



COMMONWEALTH of VIRGINIA
Department of General Services

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January 12, 2024

The Honorable Susan Clarke Schaar
Clerk of the Senate
Senate of Virginia
P.O. Box 396
Richmond, Virginia 23218

Subject: Public Body Procurement Workgroup's Final Report on Study of SB 912 & SB 1115

Dear Madam Clerk:

During the 2023 General Assembly Session the Senate Committee on Finance and Appropriations referred Senate Bill 912 and Senate Bill 1115 to the Public Body Procurement Workgroup for study.

The Workgroup's final reports on its study of these bills is attached. Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "M Bisogno", written over a horizontal line.

Michael Bisogno

cc: The Honorable L. Louise Lucas, Chair, Senate Committee on Finance and Appropriations
The Honorable Frank M. Ruff, Jr., Patron of SB 912
The Honorable Bill DeSteph, Patron of SB 1115

Public Body Procurement Workgroup

Report of the Public Body Procurement Workgroup on the Virginia Public Procurement Act Process for Competitive Negotiation; Exceptions to Contractual Terms and Conditions (SB 912)

November 1, 2023

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I. Introduction

During the 2023 General Assembly session the Senate Finance and Appropriations Committee voted to pass-by indefinitely SB 912 patroned by Senator Frank Ruff and refer it to the Department of General Services' (DGS') Public Body Procurement Workgroup (Workgroup) for study. The Workgroup was directed to study SB 912, which would prohibit public bodies when conducting information technology procurements from requiring offerors to state in their proposal any exceptions to any contractual terms and conditions, including any liability provisions contained in the request for proposals. The letter directing the study of SB 912 set a deadline of November 1, 2023, for the Workgroup to submit a report with its findings and recommendations to the co-chairs of the Senate Committee on Finance and Appropriations and Senator Ruff.

In response to this directive, stakeholders were identified, and three Workgroup meetings were held at which SB 912 was discussed. This report summarizes the information presented to the Workgroup by stakeholders and subject matter experts and the Workgroup's findings and recommendations.

II. Background

Overview of Public Body Procurement Workgroup Authority and Duties

Item 85 of the 2022 Appropriations Act directs DGS to lead, provide administrative support to, and convene an annual public body procurement workgroup to review and study proposed changes to the Code of Virginia in the areas of non-technology goods and services, technology goods and services, construction, transportation, and professional services procurements. The Appropriations Act language specifies that Workgroup's membership is composed of the following individuals or their designees:

- Director of the Department of Small Business and Supplier Diversity
- Director of the Department of General Services
- Chief Information Officer of the Virginia Information Technologies Agency
- Commissioner of the Virginia Department of Transportation
- Director of the Department of Planning and Budget
- President of the Virginia Association of State Colleges and University Purchasing Professionals
- President of the Virginia Association of Governmental Procurement

Additionally, the Appropriations Act language requires that a representative from each of the following provide technical assistance to the Workgroup:

- Office of the Attorney General's Government Operations and Transactions Division
- Staff of the House Appropriations Committee
- Staff of the Senate Committee on Finance and Appropriations
- Division of Legislative Services

The Appropriations Act language outlines two avenues by which bills may be referred to the Workgroup for study. First, the Chairs of the House Committees on Rules, General Laws, and Appropriations, as well as the Senate Committees on Rules, General Laws and Technology, and Finance and Appropriations, can refer legislation by letter to the Workgroup for study. Second, the Chairs of the House Committees on Rules and Appropriations, as well as the Senate Committees on Rules and Finance and Appropriations, can request that the Workgroup review procurement-related proposals in advance of an upcoming legislative session in order to obtain a better understanding of the legislation’s potential impacts. Additionally, the General Assembly can pass a bill that includes an enactment clause directing the Workgroup to study a particular topic.

Overview of SB 912

As introduced, SB 912 would amend Code § 2.2-4302.2(A)(3) by prohibiting public bodies when conducting information technology procurements from requiring offerors to state in their proposal any exceptions to any contractual terms and conditions, including any liability provisions contained in the request for proposals. The bill would require offerors to state any such exceptions in writing at the beginning of negotiations and require public bodies to consider such exceptions during negotiations. Currently, Code § 2.2-4302.2(A)(3), prohibits public bodies when conducting information technology procurements from requiring offerors to state in their proposal any exceptions to any liability provisions (rather than any contractual term and condition) contained in the request for proposals and requires offerors to state any such exceptions in writing at the beginning of negotiations and such exceptions shall be considered during negotiations.

The bill was passed by indefinitely¹ in the Senate Finance and Appropriations Committee with a letter² directing the Workgroup to study it.

