

**IMPROVING THE ABILITY OF THE DEPARTMENT OF
MILITARY AFFAIRS TO RESPOND TO OPPORTUNITIES
TO UTILIZE FEDERAL FUNDING AVAILABLE FOR
CAPITAL PROJECTS**

October 2017

Submitted to:

The Honorable Chris Jones, Chairman, House Appropriations Committee
The Honorable Thomas Norment, Co-Chairman, Senate Finance Committee
The Honorable Emmett Hanger, Co-Chairman, Senate Finance Committee
The Honorable Richard D. Brown, Secretary of Finance
The Honorable Nancy Rodrigues, Secretary of Administration
The Honorable Brian Moran, Secretary of Public Safety and Homeland Security

By

Department of Military Affairs
Department of General Services

Report Directive

Item C-34.40, Chapter 836, 2017 Acts of Assembly:

The Department of General Services (DGS) and the Department of Military Affairs (DMA), in consultation with the Department of Planning and Budget (DPB), shall study and identify issues related to the DMA's ability to enter into contracts using federal funding and adhering to the Commonwealth's capital outlay Code requirements, and DGS' policy and procedures for capital outlay projects. DGS and DMA will give priority to evaluating and developing, if possible, options to leverage federal dollars for capital projects that become available and must be obligated within 90 days of the end of a federal fiscal year. DGS and DMA shall submit recommendations to the Chairmen of the House Appropriations and Senate Finance Committees and the Secretaries of Administration, Finance, and Public Safety and Homeland Security no later than November 1, 2017.

Executive Summary

The Department of Military Affairs (DMA) is often unable to take full advantage of federal funding for capital projects that becomes available late in the federal fiscal year in situations that would require some state matching funds. This situation, which primarily affects funding for renovations and additions to (the Virginia Army National Guard is at only 49% of Authorized/Required Space) readiness centers, formerly known as armories, is due to differences between state and federal definitions, capital thresholds, and procedures, and compliance with the Construction and Professional Services Manual (CPSM), as well as the inability of the agency, under current state policy and the Virginia Public Procurement Act, to have construction contracts and state matching funds available within the tight deadlines imposed by the federal government for federal funds that become available at the end of the fiscal year. To mitigate this situation, and put DMA in a better position to compete for this funding, the following steps are recommended:

1. Raise the threshold of a capital project for DMA from \$1 million to \$2 million total project costs for state supported projects. This would not affect other DMA projects that exceed this amount but do not require state funding.
2. For renovation projects, or renovation/addition projects where the added space is ancillary and does not add new program space, allow DMA to use job order contracting for capital, maintenance reserve, and operating expense projects costing up to \$2 million; [with a maximum amount of \$1.0 million in state-supported costs]. Examples of ancillary space are as follows: mechanical rooms, electrical rooms, well or pump houses, and vestibules.
3. Create an umbrella capital project with funding authorized to be used for planning and state matching construction funds, which include project management and soft costs, in order to compete for federal funds that become available unexpectedly; and
4. Allow DMA to advertise capital, maintenance reserve, and operational funded projects for bid in anticipation of potential receipt of federal matching funds. Project bid dates shall not be before July 1st, of that same year, so as to limit the bid bond duration to a maximum of three months.

Background and Discussion

The Commonwealth's more than 7,000 guardsmen are housed in readiness centers, formerly called armories, in communities across the state. From these locations, guardsmen muster, equip, and train. Guardsmen not only mobilize from these locations to support the national defense, but also operate from these readiness centers to help protect the Commonwealth from natural and man-made threats.

These facilities are becoming increasingly inadequate to meet the needs of the Virginia National Guard. They are at 49 percent of the Department of the Army authorized/required space and 64 percent have space shortages that directly impact their ability to support their mission. The average Facility Condition Index is rated as poor and continues to degrade at current funding levels. The Virginia National Guard has reached a point where the state of its facility portfolio is negatively impacting the ability to accomplish assigned missions. Having units that are geographically separated from vehicles and equipment due to lack of military parking and equipment storage spaces results in a waste of limited training time and a slowing of emergency response times. Soldiers parking their private vehicles on the grass due to parking shortages raising safety and environmental concerns. Equipment storage shortages are causing units to double-up in limited storage space raising accountability and safety concerns while slowing access to equipment for training and emergency response. With an average age of 44 years and 30 percent of facilities over 50 years old, the lack of modern mechanical and information technology systems hamper modern training as well as operational and command and control in emergency situations. Lack of maintenance bays hamper training and emergency operational requirements. Shortfalls and failing administration, classroom, and other support space make training and operating in emergencies more difficult. Guardsmen and women historically overcome challenges; however, the facility portfolio should not be a hindrance to training and emergency operations, it should be a force multiplier in today's world where the National Guard trains and operates from their readiness centers for regular service providing for the safety of the Commonwealth and security of the nation.

