates the facts to the procurement rules ... at issue." The Association also recommends that agencies plainly state a decision and the remedy

"I'd suggest providing vendors with information on the complaint procedure—I thought several times during the contracting process that I wished we small non-profits had an ombudsman to assist us, as it is difficult to complain about the folks that are deciding the future of your contract."

— Vendor

if the vendor's complaint is sustained. The state's current complaint processes should reflect these national best practices.

RECOMMENDATION 25

The Department of General Services and Virginia Information Technologies Agency should modify their statewide procurement policy manuals to state that agencies should include complaint procedures in each contract and with all written notifications of agency decisions that are not in a vendor's favor. Their statewide procurement policy manuals should be modified to include (i) guidance for agencies on the type and level of detail to include in their responses to vendor complaints and (ii) a detailed description of the process to be followed when vendors file complaints about ongoing contracts.

7 Oversight and Administration of State Agency Contracting

SUMMARY Although agencies do not consistently apply effective contract management practices, they often procure and manage contracts without the involvement of the state’s central procurement agencies, the Department of General Services (DGS) and the Virginia Information Technologies Agency (VITA). DGS and VITA provide some oversight, but the focus is primarily on the procurement of contracts rather than effective contract development or administration. Further, oversight is focused only on a subset of state contracts. Despite the billions of public dollars budgeted by agencies for goods and services purchased through contracts, it is not possible to determine how much is ultimately spent on contracts and how those contracts have performed. Statutory changes could improve the effectiveness of contracting oversight and create a means for all agencies to track contract spending and performance.

The decentralized nature of contracting in Virginia underscores the importance of effective oversight by the state’s central procurement agencies and the need for more information about contract spending and performance. Effective oversight would help ensure that recommended or required contracting practices are being applied consistently. Effective oversight could be supported by having greater information on how contracts are performing, as well as how much agencies are spending on them.

Limited oversight of contracting increases likelihood that problems will occur

DGS and VITA have the authority to conduct contracting activities on behalf of agencies, but in most cases they have given agencies permission to conduct contracting on their own. DGS and VITA still exercise oversight over agencies’ contracting activities, but this oversight is focused on relatively few contracts and does not concentrate on certain aspects of contracting that pose significant risk to the state.

DGS oversight is too limited

The Policy, Consulting, and Review Bureau within the DGS Division of Purchases and Supply is responsible for overseeing agencies’ goods and non-professional services contracting, but its oversight is too narrowly focused. The Bureau performs Procurement Management Reviews to evaluate whether procurement activities align with state statutes and policies, and it issues formal findings regarding agencies’ compliance with state policy and their use of effective procurement practices. These reviews are relatively infrequent and do not appear to focus on contract development or administration.

Procurement Management Reviews

According to DGS staff, agencies should undergo a Procurement Management Review once every three years, but the Policy, Consulting, and Review Bureau performs them less frequently. Some of the agencies that have the largest number of contracts, or contracts with comparatively high dollar values, do not appear to have undergone a recent review. These include the Department of Medical Assistance Services (DMAS), the Department of Corrections (DOC), Virginia State Police, and the Department of Education.

DGS could use more risk-based criteria when prioritizing which agencies receive a formal review. For example, although DMAS, DOC, and Virginia State Police have not been reviewed in 10 years or more, DGS staff did not list these agencies as being among those planned for review in FY16. However, smaller agencies and individual correctional facilities and community colleges, as well as one state commission and a foundation, are scheduled for review. Agencies could be selected based on frequent use of high-value contracts; frequent use of IT, construction, or services contracts; and frequent use of sole source procurements.

Procurement Management Reviews are the primary means by which DGS ensures that agencies comply with state procurement laws and policies, and that they implement best practices regarding the procurement of contracts. DGS should ensure that certain agencies undergo contract management reviews at least once every three years and that risk-based criteria are used to select agencies for review.

RECOMMENDATION 26

The Department of General Services should prioritize for Procurement Management Reviews agencies that frequently use (i) high-value contracts; (ii) IT, construction, or services contracts; and (iii) sole source procurements. The department should ensure that agencies identified as high priority are reviewed at least once every three years.

Procurement Management Reviews are not focused on those aspects of contracting that agencies struggle with the most and that present the greatest risk to the state. The reviews focus exclusively on the procurement phase of contracting, and they tend to concentrate on small procurements, such as those using the state's small purchase charge card and those set aside for small businesses. Reviews also focus on ensuring that agencies comply with DGS requirements for the use of eVA.

Procurement Management Reviews focus on goods and non-professional services contracts and do not examine the procurement or management of professional services contracts or construction contracts, even though a large majority of contract spending is for these types of contracts. Most contract purchases, in terms of dollars, are for construction and professional services. (See Chapter 1.) Professional services contracts and construction contracts are governed by the Division of Engineering and Buildings, a division of DGS. Contracting practices for these types of contracts should

Exceptions to DGS and VITA policies

DGS and VITA develop and enforce statewide contracting policies applicable to most agencies. Exceptions include road design and construction contracts, which are solely under VDOT's purview, and agencies and institutions that are exempt from the VPPA, including agencies in the legislative and judicial branches and several institutions of higher education.

be subject to Procurement Management Reviews by the Policy, Consulting, and Review Bureau, particularly for those agencies that procure a large number of such contracts.

DGS role in reviewing agencies' contracting practices

DGS could better protect the state's interests by broadening its focus to include reviews of other aspects of contracting. In particular, it should concentrate on assisting agencies with contract development and contract administration and include these stages of contracting in its Procurement Management Reviews. DGS could focus on ensuring that agencies implement the contracting policies and practices recommended throughout this report, in particular:

- the implementation of policies to strategically assign the most complex or high-risk contracts to experienced and trained contract administrators and sufficiently orient them to the provisions of their contracts;
- the use of effective tools for contract monitoring and enforcement;
- the use of a single repository of information on all contracts that is used to track contract performance; and
- the implementation of a policy for consistently identifying and managing contract-related risks and ensuring that contracts contain appropriate enforcement mechanisms in addition to the termination clause.

DGS could also focus on ensuring that agencies are using best practices for the procurement and management of professional services and construction contracts. According to DGS staff, the agency does not have the authority to enforce compliance with state laws and policies for these aspects of contracting. Without a statutory change to grant DGS this authority, DGS would only be able to advise agencies on the use of best practices, rather than enforce compliance with state statutes and regulations.

Better coordination with the Auditor of Public Accounts (APA) could help the Policy, Consulting, and Review Bureau place a higher priority on agencies' contract development and administration practices. Currently, DGS's Procurement Management Reviews focus on some of the same procurement practices that are reviewed by the APA, including ensuring that agencies are using appropriate procurement methods for their purchases and that contract administration duties are assigned in writing. DGS staff who are currently reviewing the same aspects of contracting as the APA could refocus their time on contracting elements that are not the APA's focus. DGS should collaborate with the APA to ensure that the elements of its reviews, and the review schedule, do not unnecessarily duplicate the work performed by the APA staff.

DGS staff have observed that broadening the scope of its responsibilities in this way would be challenging to accomplish with their existing resources. DGS should assess its staffing needs and identify the numbers of new staff that would be needed to broaden the focus of the Policy, Consulting, and Review Bureau. To minimize the number of additional staff that would be needed, DGS should also identify ways in which its current staff could be utilized more efficiently.

RECOMMENDATION 27

The Department of General Services should broaden its focus, and the focus of its Procurement Management Reviews, toward ensuring agency compliance with state laws and policies regarding the development and administration of contracts and implementation of best practices for all aspects of contracting, including professional services and construction contracts. The department should collaborate with the Auditor of Public Accounts (APA) to ensure that the elements of its reviews, and the review schedule, do not unnecessarily duplicate the work of APA staff.

RECOMMENDATION 28

The Department of General Services should identify the number of additional staff needed to effectively assist agencies with the development and administration of contracts and to include these aspects of contracting in their Procurement Management Reviews. The agency should submit a report to the Secretary of Administration, Department of Planning and Budget, and House Appropriations and Senate Finance Committees regarding its additional staffing needs.

VITA does not review adequacy of terms and conditions for some agency IT contracts that are lower cost

VITA is responsible for conducting oversight of agencies' IT contracting activities. For most executive branch agencies, VITA must review and approve IT procurements valued at over \$100,000 at one or more stages. For procurements valued between \$100,000 and \$250,000, agencies request that VITA staff delegate procurement authority to the agency. For procurements above \$250,000 but below \$1 million, agencies request procurement authority, but it has to be granted by VITA's Chief Information Officer (CIO). For procurements valued at \$1 million or more, the VITA CIO must review and approve the agency's Request for Proposals as well as the final contract.

Low-cost IT contracts are not reviewed by subject-matter experts at VITA, although such contracts may create risks for agencies because poorly performing IT systems or equipment could disrupt agency operations. Although the VITA CIO must approve agency IT contracts with an estimated value of \$1 million or greater, most agency IT contracts are valued at less than this amount. In FY15, 84 percent of agencies' IT contracts were valued at less than \$1 million and therefore were not subject to this level of VITA review and approval. (VITA's use of the \$1 million threshold does, however, result in greater scrutiny being applied to contracts that represent about three-fourths of state agencies' spending on IT contracts.)

Contracts valued at less than \$1 million could benefit from VITA's review. When reviewing high-dollar requests for proposals and contracts, VITA ensures that agencies include certain provisions that protect the state, such as clauses that are required under state statute for IT contracts. According to VITA staff, the reviews are intended to identify potential risks, such as security risks to citizens' personal data, by examining the requirements put forth by the agency and the corresponding solution proposed by

the vendor. Applying this same level of scrutiny to contracts under \$1 million could help agencies avoid problematic IT contracts. In one case, an agency has a problematic IT contract valued at less than \$1 million that does not contain penalties or incentives. VITA staff may have recommended the inclusion of such provisions, and some problems might have been prevented if the vendor had an incentive to be more responsive to the agency's requests.

VITA already reviews agency requests for IT procurements valued between \$250,000 and \$1 million, and VITA could use that process to flag contracts that could benefit from a follow-up review. For example, if an agency proposes to procure a low-cost IT service that it has never used before, VITA staff—during their review of the procurement proposal—could require that the agency submit the contract to VITA for additional review of the provisions before the contract is finalized. Because this could require staff in VITA's procurement division, as well as other divisions, to review more contracts than has historically been the case, VITA should retain the flexibility to implement this new process in a way that minimizes demands on staff time and other resources.

Many agencies expressed frustration at the amount of time VITA procurement and contract reviews have taken, and that VITA staff are not sufficiently communicative during these reviews. However, it appears that recent changes to VITA's process could alleviate these concerns. For example, VITA transferred responsibility for reviewing agency procurement requests to a new part of the agency to improve efficiency and implemented an automated electronic process (Sharepoint) to facilitate information sharing among staff. VITA staff should make sure that the new processes expedite reviews of procurements and contracts and improve communication between VITA and individual agencies.

RECOMMENDATION 29

The Virginia Information Technologies Agency (VITA) should identify, in its reviews of IT procurement proposals by agencies, procurements that appear to be high risk, regardless of dollar value. VITA should require that all contracts associated with these high-risk procurements be submitted to VITA for review before they are finalized. VITA's reviews should focus on ensuring that the contract provisions adequately protect the interests of the agency and the state.

Lack of spending and performance information hinders ability to maximize value and minimize risk

Despite significant agency spending on contracts, the state has incomplete and fragmented information on the most basic aspects of state contracts, such as expenditures and performance. This is true at both the central level, in terms of information available from DGS and VITA, and at the individual agency level. The existing data, which is incomplete and not centrally compiled, includes information captured through eVA

and the APA's Datapoint database, procurement reviews conducted by the APA, DGS, and VITA, and procurement-related reports produced by the internal audit staff of larger agencies. None of these data sources provides a complete, accurate picture of basic information such as how many contracts agencies are administering, the total projected dollar value of the contracts, or the total amount that agencies have spent against these contracts.

This basic information about contracting should be consistently collected across all agencies and institutions to ensure optimal transparency regarding the use of public funds and to obtain a better understanding of how contracts are used by state agencies. A better understanding of how funds are being spent could help the state maximize the value of its contracts. Likewise, a more complete awareness of how contracts are performing can help agencies minimize the risks that the state is exposed to through poor contract performance. Moreover, comprehensive information about both contract spending and performance could help policy makers determine whether some functions could be more efficiently and effectively performed by agencies themselves rather than through contracts.

Existing data on contract expenditures is not comprehensive

It is not currently possible to identify how much state agencies have spent on contracts through either the state's financial management system, Cardinal, or the state's e-procurement system, eVA. Complete and accurate information on spending could be used to evaluate how much is being spent on high-risk contracts and whether some agencies manage to spend less than other agencies on contracts for the same good or service. It could also be used to identify contracts for which agencies have spent more than they originally committed. Cardinal does not link agency expenditures on goods and services directly to the contracts from which these goods and services are purchased, and eVA captures only the amount that an agency plans to spend on a contract over its duration, not how much has actually been spent in a given year. Moreover, eVA data is not comprehensive because some agencies do not consistently use eVA to procure contracts.

In 2014, the General Assembly required DGS and the Department of Accounts to integrate eVA with Cardinal by 2017. Both departments are working on integration of the two systems, which will allow agency expenditures to be linked to specific contracts. The APA has observed that many of the agencies and higher education institutions that use Cardinal do not use eVA, and without participation in eVA by all state entities, integrating the two systems will still not achieve full transparency. To achieve greater transparency, all state agencies and higher education institutions that do not use eVA could be required to report actual expenditures on individual contracts to DGS on an annual basis. DGS could combine this expenditure data with the data on contract-specific expenditures produced by the integration of Cardinal and eVA, and make comprehensive information on all state entities' contract purchases available to

the public. According to DGS, another obstacle to integration is cost, which was projected to exceed \$8 million.

Agencies maintain very little data on contract performance

Compared to data on contract-related expenditures, there is even less data available on how contracts have performed. This lack of information constrains the efforts of individual agencies and state-level decision makers to minimize contract-related risk. It prevents agency staff from avoiding problematic vendors and developing and administering contracts in a way that takes into account previous “lessons learned” at their own agency and at other agencies. It also hinders oversight agencies from identifying and correcting specific policies or practices that are contributing to poor contract performance. Further, the lack of information about contract performance constrains legislators’ ability to become aware of performance problems that arise on high-risk or high-profile contracts, such as the recent contract to widen U.S. Route 460.

Staff from numerous agencies would like to have a centralized resource on contract performance that would inform their contracting decisions. An electronic system could be made available to all agencies to document the performance of contracts and the performance of individual vendors. In addition to capturing data on contracts, the system could be a repository for documentation related to vendor performance, such as cure letters, formal complaints, and end-of-contract evaluations. This could be used by agencies to inform their award decisions and help them avoid vendors with a history of poor performance.