Study Participants/Stakeholders

The Workgroup’s Appropriations Act language directs it to hear from stakeholders identified by the patron of referred legislation and other interested individuals. As such, the Workgroup’s staff (Staff) contacted Senator Ruff, the patron of SB 912; Senator Adam Ebbin, Chair of the Senate Committee on General Laws and Technology; and Senator Janet Howell and Senator George Barker, Co-Chairs of the Senate Committee on Finance and Appropriations, to solicit their input regarding stakeholders they would like included in the Workgroup’s review of SB 912. Staff compiled the names of the stakeholders identified into a stakeholder email distribution list, which it used to communicate information about the Workgroup’s study of SB 912 and opportunities for public comment to the identified stakeholders. Staff also added any interested individuals to the stakeholder email distribution list upon request by such individual.

The stakeholder email distribution list was composed of the following individuals:

- The Honorable Frank Ruff – Senate of Virginia

¹ The Senate Finance and Appropriations Committee passed the bill by indefinitely with a letter by a vote of 9Y, 6N

² Appendix A

- Christy Morton – Two Capitols Consulting
- Bill Hefty – Hefty & Wiley
- Courtney Mustin – Department of Small Business and Supplier Diversity
- Robert Bohannon – Hunton Andrews Kurth LLP
- Christopher McDonald – Williams Mullen

III. Workgroup Meetings on SB 912

The Workgroup held three meetings at which it discussed SB 912. At its May 2, 2023 meeting, Staff gave an overview of the proposed 2023 work plan for the Workgroup, highlighting the four bills that were referred to the Workgroup by the General Assembly during the 2023 session, which included SB 912.

The Workgroup largely focused on SB 912 at its second meeting held on May 16, 2023. Senator Ruff, the patron of SB 912, provided remarks to the Workgroup explaining the importance of obtaining the best value at the best price in procurement and that he would like to ensure that taxpayers dollars are well spent. He concluded his remarks stating that there have been instances in the past where the state has purchased technology that was not as successful as desired. Senator Ruff then requested Andrew Lamar with the Richmond Technology Council to further explain the issues that SB 912 seeks to resolve. Lamar shared that the proposed changes in SB 912 would increase competition on information technology procurements, allow agencies to select the most qualified proposals, and allow for thoughtful conversations on appropriate terms and conditions, rather than vendors being scored significantly lower or excluded from negotiations due to taking exceptions to terms and conditions.

Next, the Workgroup heard presentations from four stakeholders on SB 912. Joshua Heslinga, Director of Legal and Legislative Services with the Virginia Information Technologies Agency (VITA), began by thanking Senator Ruff and the Richmond Technology Council for continued dialogue on this topic. Heslinga explained VITA’s process for evaluating offerors’ proposals and stated that he is unaware of instances where suppliers are scored significantly lower or excluded from negotiations due to a supplier taking exceptions to terms and conditions. He concluded his remarks by summarizing two proposed amendments to SB 912³ for the Workgroup’s consideration. Jennifer Stieffenhofer, on behalf of the Virginia Association of Governmental Procurement (VAGP), which represents over 1,100 procurement professionals across Virginia, stated that she was unaware of practices that establish scoring criteria for exceptions to contractual terms and conditions as such exceptions are discussed during the negotiation phase. Gerrit VanVoorhees, Director of Information Technology with the City of Petersburg, spoke on behalf of the Virginia Local Government IT Executives (VaLGITE). VanVoorhees asked why information technology was being singled out rather than changing procurement as a whole and shared that it is unclear what problem this legislation is trying to solve. VanVoorhees stated there are instances where it is important to know vendor exceptions up front to avoid a prolonged procurement process. Michael Thomas with McGuireWoods Consulting shared that terms and conditions are in requests for proposals for a variety of reasons

³ See Appendix C

as they relate to the type of proposal and can influence the cost of services, all of which are better understood when discussed in the negotiations phase.

Next, Pete Stamps, Director of the Division Purchases and Supply (DPS) with the Department of General Services, was called upon by the Workgroup to explain how DPS handles exceptions to terms and conditions made by offerors. Stamps shared that DPS requests that vendors document exceptions to terms and conditions in proposal responses; however, such exceptions are not evaluated until the negotiation phase.

Following presentations on SB 912, the Workgroup received public comment before discussing findings and recommendations. Chris Nolen with McGuireWoods Consulting explained that vendors are deemed to have accepted the terms and conditions in the proposal if no objection is taken. Nolen further explained that redlining terms and conditions is based on the vendor's view of risk and, without context, it is impossible to know if the vendor really understands the agency proposal. Mark Perry, a member of VaLGITE, shared the importance of knowing exceptions upfront in proposals before the process proceeds and expressed a desire to keep exceptions to terms and conditions in the proposal response without scoring them in the initial phase. The second meeting concluded with the Workgroup's discussion and proposal of two recommendations based on the testimony heard from stakeholders.