There is federal funding available that could be used to improve the conditions of the readiness centers. DMA is unique among state agencies in that approximately 90 percent of its funding comes from the federal government, through Department of Defense (DoD), Department of the Army (DA), and Department of the Air Force (DAF) funding streams. On the Army side, major facilities expenditures are accomplished under two separate funding streams; one-year money in annual Operations and Maintenance accounts, and five-year money available through the military construction (MILCON) process for projects on federal installations, such as Ft. Pickett. In these cases, the federal funds will cover the entire cost. For readiness centers, states must provide matching funds, generally 50 percent, in order to spend those federal funds for sustainment, restoration, and modernization of a facility. While funds are short at both the federal and state levels, there are regularly unexpected excess federal funds available near the end of the federal fiscal for which states can compete and that could be used for readiness centers. Success in competing for these unexpected excess federal funds could help ameliorate facility issues for the Commonwealth's guardsmen. However, there are two primary obstacles that limit the Commonwealth's ability to take full advantage of these opportunities

The first obstacle is a difference between the state and federal dollar thresholds for capital projects. The federal threshold for projects for certain types of work is as high as \$3.0 million federal-only dollars, whereas the state requires that any project costing more than \$1 million total project costs be considered a capital project, rather than an operating expense and, therefore, requiring specific project authorization for funding appropriation for readiness center projects. Because there is generally a 50/50 state/federal share required for work on readiness centers, the federal definition would allow the combining of \$3 million in federal funds and \$3 million of state funds into a single \$6 million project without it being considered a capital (MILCON) project, which would trigger other requirements. Conversely, the state's definition would limit each source of funding to \$500,000 for a total of \$1 million total project cost before being subject to the requirements of a capital project.

The second obstacle is the timing of the availability of some federal funding. Because some states cannot contractually obligate all of the annual federal capital maintenance funding allotted during a year, the federal government will make the "excess" unobligated funding available at the end of the federal fiscal year to other states who can use it. DMA's capacity to receive federal money for facilities is fairly volatile, especially toward the end of the federal fiscal year. As the federal government operates on an accrual accounting basis, as long as a contract is awarded by 11:59 p.m. on 30 September, that money is considered obligated and spent. Especially because of the efficiency and effectiveness of DMA's Facilities Section, the National Guard Bureau looks to Virginia as a "relief valve" for money that has not been spent in other states. Virginia has traditionally received large amounts of money from National Guard Bureau (NGB) in the last quarter of the year, and up to 90 minutes before midnight on 30 September. Virginia has received as much as \$22 million in extra funds at the last minute, but the state is limited in how it can use this funding.

The provisions of the Appropriation Act provide DMA some flexibility in competing for these unexpected federal capital funds. DMA is exempted from the state's capital outlay process for work up to \$3 million that is 100 percent federally reimbursed. If DMA wishes to use the state's capital outlay process, rather than the federal process, the Governor can also approve emergency capital projects that are 100 percent federally reimbursed. These two provisions allow DMA to compete for federal funds to do work only on federal installations, such as Ft. Pickett or federal maintenance facilities.

As soon as a requirement for state funds is introduced, as is the case for readiness centers, there is significantly less flexibility because DMA needs both capital project approval and state fund appropriation. Furthermore, under Construction and Professional Services Manual (CPSM) policy, DMA must have funding available in order to request bids for capital projects. This means DMA does not have "shovel ready" contracts for readiness centers to sign on short notice when additional federal funds become available.

In summary, because the state does not provide funding or capital project authority "just in case" federal funds become available, DMA is often left with the situation of having federal funds that could be used for readiness centers, but no matching funds or contractual mechanism to have contracts shovel ready even if state funds were available. This causes our readiness centers where our Virginia Guardsmen muster, train, equip, operate for the safety of the

Commonwealth, and mobilize to protect the nation, to fail to successfully compete for unexpected excess federal funds.

To address these issues and provide DMA greater ability to compete for unexpectedly available federal capital funds, the following steps are recommended:

1. Raise capital threshold for DMA to \$2 million (total project cost) - Raising DMA's capital project threshold to \$2 million for addition/renovation projects involving state matching funds would allow DMA to use \$1 million state operating funds and \$1 million federal funds for a single project, effectively doubling DMA's current ability to quickly execute work. The vast majority of DMA projects fall within the \$1 million to \$2 million range, so DMA can then have greater flexibility to shift work to the most urgent need and to compete for the category of unexpected excess federal funds. This new capital threshold would be the same as that applicable to institutions of higher education.
2. For renovation projects, or renovation projects with an ancillary addition, use Job Order Contracting – Job Order Contracting is a method of procuring construction by establishing a book of unit prices and then obtaining a contractor to perform work as needed using the prices, quantities, and specifications in the book as the basis of its pricing. Allowing DMA access to a Job Order Contracting vehicle will enable it to obtain firm pricing on projects without having the specific funding available. Thusly, DMA would have a pre-priced contract waiting for the federal end-of-year drop of funds. If DMA did not receive the funding, then DMA simply would not execute the contract, but would have an already priced and available project for the next federal fiscal year. This would require a modification to Code of Virginia section [§ 2.2-4303.2](#). Currently, this section limits individual job orders to a maximum of \$500,000. This would need to be increased to \$1,000,000 of state funds and \$2,000,000 total project costs including other funding sources.
3. Consider establishing umbrella capital project. – Establishing an umbrella capital project linked to agency NGF and State supported funding would give DMA the appropriation authority to engage in projects to include planning, project management, and soft costs, and provide a guaranteed source of funding. This would enable DMA to compete for federal funds that require a state match.
4. Allow contingent advertising. Allowing DMA to advertise construction projects for bid in anticipation of (contingent upon receipt of) matching federal funds maximizes DMA's opportunities to compete for excess federal funding. This would allow DMA to have signature ready construction contracts, particularly for new construction/additions, ready for execution in the event of an unexpected federal windfall. In the bid documents, DMA will inform bidders that the project may not receive funding.