Some agencies already use commercial off-the-shelf software available through a VITA statewide contract for this purpose. eVA could be used for this purpose, but because eVA has been custom-built for the state and therefore may not have the longevity of other systems, it should not be the only option considered.

To collect data, all agencies should be required to track quantifiable, objective measures of contract performance, such as the contract completion time frame relative to the original time frame and the agency’s total expenditures relative to the original budget. The system should be maintained centrally by DGS and accessible to all agency staff with procurement and contract administration responsibilities.

Developing a contract performance system will require time and state resources. For example:

- Identifying relevant, practical, and objective performance criteria will require input from staff at DGS, VITA, selected state agencies, the Office of the Attorney General, the Senate Finance Committee, the House Appropriations Committee, and vendors. Virginia Department of Transportation staff should also be consulted, given the department’s work over the past several years on its own contract performance tracking system.

Other states track contract performance

In 2013, as part of its sweeping procurement reforms, Arizona implemented “vendor performance standards” to guide agencies’ procurement decisions.

In 2015, Texas passed legislation to create a vendor performance tracking system.

In 2015, California announced plans to pilot a program to rate the performance of state IT contractors.

Other governments, including the Colorado, Florida, and Connecticut state governments and the federal government, centrally track vendor performance.

- DGS will have to enhance eVA’s capability to host such a system, or develop a new system to track contract performance separate from eVA.
- DGS and VITA will have to train agency staff on how to measure contract performance, record metrics in the new system, and use the performance data maintained in the system to inform their contracting decisions.
- DGS and VITA will have to inform vendors about the new system, the criteria against which performance will be measured, and how the system will be used by state agencies.
- DGS and VITA will have to review their vendor complaint policies to ensure that the policies are consistent with the new system and that the system does not deter vendors from filing procurement- or contract-related complaints.
- Individual agencies will have to ensure that procurement staff and contract administration staff are aware of and understand the purpose of the system, understand the criteria that are to be tracked, and understand how to measure and record performance.

To minimize the time and resource demands of implementing a system to track contract performance, such an effort could be focused only on high-risk contracts (as defined in Chapter 4). Individual agencies could have the discretion to track the performance of contracts based on other criteria that they choose, and they could be required only to track the performance of high-risk contracts. Consideration could also be given to limiting public access to certain types information, such as performance data. Other states have recently implemented policies to track the performance of state contracts, and their experiences could be used to inform an effective approach in Virginia (sidebar).

RECOMMENDATION 30

The General Assembly may wish to include language in the Appropriation Act to require the Department of General Services, the Virginia Information Technologies Agency, and the Office of the Attorney General to collaborate on the development of a central database to collect information about high-risk state contracts. The information aggregated should be quantifiable, objective, and applicable to all contracts, so that it can be used to track the performance of high-risk contracts. The system would also act as a repository of documentation related to the performance of all vendors. The departments should provide a report to the House Appropriations and the Senate Finance Committees no later than September 1, 2017, that includes recommendations for the design of the system, implementation considerations, and a description of the resources that will be necessary to develop and implement it.

Centralization would remove advantages created by current agency autonomy

Decentralization limits statewide control of the contracting function and allows variation in agency contracting practices. Variation in agency practices can create inefficiencies, constrain competition, create significant legal or financial risks for the state, or even permit unethical practices to go unchecked. Such variation also may complicate the contracting process from the perspective of both agency staff and vendors. Centralizing the contracting function under DGS and VITA could be one means of reducing or eliminating such variation. However, it does not appear that any other states have fully centralized contracting; in fact, decentralized contracting is typical among other states.

There are advantages to decentralization that would be eliminated if DGS and VITA were conducting agencies' contracting activities for them. When an agency is responsible for its own contracting activities, agency procurement staff become familiar with the types of goods and services the agency needs. Procurement staff can use this familiarity to ensure that reputable vendors are aware of contracting opportunities, specifications are sufficiently detailed and clear, and the agency's previous experiences with certain types of contracts or particular vendors are taken into account for future contracts. A more centralized contracting structure would constrain the agency's ability to develop this level of specialization and familiarity. Further, when contracting occurs at the individual agency level, it is more likely that procurement staff will involve the ultimate end users of the goods or services in procurement and contract development decisions. Involving end users helps ensure that contracts sufficiently specify agencies' needs and expectations and that their interests are protected.

Administering contracts at the agency level is also advantageous because an agency's own contract administrators can best evaluate vendor performance according to the needs and expectations of agencies' programs and operations, which are often specific to the agency. Contract administrators are in many cases also the end users of the goods or services being purchased, and their agency-specific knowledge could not be replicated by staff of DGS or VITA.

A key practical consideration when evaluating the advantages and disadvantages of centralization is the demand that contracting places on personnel resources. Contracting requires significant personnel resources because it is a lengthy, multi-phase process that involves numerous staff with different types of expertise and responsibilities. In many cases, individual agencies have greater access to personnel, both in terms of numbers and expertise, than DGS or VITA. Centralizing contracting would require that DGS and VITA greatly increase their staff resources, either through the creation of new positions, sharing existing positions across the two agencies, utilizing staff resources at the state's largest agencies, or some combination of approaches.

Arizona's central oversight of state contracts was established in 2014 through interagency agreements that transferred chief procurement officers from nine agencies to the state's central procurement agency. The purpose of centralization was to improve oversight of state contracting.

Through statewide laws and policies contained in the VPPA and developed by DGS and VITA, the state currently has the tools necessary to ensure that effective contracting practices are consistently employed, even in a decentralized structure. Improving these laws and policies, and enforcing them, would be a more practical and effective means of addressing the current shortcomings in state contracting than centralizing the contracting function. This report's recommendations are designed to improve upon existing laws and policies and to give oversight agencies the information and authority needed to ensure that agencies consistently use effective contracting practices.

Appendix A: Study Mandate

A Resolution of the Joint Legislative Audit and Review Commission directing staff to review the development and management of state contracts.

Authorized by the Commission on September 8, 2014

WHEREAS, state agencies develop and manage contracts across many different areas of government, including transportation, health care, higher education, information technology, and capital construction; and

WHEREAS, the Virginia Public Procurement Act (VPPA) states that, when public bodies obtain goods and services, “competition be sought to the maximum feasible degree, that procurement procedures involve openness and administrative efficiency, . . . that rules governing contract awards be made clear in advance of the competition, . . . [and] that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor”; and

WHEREAS, state agencies have different types of procurement contracts at their disposal, including invitation for bids, request for proposals, sole source contracts, and public-private partnerships; and

WHEREAS, the value of state contracts can be significant, ranging up to billions of dollars per contract; and

WHEREAS, the procurement process is decentralized in Virginia, and state agencies vary in their expertise to develop and manage contracts; and

WHEREAS, improperly developed or managed contracts can result in significant costs to the Commonwealth; and

WHEREAS, other governments and organizations may provide a model for how to improve Virginia’s approach to developing and managing state agency contracts; now, therefore be it

RESOLVED by the Joint Legislative Audit and Review Commission, That staff be directed to review the development and management of state contracts, including contracts awarded under the VPPA, the Restructured Higher Education Financial and Administrative Operations Act, and through public-private partnerships. In conducting its study, staff shall review and assess (i) the adequacy of the state’s oversight and enforcement authority for different areas of procurement and types of contracts; (ii) the appropriateness of procurement methods used by state agencies, including the use of statewide contracts, invitation for bids, request for proposals, and public-private partnerships; (iii) the adequacy of the process and provisions used in contract development to ensure that state agency needs are sufficiently defined, and to ensure contract compliance and performance; (iv) the adequacy of grievance procedures available when state contracts are awarded; (v) the adequacy of state agency contract administration and management processes; (vi) the level of transparency to the General Assembly and public of the potential risks of large state contracts and procurement projects; (vii) the adequacy of the state’s expertise and processes to ensure that its interests are protected and to appropriately limit its risk in large contracts; (viii) the appropriateness of agency exemptions to the VPPA; (ix) the appropriateness and effectiveness of state policies for Small, Women-owned, and Minority-owned businesses; (x) procurement models used by other governments and organizations, including the potential

benefits of more centralized approaches to procurement and contract management; and (xi) any other issues as appropriate.

All agencies of the Commonwealth, including the Department of General Services, Office of Transportation Public-Private Partnerships, Virginia Department of Transportation, Virginia Information Technologies Agency, Department of Medical Assistance Services, and institutions of higher education shall provide assistance, information, and data to the Joint Legislative Audit and Review Commission (JLARC) for this study, upon request. JLARC staff shall have access to all information in the possession of state agencies pursuant to § 30-59 and § 30-69 of the Code of Virginia. No provision of the Code of Virginia shall be interpreted as limiting or restricting JLARC staff's access to information pursuant to its statutory authority.

Appendix B: Research Activities and Methods

Key research activities performed by JLARC staff for this study included

- structured interviews with state agency staff, staff in other states and national contracting organizations, and vendors that have recently contracted with the state;
- surveys of state agency procurement staff and contract administrators, vendors, and procurement staff in other states;
- collection and analysis of data on
 - the dollar value, purpose, and performance of a sample of state agency contracts;
 - procurements conducted by all state agencies and higher education institutions;
 - actions taken by agencies to enforce contracts, including contract terminations;
 - the dollar value of vendors' bids for contracts set aside for small businesses;
 - contract-related agency and vendor complaints; and
 - agencies' use of sole source contracts.
- a review of literature on procurement and contracting best practices;
- a review of contracting program evaluations conducted in other states; and
- a review of documents related to contracting in Virginia as well as other states, including procurement laws and policies, written justifications of sole source procurements, standard required and special contract provisions, materials on procurement and contract administration training, and findings from internal agency audits and audits conducted by the Auditor of Public Accounts.

Structured interviews

Structured interviews were a key research method for this report. Interviews were conducted of state agency staff at the

- Auditor of Public Accounts,
- Department of Accounts,
- Department of General Services,
- Department of Legislative Services,
- Department of Small Business and Supplier Diversity,
- Virginia Information Technologies Agency,
- Office of the Attorney General,
- Office of Public Private Partnerships,
- Office of the Secretary of Transportation,
- Virginia Correctional Enterprises,
- Virginia Institute for the Blind, and
- 14 state agencies and institutions of higher education selected for more in-depth research.

State procurement officers and contract administrators

JLARC staff conducted in-depth interviews with procurement and contract administration staff at 10 state agencies and four higher education institutions. Agencies were selected based on (i) their total dollar commitments to contracts in FY14, (ii) the number of procurement transactions performed in FY14, (iii) their use of complex or “non-standard” procurement methods (such as requests for proposals, sole sources, and emergency procurements), and (iv) important characteristics of their largest contracts. Institutions of higher education were selected based on these factors, as well as comparatively high total procurements of construction contracts in FY14.

At each of the 10 agencies, structured interviews were conducted with the chief procurement officer and other procurement staff. These interviews focused on each agency’s procurement and contract administration policies and practices, their experiences with vendors, and their experiences with problematic contracts. At each of the four higher education institutions, interviews focused on similar topics, as well as the institutions’ experience with different procurement methods for building construction contracts.

At each agency, JLARC staff also conducted interviews with small groups of contract administrators. In some cases, individual contract administrators were interviewed as part of the group as well as individually. These interviews covered the extent of contract administrators’ involvement in the procurement and development of their contracts, actions taken by contract administrators to monitor and enforce contracts, contract administrators’ level of experience with contract administration, and their interactions with vendors.

Other state agency interviews

The structured interviews conducted with other state entities focused on the oversight and assistance available to state agencies from central procurement and other agencies, the history of laws and policies regarding state contracting in Virginia, the availability of data, and the operations of agencies designated as mandatory sources for the purchase of certain goods and services.

Surveys

Four surveys were conducted for this study: (1) a survey of state procurement staff, (2) a survey of state contract administrators, (3) a survey of vendors that have contracted with Virginia state agencies, and (4) a survey of other states about their contracting policies and practices.

State procurement staff

The survey of state procurement staff was administered electronically to all executive, legislative, and judicial branch agencies, and public higher education institutions. The survey was sent to all procurement staff at each agency, including the chief procurement officers, based on a list of staff provided by the Department of General Services. JLARC staff received responses from 370 procurement staff out of 608 (61 percent) representing 130 state agencies (77 percent). Staff received twelve additional responses from procurement staff not on the recipient list, bringing the total number of respondents to 382 procurement staff out of 620 (62 percent) representing 134 agencies.

Topics covered in this survey included: (i) procurement staff’s experience and their participation in and opinions of procurement training courses offered by the Department of General Services, (ii) the

manner in which procurement and contract administration is organized within the agency, (iii) agencies' approaches to the solicitation and development of contracts, (iv) staff's perception of the value of various types of contracts, including statewide contracts, mandatory source contracts, SWaM contracts, and construction contracts, (v) the strategies staff use to monitor contract performance and manage risk, (vi) the extent to which agencies' contracts contain certain risk management and enforcement provisions, and (vii) data on the number and value of contracts and the number of procurement and contract administration staff. Questions about agencies' policies or practices were answered only by chief procurement officers, while questions about staff's perceptions and experiences were answered by all procurement staff.

State contract administrators

The survey of state agency contract administrators was the key method used to obtain performance data about recent or on-going contracts. The survey was administered electronically to 23 executive branch agencies and public four-year higher education institutions. In general, these agencies ranked highest in terms of their contracting activity in FY14. Agencies were selected based on (i) their total dollar commitments to contracts in FY14, (ii) the number of procurement transactions performed in FY14, (iii) their use of complex or "non-standard" procurement methods (such as requests for proposals, sole sources, and emergency procurements), and (iv) important characteristics of their largest contracts.

The survey was sent to the contract administrators at each agency who were responsible for the agencies' highest value contracts. The survey attempted to collect data on a total of 138 contracts valued at \$11.2 billion. Responses were provided for 117 contracts (85 percent) valued at \$8.1 billion (72 percent). In total, JLARC staff received responses from 92 contract administrators.

Topics covered in this survey included: (i) contract administrator experience and training, (ii) the average amount of time spent per week administering the contract, (iii) the number of contract modifications and the reasons for those modifications, (iv) the presence of contract provisions to manage risk and allow for enforcement, (v) contract costs, cost overruns, and the reasons for overruns, (vi) contract duration, schedule delays, and the reasons for delays, (vii) the contract administrator's satisfaction with the vendor's performance and the impacts of poor performance on the agency and the public, and (viii) challenges to effective contract administration.

Vendors

The survey of vendors who have contracted with Virginia state entities was the key method used for obtaining information on vendors' experiences with the state's procurement and contract administration practices. The survey was administered electronically to 19,344 vendors who had had some experience contracting with the state since January 2014, based on data obtained from the Department of General Services. Vendor contact information was obtained through vendor accounts in eVA. In total, JLARC staff received responses from 1,457 vendors (eight percent). Most (90 percent) respondents reported having fewer than 250 employees. Respondents represented a broad range of industries, with the most common being Facility Construction and Maintenance (13 percent), IT (10 percent), and Business Management/Consulting (eight percent).