At its third and final meeting for SB 912, held on June 6, 2023, the Workgroup received public comment on the two recommendations developed at the prior meeting before voting to finalize the recommendations. The only stakeholder to speak during public comment was Andrew Lamar with the Richmond Technology Council. He thanked the Workgroup for a very thoughtful and deliberate conversation at the last meeting and expressed his support of the two recommendations presented for SB 912. The Workgroup voted on the recommendations, beginning with the first option proposed, which was approved by a vote of 5-0⁴. The Workgroup discussed the second option, which was approved by a vote of 4-1⁵.

See Appendices B, C, and D for the meeting materials, including meeting minutes for each of the three meetings.

IV. Summary of Information Presented to the Workgroup

The Workgroup was directed to study SB 912 and report its findings and recommendations to the co-chairs of the Senate Committee on Finance and Appropriations and Senator Frank Ruff by November 1, 2023. Below is a summary of the testimony and presentations that the Workgroup received pertaining to this task.

Comments in Support of SB 912

Andrew Lamar with the Richmond Technology Council shared that during the 2023 General Assembly session, SB 912 was introduced to bring a small change to the Virginia Public Procurement Act that the group believed would result in more business participation in

⁴ Yes: Innocenti, McHugh, Heslinga, Pride, Damico

⁵ Yes: Innocenti, Heslinga, Pride, Damico; No: McHugh

information technology procurements for the Commonwealth. Lamar stated that each of the nine regional technology councils support this change and that the General Assembly passed similar legislation in 2016 regarding exceptions to liability terms and conditions, which resulted in more vendors having the opportunity to compete on procurements and move into the negotiation phase. Lamar shared that the process being proposed in SB 912 is similar to the procurement process for obtaining architects and engineers, where exceptions to terms and conditions are not submitted with the proposal and instead are discussed at the negotiations stage, explaining that this would be beneficial for information technology procurements. Lamar said agencies increasingly are scoring offerors' proposals based on an offeror's willingness to wholly accept the terms and conditions in the proposal without the opportunity to discuss concerns or revisions. He explained that some agencies score proposals based on whether a vendor takes exception to the terms and conditions, causing highly qualified vendors to be ranked lower than less capable vendors. Lamar said vendors who do not take exceptions or seek clarification should be a red flag to the Commonwealth and that Richmond Technology Council advocates for policies that increase opportunities and competition. Lamar added that proposals should be evaluated on their merit, best solution, and ability to perform.

Lamar stated that SB 912 would allow agencies to select the most qualified proposals and allow for thoughtful conversations on appropriate terms and conditions, explaining that agencies still can insist on any terms they believe are essential for a particular contract. He added that SB 912 would prohibit a public body from requiring a vendor to state exceptions to terms and conditions; however, that would not prohibit the vendor from indicating exceptions on their own.

Michael Thomas with McGuire Woods Consulting shared that terms and conditions are there for a variety of reasons, relate to the type of proposal, and can influence the cost of services, which are better understood when discussed in negotiations. He explained that it is beneficial for vendors to think out of the box and offer more innovative proposals. Thomas said that terms and conditions agencies include in requests for proposals do not always fit for the vendor's proposal and stated that while a redlined document can look daunting and overwhelming to the evaluation panel, allowing negotiations provides the opportunity for explanation and better understanding of the redlined terms.

Chris Nolen with McGuire Woods Consulting explained that the request for proposals issued by public bodies states that vendors are deemed to have accepted the terms and conditions in the proposal if no objection is taken, which is the issue that needs to be addressed. He stated that vendors redline terms and conditions based on the vendor's view of risk and without more context it is impossible for a public body to know if the vendor really understands the agency's need. Nolen explained that he understands the desire to receive the vendor's exceptions at the beginning of the process and so the question becomes if the exceptions are a part of the proposal or if the exceptions are kept separate from the proposal scoring process.

Other Comments on SB 912

Jennifer Stieffenhofer, speaking on behalf of the Virginia Association of Governmental Procurement (VAGP), shared that she is unaware of practices where public bodies establish scoring criteria for offerors' exceptions to terms and conditions as exceptions are addressed during the negotiation phase. She requested examples of such practices described by the proponents of SB 912.