Topics covered in the survey included: (i) vendors' satisfaction with their experiences contracting with the state, (ii) specific challenges experienced by vendors, (iii) satisfaction with responding to state contract solicitations, (iv) satisfaction with the state's vendor complaint process, and (v) satisfaction with the state's process for SWaM certification.

Other state procurement directors

The survey of procurement directors from other states was used to identify states that could be targeted for phone interviews and more in-depth research. The survey was administered electronically to the individual in each state identified by the National Association of State Procurement Officials as being responsible for that state's procurement function. In total, JLARC staff received responses from 13 state procurement directors (27 percent). Topics addressed in the survey included: (i) states' approaches to monitoring contract performance at the agency level as well as at a centralized level, (ii) states' approaches to contract administration, (iii) state-offered training on contract administration, and (iv) states' use of procurement preference policies. JLARC staff conducted phone interviews with procurement officers in several states based on the responses to this survey.

Data collection and analysis

Several types of data analyses were performed for this study. Staff assessed contracting trends and usage of statewide contracts using eVA data. Staff also collected and analyzed data on the performance of a sample of large state contracts. In addition, staff analyzed the data on bids submitted for small purchases and a sample of contracts procured using competitive sealed bidding. Staff also analyzed data on sole source purchases.

Collection and analysis of data on state agency contracts

In order to manage the scope and workload of the study, JLARC staff had to identify a subset of agencies and higher education institutions to target for in-depth research. Identifying agencies for in-depth research was partially done by analyzing eVA data on agencies' procurements. However, JLARC staff also wanted to identify agencies for in-depth research based on important characteristics of their largest contracts.

Because there is no centralized data on key characteristics of the contracts procured by state agencies, JLARC staff requested data on the largest five contracts held by 23 agencies. (These 23 agencies were selected based on their high volumes of certain types of contracting activity, and are the same 23 agencies described above.) A data collection instrument was designed to collect general information about each agency's contracts as well as specific information on the largest five contracts. General information included (i) agency's number of contracts, (ii) agency's issuance of cure letters, (iii) contract terminations, and (iv) vendor protests, complaints, and claims. Contract-specific information included (i) vendor name, (ii) description of the goods or services purchased, (iii) contract's dollar value, (iv) contract's duration, (v) procurement method for the contract, (vi) changes to the contract, (vii) agency assessment of the contract's complexity, (viii) agency satisfaction with the contract, (ix) particular risks posed by the contract, and (x) contract administrator contact information. JLARC staff used this data to inform its agency selection, interview questions, and subsequent data collection efforts.

Analysis of eVA data (Chapter 1)

In order to provide background information and historical context on the volume of contracting done by the state, JLARC staff obtained eVA data from the Department of General Services on all purchases made by state entities from FY11 to FY15. The data were provided at the purchase order level, and included the vendor name and purchasing state entity, the date of the purchase, the amount of the purchase, and information on the good or service purchased, including NIGP code. All purchases for amounts of zero were dropped from the analysis. A large negative value that was included as a payment from a concession project was also excluded from the total.

In terms of analysis, the data were broken down along several lines. The first and most general analysis was the total volume of contracting in each fiscal year. The second line of analysis broke down purchasing total in each fiscal year by state entity and secretariat. The third looked at purchasing in each fiscal year by NIGP code.

Analysis of statewide contract data (Chapter 1)

JLARC staff obtained data from the Department of General Services on purchase totals for statewide contracts in FY15. These included all statewide contracts for non-IT goods and services. JLARC staff analyzed statewide contract usage by individual state entity and the NIGP code of the goods and services provided through each statewide contract.

Analysis of data on contract performance (Chapter 2)

JLARC staff obtained data on contract performance through a survey of contract administrators, which provided information on 117 contracts at 23 state executive branch agencies and higher education institutions (see contract administrator survey description above). From the total number of contracts that contract administrators had provided information on, JLARC staff identified those that had not performed according to original contract requirements or agency expectations on four measures included in the survey: (1) schedule, (2) cost, (3) specifications, and (4) quality (Table B-1).

To provide additional context about performance outcomes that differed from the requirements or expectations laid out in the original contract, JLARC staff asked contract administrators a series of follow-up questions about the reasons why performance differed from the original contract. Not all contract administrators received or responded to these follow-up questions. The reasons offered as response choices to contract administrators were divided into circumstances that were determined to be “preventable” and those determined to be outside of the control of the agency or the vendor. Contract administrators who pointed to a problem with specifications or quality were not provided with follow-up questions; these performance outcomes were classified as “avoidable circumstances.”

Table B-1
Metrics identifying contract performance that differed from original requirements

Performance metric	Applicable questions	Responses indicating performance differed from original contract	Number of unique contracts	Value of contracts
Schedule	Has the contract's end date been extended, aside from renewals?	Yes	28	\$1.3 billion
	Is the work for this contract on schedule or behind schedule?	Slightly behind schedule, Somewhat behind schedule, Significantly behind schedule	19	\$1.4 billion
	Will the vendor be able to complete all work required by the contract by the contract's scheduled end date?	No	7	\$175.5 million
	Subtotal		38	\$2.4 billion
Cost	As of today, is the cost of the current contract higher than the cost agreed upon in the original contract?	Slightly higher, Somewhat higher, Significantly higher	42	\$4.9 billion
	Ultimately, do you expect the total estimated cost of the contract will be less than, about the same as, or higher than the cost of the original contract?	Higher than the original cost	42	\$5.0 billion
	Subtotal		57	\$5.3 billion
Specifications	How satisfied are you with the vendor's ability to meet the contract's specifications?	Moderately satisfied, Slightly satisfied, Not at all satisfied	22	\$2.0 billion
	Subtotal		22	\$2.0 billion
Quality	How satisfied are you with the quality of goods or services being provided by the vendor?	Moderately satisfied, Slightly satisfied, Not at all satisfied	19	\$2.0 billion
	Subtotal		19	\$2.0 billion
Total			74	\$6.5 billion

Analysis of contract termination data (Chapter 2)

JLARC staff obtained data on contract terminations from 22 of the 23 agencies discussed above. Agency procurement staff were asked to provide basic information on contracts that had been terminated prematurely or cancelled by their agency or by a vendor between July 1, 2011 and June 30, 2015, as well as select a reason for contract termination from a pre-populated list.

Analysis of agency complaint data (Chapter 2)

JLARC staff obtained data from the Department of General Services on formal complaints filed by an executive branch agency and higher education institution against vendors. Complaints are limited to contracts for non-IT goods and services and road construction and may not be comprehensive. The Department of General Services provided data on complaints filed between FY12 and FY15 (partial). Although the Department of General Services categorizes complaints issued by agencies, these categories did not appear to be consistently applied over time or within agencies, which may affect the data presented in Chapter 2.

Analysis of bids submitted for contracts set aside for small businesses (Chapter 3)

JLARC staff obtained data on the bids submitted for all small purchases processed through the eVA Quick Quote system from July 2013 through March 2015. The data included information on the bids submitted by vendors for over 15,000 purchases. Staff cleaned the data to address erroneous bid amounts, dropping all bids that were seven times less than or greater than the winning bid amount. Staff also excluded all purchases with multiple awards.

Three primary analyses were conducted with the small purchase bid data:

- Analysis (1) comparison of the average of bids submitted by small businesses with the average of bids submitted by non-small businesses for each purchase,
- Analysis (2) comparison of the winning bid submitted by small businesses with the lowest bid submitted by a non-small business for each purchase, and
- Analysis (3) comparison of bids submitted by small and non-small businesses for large goods and services contracts procured using competitive sealed bidding.

Staff's analyses were intended to assess the state's small business set aside policy (mandate item ix). Specifically, the first analysis was conducted to determine the extent to which small businesses' prices are more expensive than non-small businesses. The second analysis was conducted to determine the extent to which the state experienced a fiscal impact by awarding purchases to small businesses that cost more under the small business set aside policy. The third analysis was conducted to determine whether, for large purchases, small businesses' prices are comparable to non-small businesses' prices. For these analyses, staff analyzed only purchases that included bids from both small and non-small businesses (7,823 purchases). Small businesses were defined to include those with at least a "small" or "micro" business certification for these analyses. Small businesses could also be women- or minority-owned.

During the period of time that small purchase data were analyzed (July 2013 through March 2015), the state's small business set-aside policy underwent changes that may affect the results of the bid analyses. According to staff from the Department of General Services (DGS), a barrier to competition was removed in November 2014, allowing non-small businesses to compete for set-aside purchases and providing an incentive for their bids to be comparable to other businesses' bids. Prior to the policy change, DGS staff report that competition may have been limited between small and non-small businesses for set-aside purchases, and average bids submitted by non-small businesses may have been artificially low. As a result, differences calculated between small and non-small businesses' bids may be larger prior to the change than they are presently. Further analysis is needed to confirm this trend because staff had access to limited data after the policy change.

Analysis (1):

For the comparison of average bid prices, staff calculated the average of the bids submitted by small businesses and the average of bids submitted by non-small businesses, for each purchase. Staff assessed the difference between the two averages and determined the proportion of purchases for which the average of small businesses was higher than the average of non-small businesses. Among these purchases, staff then determined how much higher small businesses were, on average.

Analysis (2):

For the analysis of winning small business bids, staff identified all purchases that were awarded to a small business under the small business set-aside policy (approximately 4,800 purchases). Staff then calculated the percentage of purchases for which small businesses receiving an award had a higher bid than the lowest non-small businesses. Among these purchases, staff determined how much higher the winning small businesses' bids were, on average. Staff added the amount that the state paid to these small businesses beyond what could have been paid to the lowest non-small business to determine the fiscal impact that the small business set-aside policy had on the state between July 2013 and March 2015.

Analysis (3):

Separate from the analyses conducted on bids submitted for small purchases, JLARC staff collected and analyzed bids submitted for a sample of larger contracts that agencies procured using competitive sealed bidding. Because data on the bids submitted for larger purchases was not available from the Department of General Services, staff sent a data collection instrument to 22 state agencies with varying levels of contracting expenditures and procurements. Staff requested that agencies provide bid amounts for all contracts procured using competitive sealed bidding in FY14 and FY15. In total, staff received information on approximately 120 contracts that had bids from both small and non-small businesses.

Staff performed two key calculations with the bid data collected from agencies. Staff compared the average of small businesses' bids with the average of non-small businesses' bids for each purchase that received both types of bids. Staff found that the average of small businesses' bids was lower for the majority (68 percent) of purchases. Staff also determined the percentage of purchases that were awarded to small businesses instead of non-small businesses. Staff found that 71 percent of purchases that received both types of bids were awarded to small businesses. These small businesses had the lowest bid as required by state policy for contracts procured using competitive sealed bidding.

Analysis of sole source data (Chapter 3)

JLARC staff obtained data on all sole source procurements processed through the eVA eMall system for FY14. JLARC staff assessed sole source procurements categorized as "sole source," "sole source-exempt," and "technology-sole source." JLARC staff analyzed the number and value of sole source procurements conducted by all state agencies and public higher education institutions. Staff then calculated the total sole source procurement count and value across all entities. Staff also determined which entities were responsible for the largest portion of sole source procurements.

Analysis of data on higher education construction procurements (Chapter 3)

JLARC staff collected data on building construction contracts procured by four different institutions of higher education. The purpose of this data collection effort was to examine the criteria institutions have used in evaluating vendors' proposals for building construction contracts, to compare the number and impact of change orders made between design-bid-build, design-build, and construction-manager-at-risk contracts, and to compare the number and magnitude of schedule delays and cost

overruns between these three types of contracts. From the four institutions, staff collected information on 28 different projects (11 construction manager, 13 design-bid build, and one design-build). (A summary of the analysis is included in Appendix D.)

Analysis of vendor complaint data (Chapter 6)

JLARC obtained data on formal complaints filed by vendors against state agencies from two sources: the Department of General Services and JLARC's survey of vendors. Data on complaints from the Department of General Services are limited to contracts for non-IT goods and services and road construction. The Department of General Services provided data on complaints filed between FY12 and FY15 (partial). JLARC's survey of vendors asked vendors to report whether their business had ever filed a complaint during the procurement process or during the course of a contract.

Research into other states

Interviews with staff from national associations and procurement officers and contract administrators in other states were conducted to better understand current trends and innovations in contracting policies and practices, and to report on promising contracting practices in other states. Staff interviewed the Director of Strategic Programs at the National Association of State Procurement Officials, who provided insight into current standards and developments in state procurement practices and recommended other states to contact for more in-depth interviews.

Procurement and contract administration staff from Arizona, Colorado, Maryland, Nebraska, North Carolina, South Carolina, and Tennessee were also interviewed. All states were recommended for interviews because of the strengths of their procurement and contract administration policies, or because they had recently undergone an extensive evaluation. Colorado was of particular value to contact because of their advanced and well-developed contract oversight and contract management practices. North Carolina provided a good model for developing contract management training practices. Arizona also provided an effective model for the oversight of mandatory sources. Each of these areas had been identified by JLARC staff as being of particular interest in its research.

Document and literature review

Numerous documents and literature pertaining to contracting were reviewed throughout the course of the study, such as:

- prior studies and reports on state contracting, such as the interim (2013) and final (2014) reports of the Special Joint General Laws Subcommittee Studying the Virginia Public Procurement Act;
- state laws, including the Virginia Public Procurement Act, the Public-Private Education Facilities and Infrastructure Act, and the Public-Private Transportation Act;
- state policy manuals, including the Agency Procurement and Surplus Property Manual, the Construction Professional Services Manual, the Buy IT Manual, and the Vendors Manual;
- contract provision language from Appendix B of the Agency Procurement and Surplus Property Manual, forms CO-3a, CO-7, CO-7DB, and CO-7CM from the Department of General Services' Division of Engineering and Building website, and the "core contractual

terms,” “required eVA terms and conditions,” and “VITA minimum contractual requirements for major technology projects” documents on VITA’s website;

- findings from audits conducted by the Auditor of Public Accounts and the Department of General Services’ Policy Consulting and Review Bureau related to sole source procurements and other contracting activities undertaken by agencies;
- a sample of sole source justifications from the Department of Forensic Science and Department of Medical Assistance Services;
- training course materials for the state’s Virginia Contracting Associate certification course, Virginia Contracting Officer certification course, Contract Management course, Basic IT Procurement course, and Virginia Construction Contracting Officer certification course; and
- literature on best practices from the National Association of State Procurement Officials, National Contract Management Association, National Contract Management Journal, and the states of Florida, Georgia, North Carolina, and Texas.

Appendix C: Characteristics of contracts analyzed for this study

JLARC staff surveyed contract administrators at 23 agencies. Contract administrators were generally responsible for one or more of their agencies' highest value contracts and were asked about various topics, including contract performance and contract provisions. 92 agency staff provided information on 117 contracts valued at \$8.1 billion.

Table C-1 summarizes the key characteristics of the contracts for which contract administrators reported data. The contracts are grouped by type ("other" services, construction services, IT services, goods, or goods and services) and ordered by dollar value. Each column represents a characteristic of the contract, and an "X" indicates that the contract *did not* exhibit the characteristic. For example, a contract with an "X" in the "On schedule" column indicates that that contract was delayed at the time the data were collected. Blanks indicate that the contract *did* exhibit the characteristic.

TABLE C-1
Characteristics of contracts analyzed for this study

Total dollar value (\$M)	Duration (years)	On schedule	On budget	Specifies monitoring methods	Includes performance measures	Includes penalties or incentives	Includes termination clause
900.0	6.0	X					
569.8	11.7		X				X
435.6	1.0					X	
250.0	11.1						
131.8	5.0		X	X			
81.9	1.0						
81.7	5.0						X
74.1	2.4		X	X	X	X	X
72.8	3.4		X				X
61.0	11.8					X	X
42.3	4.0				X	X	X
39.4	5.0	X					
26.0	7.0		X				
15.8	4.1				X	X	
14.4	5.0				X		X
13.7	na		X				
11.5	1.1	X	X				
11.2	2.0	X	X	X	X	X	
7.7	3.0				X	X	
7.2	9.0	X			X	X	
6.8	6.0	X				X	
6.5	4.0					X	X
6.0	na			X	X	X	X
6.0	5.1						X
5.2	2.0					X	

Other services
(excludes IT, construction)
38 contracts

Total dollar value (\$M)	Duration (years)	On schedule	On budget	Specifies monitoring methods	Includes performance measures	Includes penalties or incentives	Includes termination clause
4.1	2.7			X	X	X	
3.0	5.5	X				X	
0.7	3.0				X	X	X
0.6	4.0				X	X	X
0.6	3.0				X	X	X
0.5	3.0					X	
0.5	10.0					X	X
0.4	1.9					X	X
0.4	0.5					X	
0.3	1.0					X	
0.2	0.8					X	
0.2	0.4			X		X	X
0.1	1.8	X			X	X	X
579.6	58.4		X				
464.0	5.1		X				
378.2	14.6	X	X			X	
247.6	5.4		X				
206.8	14.1	X	X				
137.5	2.7		X				
118.4	3.2	X	X				
105.0	2.8		X	X	X		
95.0	3.3	X	X				
95.0	na	X	X		X	X	
84.4	na	X	X				
72.0	na	X	X		X		

Other services
continued

Construction services
50 contracts

Total dollar value (\$M)	Duration (years)	On schedule	On budget	Specifies monitoring methods	Includes performance measures	Includes penalties or incentives	Includes termination clause
44.8	2.9		X			X	
31.5	1.4	X	X			X	
26.0	0.9	X	X			X	
25.0	0.0	X	X			X	
25.0	1.8		X			X	
23.9	3.0	X	X			X	
18.4	1.2		X	X	X	X	X
18.2	1.7	X	X			X	
13.2	3.3						
11.1	4.5					X	
11.0	4.6			X	X	X	X
10.5	1.7	X	X				X
10.5	3.7					X	X
6.0	1.1	X	X			X	
5.0	2.0	X	X		X	X	X
4.7	2.0		X		X	X	X
4.4	2.0		X		X	X	X
3.2	7.0					X	
3.0	7.1					X	X
2.2	5.0					X	
1.6	na			X	X	X	X
1.4	1.0	X	X			X	
1.0	2.0					X	
1.0	3.0			X	X	X	X
0.9	4.0				X	X	

Construction services
continued

Total dollar value (\$M)	Duration (years)	On schedule	On budget	Specifies monitoring methods	Includes performance measures	Includes penalties or incentives	Includes termination clause
0.8	1.0		X			X	
0.8	1.0		X			X	
0.6	2.0	X	X			X	
0.5	0.4	X	X			X	
0.4	1.6	X				X	
0.3	1.2	X	X			X	
0.3	0.3		X			X	
0.3	0.3	X	X			X	
0.3	0.5		X			X	
0.3	3.0	X	X	X	X	X	
0.3	0.5		X			X	
0.2	0.2		X			X	
0.1	0.4		X			X	
390.0	5.0		X			X	
367.5	8.0		X				
256.1	2.0					X	X
107.0	5.0	X	X				
35.0	6.0			X	X	X	
28.1	7.7		X		X	X	
21.0	6.0			X	X	X	
17.0	5.0	X			X	X	X
10.7	4.1		X	X	X	X	X
8.6	4.1		X	X		X	X
8.0	na					X	X
2.2	4.9	X		X	X	X	X

Construction services
continued

IT services
14 contracts

	Total dollar value (\$M)	Duration (years)	On schedule	On budget	Specifies monitoring methods	Includes performance measures	Includes penalties or incentives	Includes termination clause
	0.9	2.1	X					X
	0.3	2.5	X			X	X	
	485.0	14.7		X			X	
	186.9	10.2				X	X	X
Goods	108.7	3.0					X	X
6 contracts	95.0	10.0		X			X	X
	34.0	9.4				X	X	X
	5.0	14.2					X	
	61.0	10.0	X	X			X	X
	41.8	5.2		X				X
	35.9	5.8						X
Goods and services	15.0	4.0						
9 contracts	8.5	5.4	X		X	X	X	X
	4.9	4.0						X
	2.9	4.0			X	X	X	
	1.1	4.0			X	X	X	
	0.9	na			X	X	X	X
	\$8,120.8	4.1	X = 38	X = 57	X = 21	X = 38	X = 85	X = 44
		(average)						

SOURCE: JLARC staff analysis of a survey of state agency contract administrators, 2015.

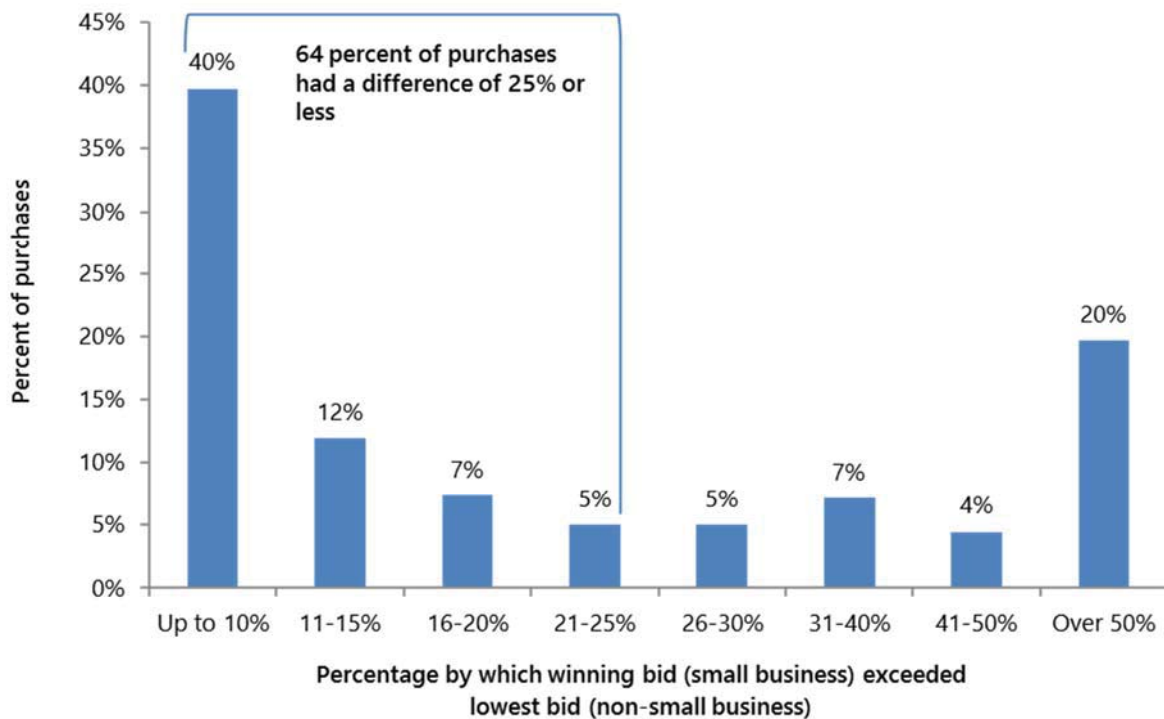
NOTE: Numbers may not add due to rounding. "X" indicates that a contract did not exhibit the characteristic presented in each column. "na" indicates that the information was not provided by the contract administrator.

Appendix D: “Fair and reasonable” formula

To consistently determine when purchases from small businesses under the small business set-aside can be considered “fair and reasonable,” agencies will need to establish a formula that only permits purchases from small businesses when their bids are within a specific percentage or dollar value (whichever is lower) of the lowest bid submitted by a responsive and responsible non-small business. The percentage selected for the formula should be a lower bound that specifies the maximum possible percent difference between the winning small business’s bid and the lowest non-small business’s bid. The dollar value selected for the formula should be an upper bound that specifies the maximum dollar difference between the winning small business’s bid and the lowest non-small business’s bid. If agencies are permitted to develop their own formulas, they will be better able to account for the size and nature of their purchases. For example, a formula that does not allow agencies to spend more than \$500 more than bids by non-small businesses may not be appropriate for agencies that routinely make high dollar value purchases. The figures below provide several data points to help agencies select percentage and dollar values for their formulas (Figures D-1, D-2, and D-3). These figures are based on approximately 2,000 purchases made by Virginia state agencies under the small business set-aside from July 2013 through March 2015.

FIGURE D-1

Percent of purchases for which agencies spent more with small businesses than they otherwise would have, by size of percent difference



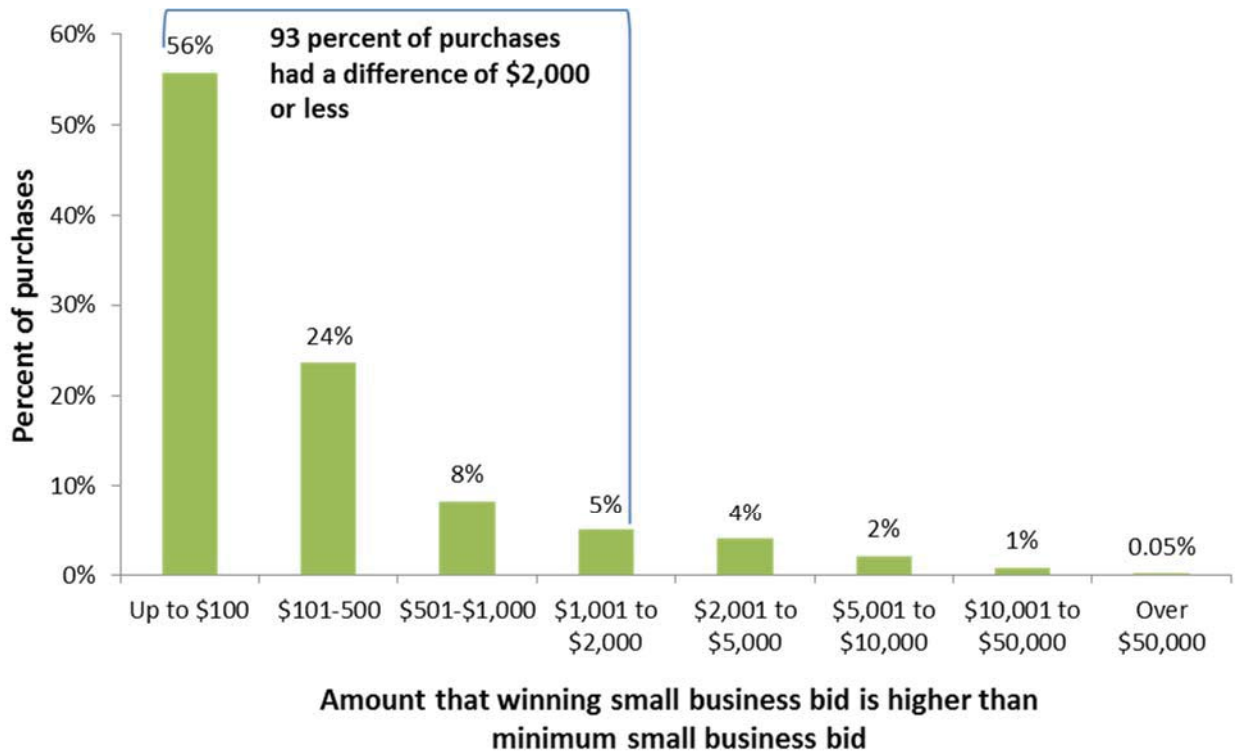
SOURCE: JLARC staff analysis of purchases processed through Quick Quote from July 2013 through March 2015.

NOTE: Based on 2,015 purchases that agencies awarded to small businesses where the small business had a bid that was higher than the lowest non-small business.

Figure D-1 provides data on the percent of purchases for which agencies spent more with small businesses than they otherwise would have, broken down by different sizes of percent difference. For example, the first bar shows that 40 percent of agencies' purchases from small businesses under the small business set-aside cost up to 10 percent more than what they could have spent with non-small businesses.

Figure D-2 provides data on the percent of purchases for which agencies spent more with small businesses than they otherwise would have, broken down by different sizes of differences reported in dollars. For example, the first bar shows that 56 percent of agencies' purchases from small businesses under the small business set-aside cost up to \$100 more than what they could have spent with non-small businesses.

FIGURE D-2
Percent of purchases for which agencies spent more with small businesses than they otherwise would have, by size of dollar difference

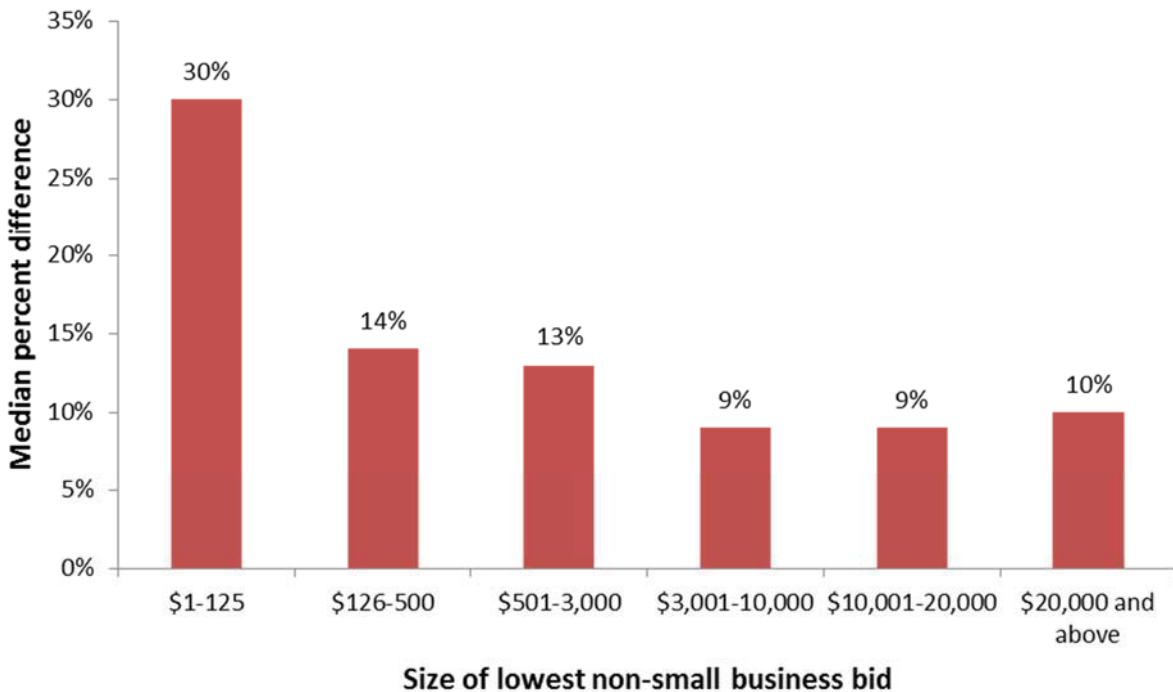


SOURCE: JLARC staff analysis of purchases processed through Quick Quote from July 2013 through March 2015.

NOTE: Based on 2,015 purchases that agencies awarded to small businesses where the small business had a bid that was higher than the lowest non-small business.

Figure D-3 provides data on the median percent difference between the bid submitted by a small business that the state selected for an award and the lowest bid submitted by a non-small business, broken down by different sizes of purchases. For example, the first bar shows that the winning small business's bid was 30 percent higher (as a median) than the lowest non-small business's bid on purchases valued between \$1 and \$125. The last bar shows that, for the largest purchases, the winning small business's bid was 10 percent higher (as a median) than the lowest non-small business's bid.

FIGURE D-3
Median percent difference between winning small business's bid and lowest non-small business's bid, by size of purchase



SOURCE: JLARC staff analysis of purchases processed through Quick Quote from July 2013 through March 2015.

NOTE: The size of purchases was determined using the lowest bid submitted by a non-small business. Based on 2,015 purchases that agencies awarded to small businesses where the small business had a bid that was higher than the lowest non-small business.

Appendix E: Construction project delivery methods

All contracting methods for construction projects present advantages and disadvantages, including the amount of competition generated among contractors. The Code of Virginia permits agencies to choose from several contracting methods for construction projects, and the primary methods used by state agencies and higher education institutions are design-bid-build, design-build, and construction-manager-at-risk (Table E-1). Design-bid-build is the default method, and agencies and institutions are required to obtain approval from the Department of General Services (DGS) to use either construction-manager-at-risk or design-build as alternatives. (Several institutions are not required to obtain approval from DGS to use an alternative method, including Virginia Tech, the University of Virginia, William and Mary, Virginia Commonwealth University, Christopher Newport University, James Madison University, and George Mason University.)

JLARC interviewed staff at four universities and collected data on 28 recent construction projects completed by these universities in order to examine the advantages and disadvantages of the three methods. Institutions of higher education tend to be the primary users of alternative methods.

TABLE E-1
Agencies and institutions primarily use three different construction contracting methods

Method	Key elements	Basis of contract award	
		Best quality	Lowest cost
Design-Bid-Build	Phase 1: Hire architect/engineer to design project	✓	
	Phase 2: Hire construction manager, who uses design produced in Phase 1		✓
Design-Build	One firm hired to design and construct the project	✓	
Construction-Manager	Phase 1: Hire architect/engineer and construction manager to collaborate on project design.	✓	
	Phase 2: Hire construction manager to construct the project. May or may not be same construction manager hired in Phase 1.	✓	

SOURCE: Research literature on differences between construction contracting methods.

Institutions use alternative methods for projects of all sizes

According to state policy, methods other than design-bid-build are intended for especially costly projects. The Secretary of Administration's guidelines for the use of the construction-manager-at-risk method states that it should be limited to projects valued over \$10 million. Universities tended to use all three methods for costly projects (Table E-2). However, the average and median cost of projects using alternative methods substantially exceeded the cost of projects that used design-bid-build.

TABLE E-2
Universities used alternative contracting methods for largest projects

Method	Range of costs (\$M)	Average cost (\$M)	Median cost (\$M)
Design-Bid-Build (N=13)	\$0.71 – \$22.1	\$5.6	\$2.6
Design-Build (N=4)	\$1.5 – \$19.1	\$10.5	\$10.6
Construction-Manager (N=11)	\$9.9 – \$66.4	\$32.2	\$31.7

SOURCE: JLARC staff analysis of data provided by institutions of higher education on a sample of construction projects.

NOTE: Costs are calculated based on the original reported contract cost, which differs from the ultimate cost of the contract. Based on 11 construction-manager-at-risk projects, four design-build projects, and 13 design-bid-build projects.

Institutions are generally satisfied with all three project delivery methods

Procurement officers and project managers at state agencies and institutions of higher education expressed comparable levels of satisfaction with all three project delivery methods. Approximately three-quarters of state agency procurement staff who had procured construction contracts expressed satisfaction with both design-bid-build and construction-manager-at-risk. Most procurement staff expressed satisfaction with the quality of design-bid-build projects (78 percent) and construction-manager-at-risk projects (88 percent). Procurement staff were also satisfied generally with the extent to which both types of projects adhered to their original schedules (69 percent for design-bid-build projects and 81 percent for construction-manager-at-risk projects).

In interviews, university procurement staff and project managers did not exhibit a general preference for one method over the others. These staff did note that the use of alternative methods, particularly construction-manager-at-risk, was advantageous for especially complex or time-sensitive projects because the ability to include a general contractor in the initial design, scoping, and scheduling of a project minimized the risk of future change orders or other problems.

All projects deviated from original contract provisions

All 28 projects analyzed performed differently than originally expected, regardless of contracting method. Specifically, at least some of each type of project experienced cost overruns, schedule delays, and change orders.

While cost overruns occurred for all three types of projects, cost overruns as a percent of the original project cost were highest for design-build projects (13 percent), followed by design-bid-build (8.7 percent), and then construction-manager-at-risk (4.2 percent) (Table E-3). In part because those projects tended to be larger, the dollar-value of cost overruns among construction-manager-at-risk projects was approximately twice as high as the additional costs incurred by other types of projects with cost overruns.

Similarly, while schedule delays occurred for all three types of projects, the average length of delays was greatest for design-build projects (75 days), followed by design-bid-build (41 days), and then construction-manager-at-risk (23 days) (Table E-4).

All three categories of projects experienced change orders (Table E-5). The cost of change orders for design-bid-build projects averaged nine percent of the projects' original cost and 4.5 percent for construction-manager-at-risk projects. (Institutions reported change orders for only one of the four design-build projects, which added \$158,000, or one percent, to the project's original cost.)

Project complexity should be considered when evaluating whether to use a method besides design-bid-build

Critics of the design-bid-build construction method assert that projects delivered in this way are more susceptible to schedule delays, cost overruns, and poor-quality products. The contracts in this sample suggest that design-bid-build projects can indeed experience these performance problems, and potentially more so than other methods, and should therefore be procured and managed as effectively as possible. However, these problems are also evident in projects constructed using the design-build and construction-manager-at-risk methods. This suggests that these alternative methods will not allow users to entirely avoid some of the problems that users of design-bid-build projects have experienced.

It does appear that alternative methods may be beneficial for especially complex or time-sensitive construction projects because of the built-in collaboration between the agency, construction manager, and project design team (see Table E-1). This collaboration can help minimize changes and delays on complex projects, such as an academic science building with highly technical laboratory specifications. This collaboration can also help expedite time-sensitive projects that might take longer under the design-bid-build model.

A dollar threshold is not the most effective criteria for deciding which method to use because a project's cost does not necessarily reflect the complexity or time-sensitivity of projects. For example, a low-dollar project could benefit from an alternative contracting method if it is particularly complex. Conversely, a high-dollar project may be relatively simple and could be successful under the traditional design-bid-build method. The Department of General Services could be directed to use specific criteria related to a project's complexity and time-sensitivity, rather than cost, to more accurately gauge a project's risk and the potential benefits of using an alternative construction method. The Department of General Services could also be directed to periodically evaluate how projects under each method perform in relation to schedule, budget, and specifications. Such periodic evaluations would allow the Department to compile data on construction project performance and contribute to a greater understanding of the advantages and disadvantages of the different methods.

TABLE E-3
Cost overruns

Method	Average % of original cost	Median % of original cost	Range (%)
Design-Bid-Build	8.7%	6.5%	(0.5) – 22.7%
Design-Build	13	10	0.9 – 30.9%
Construction-Manager	4.2	2.8	0.9 – 14.8%

SOURCE: JLARC staff analysis of data provided by institutions of higher educations on a sample of construction projects.

NOTE: Costs are calculated based on the original reported contract cost, which differs from the ultimate cost of the contract. Based on 11 construction-manager-at-risk projects, four design-build projects, and 13 design-bid-build projects.

TABLE E-4
Schedule delays

Method	Average days	Median days	Range (days)
Design-Bid-Build	41	9	(7) – 161
Design-Build	76	85	0 – 132
Construction-Manager	23	0	(25) – 155

SOURCE: JLARC staff analysis of data provided by institutions of higher educations on a sample of construction projects.

NOTE: Data on the magnitude of delays were not provided for three of the design-bid-build projects. Based on 11 construction-manager-at-risk projects, four design-build projects, and 10 design-bid-build projects.

TABLE E-5
Change orders

Method	Average % of original cost	Median % of original cost	Range (%)
Design-Bid-Build	9.0	6.9%	(0.5) – 22.7%
Design-Build	n/a	n/a	n/a
Construction-Manager	4.5	2.6	1.2 – 14.8

SOURCE: JLARC staff analysis of data provided by institutions of higher educations on a sample of construction projects.

NOTE: Costs are calculated based on the original reported contract cost, which differs from the ultimate cost of the contract. Institutions reported change orders for only one design-build project, which added \$158,000, or one percent, to the project's original cost. Based on 11 construction-manager-at-risk projects and 13 design-bid-build projects.

Appendix F: VDOT Contracting

JLARC staff completed a series of transportation studies during the late 1990s and early 2000s, several of which reviewed various aspects of the Virginia Department of Transportation (VDOT)'s procurement and contract management processes:

- Review of the Use of Consultants by VDOT (1998)
- Review of Construction Costs and Time Schedules for VA Highway Projects (2000)
- Review of VDOT's Administration of the Interstate Asset Management System (2001)

Through these studies, JLARC staff identified deficiencies with VDOT policies and practices and provided recommendations for improvement. As part of the current contracting study, JLARC staff reviewed the findings from the previous studies to examine how VDOT's contracting processes have changed. Given the statewide focus of this contracting study, JLARC staff chose to limit its research primarily to these prior areas of concern. The material in this Appendix is not a comprehensive review of VDOT's contracting practices.

Research was based primarily on 15 interviews with agency staff in the central office and districts, including several District Construction Engineers, Area Construction Engineers, and project managers, as well as procurement staff and staff with management responsibilities for specific divisions within VDOT. Interviews were supplemented with information provided by 15 VDOT contract administrators on 16 contracts valued at approximately \$4 billion as part of JLARC's survey of contract administrators; information obtained through JLARC's survey of procurement staff (including 33 VDOT staff); and information provided by VDOT management. JLARC staff also used information from VDOT's Dashboard to supplement information provided by contract administrators for several contracts.

While some aspects of VDOT's contracting processes have improved, the targeted review conducted by JLARC staff indicates that some challenges remain, notably in the areas of staffing and contract administration. However, due to the targeted and limited nature of the research, the information presented is not considered formal findings and was not used to develop VDOT-specific recommendations. It is also not possible to determine from this research the extent or impact of any remaining problems with VDOT's contracting practices.

Expertise of VDOT staff is an area of concern

Previous studies identified a loss of in-house design and contract administration expertise within VDOT, due to heavy reliance on consultants to perform key agency functions.

Currently, maintaining a sufficient level of expertise among VDOT staff who administer contracts is still a challenge, and many VDOT functions are carried out by consultants. Interviewed staff estimated that between 50 and 75 percent of inspection, engineering, and design work is currently being handled by consultants. Central office staff indicated that VDOT relies on consultants to supplement the expertise and number of district staff due to a state requirement to maintain a smaller agency workforce than in the past. VDOT staffing levels declined from 10,645 employees in 2001 to approximately 7,500 employees in 2010 in response to direction from the General Assembly, which also placed emphasis on concurrently outsourcing VDOT functions.

Several district and central office staff expressed concerns about the proportion of work being handled by consultants. Most VDOT staff who were interviewed indicated that this reliance on consultants has resulted in a loss of in-house expertise, and it is requiring additional time of VDOT staff to oversee the work of consultants. Some central office staff thought the current quality of VDOT's oversight of design work was sufficient, but still expressed concerns that in a decade, VDOT may not be as well positioned.

A primary concern appears to be that VDOT's current levels of staffing and expertise may not always be sufficient to identify errors in consultants' work. However, interviewed staff did not provide specific examples of problems resulting from problematic design work. VDOT management provided data indicating that design plan errors do occur but are relatively infrequent: during FY15, 2.37 percent of all work orders resulted from plan discrepancies.

Some interviewed staff also identified consultants' level of expertise as an area of concern. VDOT generally awards contracts to consultant firms based on the qualifications of the firms' most experienced staff. However, consultant firms will reportedly supplement their most qualified staff with less qualified or experienced staff. This practice has impacted the workloads of VDOT staff in at least one district. Contractors may also be impacted, as indicated by the following example:

“The only issues we have with the Department primarily lie with field project inspection and management. The Department has contracted the majority of field inspection out to consulting engineering firms. Many of the individuals these firms supply the Department for field inspection are not properly trained or are uneducated in the specific processes and dynamics of our projects. It has caused unnecessary time and overwhelming documentation to overcome some issues.” – Vendor

VDOT staff workload may negatively impact contract oversight

Previous JLARC studies found that VDOT's increasing reliance on consultants had led to contract administrators overseeing an excessive number of contracts. The previous studies identified circumstances where contract performance had been affected by high workloads and found that VDOT staff were not performing monitoring activities frequently enough.

Currently, VDOT contract administrators continue to have high workloads and report having insufficient time to complete needed monitoring activities, due in part to the decrease in agency staffing levels over the past 15 years. VDOT management indicated that the staff with the most expertise are often the staff with the highest workloads.

When asked to describe the most significant contracting challenges faced by VDOT, one staff member responded, “Poor contract administration—there are not enough staff to administer contracts. The contract administrators are spread very thin.” The impact of high workloads and insufficient time is illustrated in the following examples:

- One district construction engineer reported that high workloads have led to insufficient oversight of consultant design work in some cases. District staff are supposed to review the quality of design plans before vendors are asked to bid on a project, but in some cases, staff in his district had only one day to review the designs.

- Two staff reported that they did not believe they had sufficient time to adequately monitor the performance of their contracts because they are responsible for multiple high-value, high-risk contracts. One contract administrator said he spends 50 hours per week administering a multi-million dollar road construction contract but is responsible for three additional construction contracts at the same time.

A procurement officer indicated that for some contracts, VDOT staff develop work orders that specify key information about how services are to be performed by vendors, such as how many people are needed to perform the service. However, rushed contract administrators do not always include enough details in work orders. In these cases, vendors have used more employees or materials than necessary to complete a job, driving up charges to VDOT.

Contract monitoring has improved, but remains a challenge in some cases

Previous studies found that VDOT did not track critical data on consultant performance and that performance evaluations of consultants were not being completed as required. The previous studies also identified instances where there was insufficient information for anyone to determine whether performance met contract requirements on large, high-risk contracts.

Currently, VDOT's evaluation process for consultants has improved. The newly formed consultant procurement office receives a copy of all VDOT staff evaluations of consultants. VDOT contract administrators rank vendor performance on a scale from one (lowest) to five (highest). The consultant procurement office now requires VDOT staff to provide comments on vendor performance ranking a three or lower. The new evaluation process is intended to ensure consistency across evaluations, to ensure that all vendors receive evaluations, and to ensure that the information can be used as a reference check on future solicitations. Evaluations are also intended to be used during the procurement process, to ensure that past performance is taken into account during the evaluation of prospective vendors.

Although the consultant evaluation process has improved, some shortcomings remain. Central office staff noted that it can still be difficult to hold contract administrators accountable under the updated system, since the contract administrators may be reluctant to give a vendor a low rank due to a desire to maintain a good working relationship. For the same reason, some contract administrators are reportedly not documenting performance problems that have been informally resolved. (Although contracting experts view informal resolution as a best practice under certain circumstances, such an approach may result in performance problems left undocumented. Without proper documentation of performance problems, agencies may be unable to hold vendors accountable, and other agencies may be unable to avoid entering into future contracts with the vendor.) Additionally, evaluation forms also do not track data on design errors or other performance measures for design consultants.

In addition to ongoing challenges with monitoring consultant contracts, VDOT still faces challenges monitoring other contracts. Central office staff noted that the contract administrator is not always involved in the day-to-day oversight of a contract. In some cases, responsibilities may be delegated to other staff members, who will sign off and pay for deliverables that are never received, a practice identified in internal audit reports. Central office staff also expressed concerns that contract administration may not be seen as an important responsibility, contributing to lax oversight. There have

reportedly been instances when contract administrators have never reviewed the contracts they are responsible for overseeing.

Inconsistent monitoring also remains a concern for some contracts. For example, the contract administrator of one large VDOT contract noted that the vendor's performance was "scored" in each region of the state, and that these scores were tied to payment for the vendor. However, not all VDOT districts scored performance in the same way, which made it difficult for contract administrators to determine what enforcement measures to use. Further, field staff across the state have emphasized different performance measures for this contract, rather than prioritizing the same performance measures across the state. In another example, various districts have different documentation requirements to invoice vendors. In one instance, a vendor providing the exact same services across multiple districts had to follow different invoice requirements in each district in order to be paid.

Some contracts specify that the vendor will pay for a third-party to conduct quality assurance, but interviewed VDOT staff expressed concerns about this practice because it potentially creates a conflict of interest and results in an eventual duplication of effort if the practice is not used properly. District construction engineers have formally requested that quality assurance be brought back under VDOT's purview. Some interviewed staff perceive that VDOT may pay twice for quality assurance—payment to the vendor to hire a quality assurance manager and payment to VDOT staff to monitor the quality assurance manager. However, VDOT management indicated that using a third-party, hired by the contractor, to conduct quality assurance is a national practice. VDOT management also indicated that they are in the process of providing additional guidance to district staff to ensure that agency responsibilities on design-build projects are clear, including that agency staff should not be monitoring the quality assurance manager on a daily basis in order to garner the full benefits of using a design-build contract.

VDOT staff have not always followed policies and procedures put in place to protect the agency from poor contract outcomes, although these instances appear to be rare. For example, one contract administrator signed off on an invoice valued at more than \$60,000 for materials that the vendor had not used and work that the vendor had not completed, despite clear contract provisions specifying payment milestones and state policies governing payment to vendors. Although VDOT was able to terminate the contract for vendor default, the agency was unable to reclaim approximately \$25,000 from the vendor. The Auditor of Public Accounts also identified several errors with vouchers in a past audit, including that staff had not attached purchase orders to the vouchers, which could lead to unverified or improper payment to vendors.

Contract administration training has not been effective for all relevant staff

Previous studies found that VDOT lacked a detailed, agency-wide training plan and policy manual for staff who oversee consultant projects. As a result, various divisions within VDOT used inconsistent monitoring practices. The previous studies identified situations where multiple staff responsible for monitoring a single statewide contract were assessing and evaluating vendor performance using different methods and degrees of precision.

Currently, while VDOT provides contract administration training through some of its divisions, it does not have clear training guidelines for all divisions. One district staff member noted that there is no manual to provide guidance on how Area Construction Engineers—staff who typically administer

VDOT construction contracts—should conduct contract administration. Instead, VDOT relies on staff gaining sufficient knowledge about contract administration, including resolving performance problems, through “on-the-job training.” Two VDOT contract administrators responsible for three road construction contracts valued at approximately \$801.4 million indicated that they had never received contract administration training. Several contract administrators expressed a desire for more training specific to VDOT’s contracting needs. Some central office staff also suggested that any VDOT staff member who has contract administration responsibilities should go through a mandatory training program.

Two VDOT divisions have training programs for contract administrators. The Administrative Services division requires that VDOT staff receive training prior to being designated as a contract administrator for contracts under the division’s purview. The Alternative Project Delivery division—responsible for overseeing design-build projects—provides training to nominated staff on topics including design-build basics, analysis of key contract elements, and contract administration and execution. VDOT management reported that 175 staff have participated in the design-build training.

Contract performance has improved

Previous studies found that many contracts experienced cost overruns and delays, relative to the original budgets and schedules.

Following the JLARC studies, VDOT implemented the Dashboard to track the on-time and on-budget status of some construction contracts. The Dashboard remains the best tool developed by a state agency to track basic measures of contract performance and reveals significant improvement in VDOT’s ability to achieve on-time and on-budget contract completion:

- only 26 percent of contracts had an on-time completion in FY99, which improved to 82 percent by FY08 and 84 percent by FY15; and
- only 51 percent of contracts had an on-budget completion in FY99, which improved to 91 percent by FY08 and 93 percent by FY15.

VDOT management indicated that the Dashboard tracks other metrics for internal use. For example, the Dashboard tracks the amount of time the agency takes to award a contract, projects’ environmental compliance, and the condition of pavement and bridges. Additionally, the agency obtains information on quality through internal reviews conducted as part of the Construction Quality Improvement Program (CQIP), which measures construction project compliance against contract quality requirements. Both central office staff and district staff pointed to the advantages and benefits of CQIP during interviews. Several central office staff indicated that projects selected for review under CQIP are selected randomly, however, and may not necessarily represent VDOT’s highest-risk construction contracts.

Despite the improvement in transparency and contract performance, some interviewed VDOT staff expressed concerns about the use of the Dashboard in making contract decisions. For example, several contract administrators noted that some VDOT management staff tend to over-emphasize the Dashboard’s on-time and on-budget metrics. These staff perceived that this level of emphasis can cause VDOT staff to make contracting decisions that are not necessarily in the agency’s best interest. However, interviewed staff did not provide specific examples of negative contract outcomes.

Relevant findings from VDOT internal audit reports

VDOT's internal audit division periodically reviews the agency's contracting practices, and recent audit reports have identified problems with how agency staff have developed and administered contracts.

For example, an audit report identified problems with how staff administered one particular high-value, high-risk contract:

- VDOT staff occasionally lacked assertiveness and did not always provide timely guidance.
 - VDOT and the vendor had not formally resolved ambiguities and differences in the meaning of contract provisions through contract modifications.
- VDOT staff had not developed details on how performance standards were to be measured and scored prior to contract execution and, even once developed, were inadequate to ensure consistent, objective evaluation and measurement of vendor performance.
 - In some cases, VDOT is relying solely on the vendor to accurately report whether an incident is a "pass" or a "fail" without having performed any validation.
 - Regions inconsistently evaluated and scored performance and inconsistently resolved or upheld scoring disputes with the vendor.

Another audit report identified problems with the administration of multiple lower-value, routine contracts:

- Contract administrators frequently delegated responsibilities to field staff without ensuring that they had an understanding of how to adequately monitor vendor compliance.
- The majority of contracts examined by internal audit staff were insufficiently monitored.
- Staff responsible for invoice processing and approval were not always familiar with contract provisions and sometimes failed to seek verification of billed services. In some cases, there was evidence that vendors were overpaid.
- Contract administrators were not provided any guidance to determine the optimal level of monitoring for various vendor tasks.

Appendix G: Agency responses

As part of an extensive validation process, the state agencies and other entities that are subject to a JLARC assessment are given the opportunity to comment on an exposure draft of the report. JLARC staff sent an exposure draft of this report to the Secretary of Administration; the Secretary of Technology; the Secretary of Transportation; the Secretary of Commerce and Trade; the Office of the Attorney General; the Department of General Services; the Department of Small Business and Supplier Diversity; the Department of Transportation; Virginia Correctional Enterprises; Virginia Industries for the Blind; and the Virginia Information Technologies Agency. Appropriate corrections resulting from technical and substantive comments are incorporated in this version of the report.

This appendix includes response letters from the following:

- Department of General Services
- Department of Small Business and Supplier Diversity
- Department of Transportation
- Office of the Attorney General
- Virginia Correctional Enterprises
- Virginia Industries for the Blind
- Virginia Information Technologies Agency



COMMONWEALTH of VIRGINIA
Department of General Services

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 Director

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 Deputy Director

June 3, 2016

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Mr. Hal E. Greer
 Director, Joint Legislative Audit and Review Commission
 Suite 1100, General Assembly Building
 Richmond VA 23219

Dear Mr. Greer:

Thank you for your letter of May 16th, and the opportunity to comment on the exposure draft report, *Development and Management of State Contracts*. On behalf of the staff at the Department of General Services (DGS), I want to thank Ms. Smith and her team for their professionalism throughout the study. As the Commonwealth's central procurement agencies and because most of JLARC's recommendations address DGS and VITA together, DGS and the Virginia Information Technologies Agency (VITA) have jointly reviewed the report and collaborated on their responses.

Your recommendations reflect a need for collaboration between our agencies, and our mutual efforts have been recognized by the Governing Institute's 2016 Procurement Survey of the States, which ranked the Commonwealth of Virginia second in the nation for procurement and contracting practices. This ranking recognized VITA and DGS as leaders for technological innovation, transparency, and strategic methods in providing public bodies with goods, services and information technology. Accordingly, we must carefully consider the full impact that any changes may have upon current procurement and contracting practices.

The question of who has authority over state contracting is very complex, and we appreciate that the report acknowledges the variety of statutes, policies, and authorities which govern any particular entity, and indeed, any particular procurement. As noted in the exposure draft, roughly 80 percent of the contracting dollars spent by the state were spent by agencies within the transportation and education secretariats, including VDOT construction and contracts let by higher education institutions. While we agree with many of the recommendations in the report, because of the various authorities as stated by JLARC, the recommended actions in most instances will not address similar issues found at VDOT, higher education institutions, and the many independent agencies and authorities which have their own procurement authority.

We concur that the focus to date within the Commonwealth has been on the procurement process, and that greater focus is needed on the subsequent contract administration phase. As JLARC recognizes in its Recommendation 18, an increased emphasis on contract administration will require additional resources that neither DGS nor VITA are currently funded to obtain.

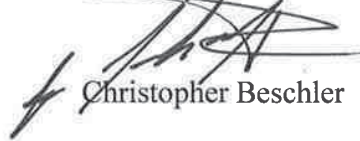
Mr. Hal E. Greer
June 3, 2016
Page 2

DGS and VITA will prepare cost estimates to develop, implement, and administer the recommendations; if funded, our agencies will pursue the recommendations.

Although we will need additional time to fully review the report's recommendations, we have provided our initial reaction in the attached chart, which provides responses to each recommendation. Overall, we believe that many of the recommendations have merit, though some appear to be overly prescriptive and may not be possible or advantageous to implement in the manner or timeframe recommended by JLARC staff.

I again thank you for the opportunity to respond to this exposure draft.

Sincerely,



Christopher Beschler

C: The Honorable Nancy Rodrigues, Secretary of Administration

Recommendation	Comment
#1	DGS and VITA agree with recommendation. See notes 1 and 3 below.
#2	DGS agrees with the recommendation, with the caveat that subject-matter experts not be required for evaluation committees reviewing informal solicitations. See note 2 below.
#3	DGS and VITA agree with recommendation. See note 1.
#5	DGS agrees, and had begun meeting with representatives from agencies with mandatory sources of supply prior to the date of the exposure draft.
#6	DGS agrees with recommendation. See note 2.
#9	DGS agrees that training related to managing contract-related risk is needed for all Commonwealth contract administrators. See notes 2 and 3.
#10	DGS and VITA believe that it is not appropriate to take action on this recommendation until the General Assembly has addressed recommendation #16 in this report. DGS and VITA will look to implement this recommendation accordingly after the General Assembly has taken action. See note 1.
#11	DGS and VITA agree with recommendation. See note 1.
#14	VITA agrees with this recommendation.
#15	DGS and VITA agree with recommendation. See note 3.
#17	DGS and VITA agree with recommendation. See notes 1 and 3.
#19	DGS and VITA agree with recommendation. See notes 1 and 3.
#20	DGS and VITA agree with recommendation. See note 1.
#21	DGS and VITA agree with recommendation provided recommendation 16 in this report is addressed. See note 1 and 3.
#22	DGS and VITA agree with this recommendation. See notes 1 and 3.
#23	DGS and VITA agree with this recommendation. See notes 1 and 3.
#24	DGS and VITA agree with this recommendation. Note that VITA currently has an alternative dispute resolution procedure available for vendors. See notes 1 and 3.
#25	DGS and VITA agree with this recommendation. See notes 1 and 3.
#26	DGS agrees with this recommendation. See notes 2 and 3.
#27	DGS agrees with this recommendation. See notes 2 and 3.
#28	DGS agrees with this recommendation. See notes 2 and 3.
#29	VITA agrees with recommendation. See notes 1 and 3.
#30	DGS and VITA agree with this recommendation provide the suggested language is approved in the Appropriation Act. See notes 1 and 3.
The below JLARC recommendations in this report were not addressed to DGS or VITA; the agencies have no comment on them.	
#4, #7, #8, #12, #13, #16, #18	

Note 1: The recommendation only addresses those state agencies required to comply with procurement policies and procedures promulgated by DGS and VITA. The provided action will NOT address similar needs found at Institutions of Higher Educations and independent state agencies that have procurement autonomy authorized by the Code of Virginia.

Note 2: The recommendation only addresses those state agencies required to comply with procurement policies and procedures promulgated by DGS. The provided action will NOT address similar needs found at Institutions of Higher Educations and independent state agencies that have procurement autonomy authorized by the Code of Virginia.

Note 3: DGS and VITA are not funded to expand current services suggested by the recommendation and will develop a cost estimate to develop, implement and administer the recommendation. If funded, the recommendation will then be pursued.



Terry McAuliffe
Governor

COMMONWEALTH of VIRGINIA

Maurice Jones
Secretary of Commerce & Trade

Department of Small Business and Supplier Diversity

Tracey Wiley
Director

To: Hal E. Greer, Director, Joint Legislative Audit and Review Commission
Honorable Maurice Jones, Secretary of Commerce and Trade

From: Tracey G. Wiley, Director, Department of Small Business and Supplier Diversity

Date: May 27, 2016

Re: Response to the Joint Legislative Audit and Review Commission: *Development and Management of State Contracts in Virginia 2016*

The Virginia Department of Small Business and Supplier Diversity (“DSBSD”) was established and granted statutory powers under §§ 2.2-1603 et seq. of the *Code of Virginia*. Section 2.2-1606 of the Code grants certain powers and duties to the DSBSD, which specifically includes, *inter alia*, the duty to “[i]mplement any remediation or enhancement measure for small, women-owned, or minority-owned business as may be authorized by the Governor pursuant to subsection C of § 2.2-4310 and develop regulations, consistent with prevailing law, for program implementation.”

Director Greer, we would like to extend our appreciation to you and the team for allowing us to review the *exposure report* provided. We have reviewed our technical comments and suggestions with the research team and provide the following comments and recommendations related to The Virginia Department of Small Business and Supplier Diversity (DSBSD). We are in agreement with recommendations #3 and #8 with no additional comments. The agency is in agreement with recommendation #4 in that the collection of data on awards made through competitive negotiations is evaluated; with the opportunity to also research the success of such contracts with small businesses and non-small businesses in order to truly measure the fiscal impact to state spending.

Our response and agency update to the issues impacting certification are included within the narrative that follows. While there are no documented studies that suggest certifying more companies is a direct correlation with increased opportunities for contracting, it is evidenced that an evaluation of the supply chain within each agency and “sourcing” to the direct needs of those agencies will produce greater results in spending with SWaM businesses.

The Virginia Department of Small Business and Supplier Diversity (formerly the Department of Minority Business Enterprise ‘DMBE’) has been plagued for several administrations with expiring technology contracts, inadequate staffing resources, turn over in management and the lack of professional development and training of its officers for its core business—certification. As a result, the newly merged agency has been rebuilding for the last 12-18 months.

The agency had been unable to address the increase in volume of applications over the last few years primarily due to the lack of resources applied to fully staff the SWaM certification unit. The department had four temporary or part-time, untrained certification officers implementing the SWaM certification process with one designated FTE. There was no formal training or onboarding for these officers and the agency regulations and policies governing SWaM certification had not been updated since 2008. The ability to manage the volume of applications with temporary, untrained staffing is impossible. The agency currently has hired a SWaM Supervisor and has resourced (4) FTEs certification officers. A training manual was produced by a consultant in 2015 and is used by the staff to create consistency in processing the incoming applications. Regulations have been reviewed and revised and being prepared for release by July 1, 2016.

Expiring technology contracts in 2013 prior to the merger, positioned the agency in a tailspin without the ability to send out alerts and reminders regarding expiring certifications. Many of those re-certifications are coming up for renewal this year. Newly developed contracts did not include simple functions within the SOW; and the agency had no manageable manual way to keep up with the volume. By end of FY16, the agency will have invested \$550,000 in new technology to develop an enterprise system including the certification platform that will elevate the user experience and resolve issues outlined within this report, specifically related to our processing times and eligibility requirements.

Based on the current technology, the agency had not been able to differentiate between business structures and certification designations. The new technology will allow for prioritization, and distinctions between new and recertification that manage the expectations in the certification process for the business applicant. Reminders and alerts will assist the applicant and the certification officer with an immediate ability to track the status of an application, advance processing times, and educate the applicant on required supporting documents in order to fully complete submission of their application. We agree with *recommendation #8*. The system is scheduled to deploy by July 1, 2016.

Administrative challenges imposed and passed on to the buyer community will be alleviated by strategies currently being implemented by the agency leadership, the Business Development and Outreach Team and management within the Certification unit. Regional Connect Forums, SWaM Champion/Supplier Diversity Training and Pre/Post Certification training are all tools to educate the buyer community on the agency updates related to certification; and in creating awareness of the new technology systems. These events have been well received and dozens of buyers have attended in every region. They have expressed their eagerness for the Pre/Post Certification training seminars to be held at their agency site so all buyers can become more educated on the process and the requirements.

The agency is currently in conversation with third-party certification entities to determine the feasibility of outsourcing the certification process for Women and Minority designations. It is a consideration in particular since there are no “set asides” for these designations within the small business program. We agree with *recommendation #7* to explore this option.

In final, it is mentioned in your report that 80 percent of the surveyed businesses meet eligibility requirements for the SWaM certification but 21 percent of those were not certified. We agree that better marketing of the program and its value proposition is needed. The agency will also seek to rebrand the benefits of certification and to highlight the successful partnerships between state government and small businesses. Increasing the awarding of bids to small businesses and their

opportunity for sustainable contracts will signal growth in our communities and reinvestment from these small businesses in the New Virginia economy.



COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION
1401 EAST BROAD STREET
RICHMOND, VIRGINIA 23219 2000

Charles A. Kilpatrick, P.E.
Commissioner

June 3, 2016

Mr. Hal E. Greer
Director
Joint Legislative Audit and Review Commission
201 North 9th Street
General Assembly Building, Suite 1100
Richmond, VA 23219

Dear Mr. Greer:

Thank you for the opportunity to comment on the JLARC Report, *Development and Management of State Contracts in Virginia*. VDOT has made significant improvement from prior JLARC studies, as documented in the review. In VDOT's 2015 Annual Report to the Governor, General Assembly, JLARC, and the Commonwealth Transportation Board, we reported that out of \$4.93 billion in total agency expenditures, \$2.67 billion represents spending with private sector vendors. Whether this spending is in the form of a contract for office supplies, the construction of a new road, or maintenance of our highways, contracting is important to VDOT. We are continually exploring opportunities to strengthen and improve our contracting efforts.

As our need for contracting goods and services has grown, VDOT has been on a continuous mission to improve our contract documents, our oversight and to get good value for dollars spent. The positive direction we are moving is demonstrated in the quantitative and qualitative results shown on VDOT's Dashboard. It shows that for FY2015, VDOT's core program delivery contracts have had positive results for Virginia.

- 84% of construction and maintenance contracts were completed on-time;
- 89% of construction and maintenance contracts were completed on-budget;
- 93% compliance in our Construction Quality Improvement Program (CQIP) reviews which measure project compliance with over 1,100 contract quality requirements.
- 81.2% of primary pavements and 88% of interstate pavements are rated in fair or better condition; and
- 93.8% of bridges and structures are rated as not structurally deficient.

Mr. Hal E. Greer

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June 3, 2016

It should be noted that time extensions and increased contract value are often a conscious decision by us to add work, to avoid conflicts with other activities and to deliver a better product or service. Late unjustified project completions result in liquidated damages being assessed against the contractor.

Contract and plan quality is critical to delivering quality products and services. For VDOT, work orders are the standard practice for amending our contracts to adjust time, scope or cost. Less than 3% of all work orders on awarded construction and maintenance contracts were attributed to plan discrepancies. Claims are also an indicator of contract issues. For FY2015, of the 76 potential claims on construction/maintenance contracts, only 7 were filed as actual claims and 6 were settled for a total of \$468,802. These are strong indicators that our plan quality remains high and our contract management is effective and efficient. Additionally, in the last three fiscal years, only twenty-five Administrative Services Division goods and services contracts were terminated based on contractor performance. Against total agency spending of close to \$5 billion, these performance indicators show very positive results from contracts with the private sector.

In addition to the Dashboard, we also have internal performance metrics, which are reviewed regularly with executive leadership. We also closely monitor the performance reporting in Virginia Performs and the Department of Planning and Budget (DPB) Strategic Plan. VDOT is routinely the subject to audits from a number of groups such as the Auditor of Public Accounts (APA), the Office of the State Inspector General (OSIG), the Federal Highway Administration (FHWA), the Department of General Services (DGS), and VDOT's Assurance and Compliance Office. These reviews are a valuable tool to gauge the health of the agency and identify vulnerabilities needing attention. We have not received any recent significant findings or adverse audit opinions.

We are encouraged that there were no findings, recommendations, or changes directed at VDOT in the JLARC report. There are several areas of the report related to the broader State contracting practices as well as VDOT specific areas where we have been taking action.

Mr. Hal E. Greer
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June 3, 2016

- **Focused Additional Staff:** In the 2016 General Assembly session, VDOT requested an increase in our Maximum Employment Level (MEL) in order to assign additional staff to critical field positions to assist in delivering the program. We are grateful that the General Assembly approved as part of the budget an additional 240 positions. These positions will be used for activities such as inspection, design, right of way, and field operations and will primarily be hired as entry level positions. We have also set an internal goal to move our vacancy rate below 3%.

- **Workforce Development.** Under this broad umbrella, we are addressing opportunities to build and attract future VDOT employees, create clear pathways of career development and leadership growth, and create and make available to our workforce tools and job aids to capture institutional knowledge and best/leading practices. Some specific components are:
 - Developing apprenticeship programs for skilled crafts,
 - Building on existing workforce growth programs such as interns, inspector trainees, Core Development Programs, and leadership development programs,
 - Improving on-the-job-training and mentoring training opportunities,
 - Contracting with the Virginia Community College System to establish transportation-related curriculums and degrees and partnering with transportation-related industry to encourage the “up and coming” workforce to see the transportation field as a viable and rewarding career path,
 - Creating job aids, job books, and other resources, specific to particular VDOT positions, which capture institutional knowledge and leading practices, in order to demonstrate job duties, requirements, and activities which demonstrate how to be successful in the position,
 - Developing career paths which demonstrate how to succeed and move laterally or upwardly for a fulfilling and progressive career with VDOT, and
 - Designating and requiring licensed engineers in key decision-making positions.

- **Legal Reviews.** VDOT will continue our partnership with the Office of the Attorney General to review contracts, develop new contract language, and assist in contract oversight issues, especially in innovative or high risk contracts.

Mr. Hal E. Greer

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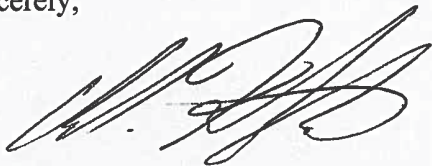
June 3, 2016

- **Contract Templates and Risk Management.** VDOT continues to use innovative contracting methods, such as Public-Private Partnership contracts and Design-Build contracts. VDOT has made improvements to the processes involving these contracts, as well as traditional design-bid-build contracts, to consider, evaluate, and mitigate risk. We plan to continue assessing risk as part of the contracting process.
- **Contract Incentives.** VDOT uses incentive/disincentive clauses and aggressive completion date requirements in pertinent contracts to encourage a focus on quality and reduced impacts to the public.

VDOT is sensitive to the fact that JLARC conducted this review with limited resources and within 18 months, thus having to rely on a sampling of projects and surveys with staff. We understand that this was not a review of VDOT and that JLARC is attempting to identify statewide issues. We will use this report as we continue to deliver our products and services to our citizens. We also look forward to improvements to the statewide procurement process that add efficiencies, provide appropriate risk management and do not impede the work of State agencies.

Again, thank you for the opportunity to comment on this report.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Kilpatrick', written in a cursive style.

Charles A. Kilpatrick, P.E.
Commissioner



COMMONWEALTH of VIRGINIA
Office of the Attorney General

Mark R. Herring
Attorney General

900 East Main Street
Richmond, Virginia 23219
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May 27, 2016

Mr. Hal E. Greer
Director
Joint Legislative Audit and Review Commission
201 North 9th Street
General Assembly Building, Suite 1100
Richmond, Virginia 23219

Dear Mr. Greer:

Thank you for your letter of May 16, 2016, providing us a copy of chapters 1 and 4 of the draft report titled "Development and Management of State Contracts." We appreciate your study of this important area. The two recommendations that you propose for our Office, Recommendation # 12 and #13, make sense and we look forward to fulfilling those.

Thank you again for your study of this area and for the opportunity to preview these chapters of the draft.

Sincerely,

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

John Westrick
Senior Assistant Attorney General

cc: John W. Daniel, II
Deputy Attorney General



COMMONWEALTH of VIRGINIA

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Virginia Correctional Enterprises

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May 27, 2016

Mr. Hal Greer, Director
Joint Legislative Audit and Review Commission
General Assembly Building, Suite 1100
201 North 9th Street
Richmond, VA 23219

Dear Mr. Greer,

This comes in response to your letter dated May 16, 2016 with attached draft-JLARC report entitled, *Development and Management of State Contracts in Virginia*. The report forwarded to me is apparently only a portion of a larger report under development by the Commission.

Your letter offered the opportunity to review the included draft report, have further conversations with your staff and provide a written response for publication with the report. I have had additional conversations with Tracey Smith as well as a meeting with her to discuss, offer comments and understand more about the process by which this report has been developed. These conversations were fruitful for all, I believe, as a manner to further understand the larger context of the issues related to Virginia Correctional Enterprises (VCE). The approach and tenor of these conversations are much appreciated.

The area of the report addressed to VCE are sections of the proposed Chapter 3, Maximizing Contract Value. We expressed to Ms. Smith and believe that the content of this chapter omits an important part of the story as it relates to the "value" brought to state government procurement by VCE.

Value...

Virginia Correctional Enterprises was established by the State Legislature in 1934 to provide job training and skills to incarcerated offenders for the purpose of preparing them for return to society with a higher chance of successful re-integration into the community. The basic premise being former offenders who are successful in the community are less likely to reoffend. The result is fewer victims; lesser costs associated with the crimes; lesser costs associated with the detection, investigation and prosecution of new crimes; and the reduction or elimination of the costs of additional periods of incarceration. With the average cost of incarceration in Virginia presently at about \$28,000 per offender, per year; reducing the rate of incarceration has the



Letter to Mr. Hal Greer, JLARC
May 27, 2016
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potential of significant savings to the Commonwealth. Virginia enjoys, at present, the second lowest recidivism rate in the country. This translates into the aforementioned cost savings in a significant way, bringing "value" to the Commonwealth, its citizens, and the agencies of state government. The mission is still relevant today.

The "value" of the products and services provided by VCE to its customers cannot reasonably be gauged solely by the mere cost of those products and services. It is our belief that any comparison to other vendors for these products and services must include an awareness and consideration of this larger purpose. The positive financial and public safety implications of VCE as a critical contributor to successful re-entry of incarcerated offenders simply should not be discounted.

Pricing...

Virginia Correctional Enterprises uses, as noted in the draft report, a classic pricing "formula derived from materials and labor costs, overhead costs, administrative costs, and a profit margin". Because VCE hosts at present eighteen (18) different and separate industry initiatives (from a dental lab making false teeth to commercial laundries to metal fabrication to shoes to wood furniture) a single pricing strategy for these diverse initiatives will not work. VCE uses strategies that position our products and services reasonably within their respective markets and are appropriately comparable given our overall public safety mission.

Quality Control...

Quality is certainly an important consideration in the production of products and services at VCE and we believe we produce a quality product. VCE spends a great deal of time across our eighteen industries, transportation and installation services focused on the quality of our products and services. We approach each day with a focus on the continual incremental improvement of our manufacturing activities and we are improving. Over the next year we will train staff in Six Sigma, Lean Manufacturing concepts that will continue to enhance our production regimens and further focus on quality.

We acknowledge that quality has been an issue for the agency in the past. Unfortunately, we continue to suffer from our customer's experiences of the past as evidenced by regular conversations with customers who quote problems from fifteen (15) years ago as their concerns about quality. When asked about recent experiences specifically the response is universally more positive.

Release Process and Perception...

Virginia Correctional Enterprises continually runs into purchasing agents who believe they can purchase a product or service from a private vendor at a cheaper price, leading to the "perception" that VCE's prices are higher than the market. What frequently is missing from this conversation is whether the attributes and specifications of the "cheaper" product is the same as those offered by VCE. The release process is defined in VA State Code with clear parameters for what factors are to be considered when a request for a release is submitted to VCE. Because of budget considerations end users regularly opt for the cheapest alternative for

Letter to Mr. Hal Greer, JLARC
May 27, 2016
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a product without consideration to additional issues of attributes, quality, suitability and warranty. VCE offers a generous full warranty of five (5) years on virtually all furniture product offerings.

Higher Education...

Information suggests that procurement by Higher Education has not been included in this comprehensive review of state procurement. VCE has been significantly, negatively affected by exclusion as a mandatory source for Higher Education. Projects that heretofore would have stayed in the Commonwealth fostering business to VCE and its Virginia suppliers have been lost to significant expenditures now going outside the economic strata of the state; this is disappointing. However, even with this development VCE continues to receive work and opportunities from a wide range of Colleges and Universities because of our quality, price and relationships that have been built over time.

Summary...

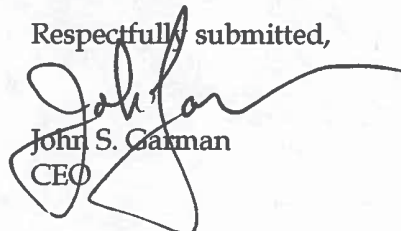
We understand JLARC has a narrow mandate regarding this review and the scope of this inquiry and report is to explore procurement and does not include a broader review or consideration of factors outside of that narrowly defined intent. However, VCE submits that our "value" to the community of state agencies goes beyond simply a price comparison.

We contend the "perception" of procurement staff too often is born of a lack of understanding and/or perhaps insufficient education/training relating to VCE's purpose, mission and value to the Commonwealth. We accept the responsibility to share our mission and mandate with these entities.

VCE stands ready to accept the responsibility of continual improvement and looking for new and more effective ways to manufacture our products, provide service industries that are timely and effective, and tweak our pricing strategies to ensure we remain a viable organization to meet the mission laid out by the State Legislature.

Thank you for the opportunity to review and comment on this section of the impending report related to Mandatory Sources and VCE. Please feel free to contact me if you have additional questions or areas of concern.

Respectfully submitted,



John S. Garman
CEO

cc: The Honorable Brian Moran, Secretary of Public Safety
The Honorable Victoria Cochran, Deputy Secretary of Public Safety
Mr. Harold W. Clarke, Director
Ms. N. H. Cookie Scott, Deputy Director



COMMONWEALTH OF VIRGINIA

Department for the Blind and Vision Impaired

397 Azalea Avenue

Richmond, Virginia 23227-3600

Raymond E. Hopkins
Commissioner

May 26, 2016

Hal E. Greer, Director
201 North 9th Street, Suite 1100
Richmond, VA 23219

Dear Director Greer:

Virginia Industries for the Blind (VIB) is an Enterprise Division of the Department for the Blind and Vision Impaired (DBVI). As the Deputy Commissioner of Enterprises and the General Manager of VIB, I want to thank you for the opportunity to meet with your staff during their research and to comment on portions of the exposure draft provided to me on May 17, 2017 and revised on May 27, 2016. I have spoken with Tracey Smith and Nathalie Molliet-Ribet about this draft as well and covered the following:

1. VIB appreciates the work to capture a portion of the mandatory sources story in the report. No general contracting study can capture the full context of a public program as diverse as VIB. I trust that readers will ensure they have the full context before reaching conclusions on VIB's overall public value.
2. I believe including the survey instrument in the final report would benefit the reader and the interpretation of the results. I understand that the respondents were filtered by those having experience with mandatory sources within the last 12 months and, if the respondents screened in, they were presented three questions to answer regarding satisfaction with mandatory sources. There is one mandatory source, State Contracts, which was not depicted in the exposure draft Figure 3-2. I feel that all mandatory sources should be included in this table so that a more complete relative picture can be seen by readers. Without that fuller context, I fear that some may walk away with the impression that VIB is only $\frac{3}{4}$ as successful as it should be on price and quality. Knowing the fuller context, such as that State Contracts receive an 85% price rating, demonstrates that VIB is not far off from the normal satisfaction level. I recognize your staff's openness to including that data in the final version of the figure.
3. The study is a snapshot in time and cannot reflect the continuous effort, investment, and improvement in VIB quality, responsiveness, and price.
 - a. Both of VIB's manufacturing facilities are now ISO-9001 certified which signifies that we have a quality program aimed at continuous improvement. Each facility has a quality supervisor, goals, and metrics that are measured and reported to leadership quarterly. I do not know of too many other state agencies that can trumpet that commitment and success.
 - b. Our turnaround time to fulfill orders has shrunk from weeks to hours for in stock items. This success led to even tighter quality goals.

- c. While the report mentioned that VIB prices are market driven and it referenced our “Market Basket”, it did not detail that based on analysis of our 13 top-selling products in December 2015, VIB saves the Commonwealth 30% compared to prices on the open market. VIB’s philosophy is to only develop business lines where we can save the Commonwealth money.

I am proud that 8 out of the 9 largest universities and colleges in Virginia, who are exempt from purchasing through mandatory sources, choose to buy mattresses from VIB because our price, quality, and customer service beat the open market.

4. Only the recommendation regarding a working group facilitated by the Department of General Services, currently known as the Council of Mandatory Sources, was visible in the exposure draft VIB received and VIB is committed to this new forum as an important vehicle for bringing a more consistent experience to our shared customers and for better telling a coherent and compelling story on the societal good brought about by our programs. Stories such as the fact that 70% of all working-aged people who are blind are not working or that studies estimate that for every dollar spent on program to enable people who are blind saves government three dollars in support programs. We believe at VIB that the best way to help a person become independent is through a job with a paycheck. I accept that this story does not fully fit this report and I trust that well-intentioned readers will learn more before reaching conclusions on any specific program.
5. It would have been helpful to see a recommendation to revise the Virginia Public Procurement Act (VPPA) and its support Agency Purchasing and Surplus Property Manual (APSPM) to address the needs and complexities of Enterprise Agencies in the Commonwealth. VIB must advance its mission of employing people who are blind with no general tax revenue. VIB operations are paid for by the revenue we generate through our products and services. Additionally, VIB is part of the federal AbilityOne program which has its own procurement rules that do not always align efficiently with the Commonwealth laws and regulations. The VPPA and APSPM are written for non-enterprise agencies and introduce less than efficient sourcing options for maintaining reliable and quality manufacturing processes demanded by customers today.

Again, please accept my appreciation for your effort to study, understand, and educate readers about the state contracting process which is a complicated collection of procurement channels and entities. Each procurement transaction must find the appropriate procurement vehicle and VIB wants to do all we can to improve the customer experience and satisfaction with the mandatory sourcing channel. There are broader societal goods that come from the work of VIB, but we are firmly committed to only developing new products and services where we can save the Commonwealth money while proving quality goods and employment opportunities for Virginians who are blind.

Sincerely,



Matthew H. Koch
General Manger, VIB
Deputy Commissioner, DBVI



COMMONWEALTH of VIRGINIA

Nelson P. Moe
Chief Information Officer
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711

June 3, 2016

Mr. Hal E. Greer
Director
Joint Legislative Audit and Review Commission
Suite 1100, General Assembly Building
Richmond, Virginia 23219

Dear Mr. Greer:

Thank you for your letter of May 16th, and the opportunity to comment on the exposure draft report, *Development and Management of State Contracts*. On behalf of the staff at the Virginia Information Technologies Agency (VITA), I want to thank Ms. Smith and her team for their professionalism throughout the study. As the Commonwealth's central procurement agencies and because most of Joint Legislative Audit and Review Commission (JLARC)'s recommendations address the Department of General Services (DGS) and VITA together, DGS and VITA have jointly reviewed the report and collaborated on their responses.

Your recommendations reflect a need for collaboration between our agencies, and our mutual efforts have been recognized by the Governing Institute's 2016 Procurement Survey of the States, which ranked the Commonwealth of Virginia second in the nation for procurement and contracting practices. This ranking recognized VITA and DGS as leaders for technological innovation, transparency, and strategic methods in providing public bodies with goods, services and information technology. Accordingly, we must carefully consider the full impact that any changes may have upon current procurement and contracting practices.

The question of who has authority over state contracting is very complex, and we appreciate that the report acknowledges the variety of statutes, policies, and authorities which govern any particular entity, and indeed, any particular procurement. As noted in the exposure draft, roughly 80 percent of the contracting dollars spent by the state were spent by agencies within the transportation and education secretariats, including Virginia Department of Transportation (VDOT) construction and contracts let by higher education institutions. While we agree with many of the recommendations in the report, because of the various authorities as stated by JLARC, the recommended actions in most instances will not address similar issues found at VDOT, higher education institutions, and the many independent agencies and authorities which have their own procurement authority.

We concur that the focus to date within the Commonwealth has been on the procurement process, and that greater focus is needed on the subsequent contract administration phase. As JLARC recognizes in its Recommendation 18, an increased emphasis on contract administration

Mr. Hal E. Greer
June 3, 2016
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will require additional resources that neither DGS nor VITA are currently funded to obtain. DGS and VITA will prepare cost estimates to develop, implement, and administer the recommendations; if funded, our agencies will pursue the recommendations.

Although we will need additional time to fully review the report's recommendations, we have provided our initial reaction in the attached chart, which provides responses to each recommendation. Overall, we believe that many of the recommendations have merit, though some appear to be overly prescriptive and may not be possible or advantageous to implement in the manner or timeframe recommended by JLARC staff.

I again thank you for the opportunity to respond to this exposure draft.

Sincerely,

A handwritten signature in black ink that reads "Nelson P. Moe". The signature is written in a cursive style with a large initial "N".

Nelson P. Moe

c: The Honorable Karen Jackson, Secretary of Technology
The Honorable Nancy Rodrigues, Secretary of Administration

Recommendation	Comment
#1	DGS and VITA agree with recommendation. See notes 1 and 3 below.
#2	DGS agrees with the recommendation, with the caveat that subject-matter experts not be required for evaluation committees reviewing informal solicitations. See note 2 below.
#3	DGS and VITA agree with recommendation. See note 1.
#5	DGS agrees, and had begun meeting with representatives from agencies with mandatory sources of supply prior to the date of the exposure draft.
#6	DGS agrees with recommendation. See note 2.
#9	DGS agrees that training related to managing contract-related risk is needed for all Commonwealth contract administrators. See notes 2 and 3.
#10	DGS and VITA believe that it is not appropriate to take action on this recommendation until the General Assembly has addressed recommendation #16 in this report. DGS and VITA will look to implement this recommendation accordingly after the General Assembly has taken action. See note 1.
#11	DGS and VITA agree with recommendation. See note 1.
#14	VITA agrees with this recommendation.
#15	DGS and VITA agree with recommendation. See note 3.
#17	DGS and VITA agree with recommendation. See notes 1 and 3.
#19	DGS and VITA agree with recommendation. See notes 1 and 3.
#20	DGS and VITA agree with recommendation. See note 1.
#21	DGS and VITA agree with recommendation provided recommendation 16 in this report is addressed. See note 1 and 3.
#22	DGS and VITA agree with this recommendation. See notes 1 and 3.
#23	DGS and VITA agree with this recommendation. See notes 1 and 3.
#24	DGS and VITA agree with this recommendation. Note that VITA currently has an alternative dispute resolution procedure available for vendors. See notes 1 and 3.
#25	DGS and VITA agree with this recommendation. See notes 1 and 3.
#26	DGS agrees with this recommendation. See notes 2 and 3.
#27	DGS agrees with this recommendation. See notes 2 and 3.
#28	DGS agrees with this recommendation. See notes 2 and 3.
#29	VITA agrees with recommendation. See notes 1 and 3.
#30	DGS and VITA agree with this recommendation provide the suggested language is approved in the Appropriation Act. See notes 1 and 3.
The below JLARC recommendations in this report were not addressed to DGS or VITA; the agencies have no comment on them.	
#4, #7, #8, #12, #13, #16, #18	

Note 1: The recommendation only addresses those state agencies required to comply with procurement policies and procedures promulgated by DGS and VITA. The provided action will NOT address similar needs found at Institutions of Higher Educations and independent state agencies that have procurement autonomy authorized by the Code of Virginia.

Note 2: The recommendation only addresses those state agencies required to comply with procurement policies and procedures promulgated by DGS. The provided action will NOT address similar needs found at Institutions of Higher Educations and independent state agencies that have procurement autonomy authorized by the Code of Virginia.

Note 3: DGS and VITA are not funded to expand current services suggested by the recommendation and will develop a cost estimate to develop, implement and administer the recommendation. If funded, the recommendation will then be pursued.



JLARC.VIRGINIA.GOV

General Assembly Building
201 N. 9th Street, Suite 1100 Richmond, VA 23219