Gerrit VanVoorhees, Director of Information Technology with the City of Petersburg, spoke on behalf of the Virginia Local Government IT Executives (VaLGITE) stated that he is unclear of the problem SB 912 is trying to solve and explained that there are instances where it is important for public bodies to know up front the exceptions a vendor is taking to terms and conditions in order to avoid a prolonged procurement process. VanVoorhees shared that he is unaware of vendors who have been excluded based solely on exceptions taken to terms and conditions, concluding his remarks with concern that SB 912 could make the procurement process less efficient.

Mark Perry, a member of VaLGITE, shared that it is important for public bodies to know vendors' exceptions to terms and conditions up front in proposals before proceeding with the evaluation process. He explained that there are many data and legal requirements in requests for proposals and knowing the exceptions up front provides a more efficient process. He expressed his preference to obtain exceptions to terms and conditions up front and understands the desire to not score the exceptions during the initial phase.

V. Workgroup Findings and Recommendations

At its second meeting, the Workgroup heard from Senator Ruff and various stakeholders from the private and public industries regarding SB 912. During presentations to the Workgroup, VITA provided and presented proposed amendments to SB 912 for consideration. Josh Heslinga stated that the Workgroup has not heard any serious concerns with the proposed approach that he presented, which would allow public bodies to obtain vendor exceptions with the proposal submission and would prohibit public bodies from penalizing vendors for exceptions during the initial review of proposals.

The Workgroup discussed a comment made previously comparing SB 912 to the current procurement process for obtaining professional services, such as architects and engineers. Heslinga explained that the process for procuring professional services requires that the public body conduct negotiations with only one offeror at a time, which is different from goods and nonprofessional services, where negotiations are conducted with multiple suppliers at the same time, creating a greater need to know as much information up front as possible. Elizabeth Dooley added that technology procurements are vastly different compared to architect and engineer contracts, noting that with technology procurements offerors often bring other terms and agreements, such as cloud terms and software license agreements, that are part of the overall consideration of the proposal package and proceeding without this information up front would do a disservice to taxpayers. Willis Morris shared that it is good to know exceptions up front and knowing more information up front will lead to better evaluations.

The Workgroup discussed whether the prohibition of scoring offerors' exceptions to terms and conditions during the initial phase should be applied only to information technology procurements or extended to all nonprofessional procurements. John McHugh stated that information technology is complex and questioned if this requirement should be expanded to include all procurements or if it should be focused on information technology procurements as in SB 912. Mike Tweedy suggested the recommendation be limited to information technology as that is how the bill originally was drafted and referred to the Workgroup. Joe Damico shared concern over applying this only to information technology procurements, as it can be problematic for buyers and vendors to keep track of different requirements for different types of procurements, adding that consistency is important. Damico stated that the buyer community expressed the importance of being well informed up front to avoid a lengthy procurement process, and the vendor community expressed concern over being excluded from negotiations because of redlining terms and conditions.

After discussing the information presented to the Workgroup, Heslinga made a motion to recommend that public bodies not be prohibited from asking for exceptions to terms and conditions in proposal responses for information technology request for proposals and that any exceptions made by offerors would not be considered as part of the initial scoring or evaluation process for shortlisting offerors for negotiation. Lisa Pride agreed and stated that she would like the Workgroup to consider consistency when proposing changes to procurement law. Elizabeth Dooley seconded Heslinga's motion and it passed by a vote of 6-0-4⁶.

Damico requested consideration of a second recommendation that expands the first recommendation to include non-information technology and non-professional services. Heslinga made a motion for a second recommendation that for requests for proposals under subsection (A)(3) of § 2.2-4302.2, public bodies would not be prohibited from asking for exceptions to terms and conditions in proposal responses and that any exceptions made by offerors would not be evaluated as part of the initial evaluation process for shortlisting offerors for negotiations. Pride seconded the motion and by a show of hands the motion was approved by a vote of 4-2-4⁷.

At the third Workgroup meeting, Staff presented the two draft recommendations for SB 912 that resulted from the previous meeting. Heslinga noted that the first recommendation received consensus from the Workgroup at the last meeting and McHugh made a motion to accept the first recommendation. Heslinga seconded the motion and it carried by a vote of 5-0⁸.

Recommendation 1:

The Workgroup recommends that the General Assembly consider amending subsection (A)(3) of § 2.2-4302.2 to (i) include language for information technology procurements that prohibits public bodies from basing the scoring or evaluation of which offerors are selected for negotiations on exceptions stated in a proposal to any contractual terms or conditions and that such exceptions shall be considered during negotiation; and (ii) remove existing language for information technology procurements that prohibits public bodies from

⁶ Yes: Morris, McHugh, Dooley, Pride, Heslinga, Damico. Abstain: Frye, Tweedy, Saunders, Haley

⁷ Yes: Morris, Pride, Heslinga, Damico. No: Dooley, McHugh. Abstain: Frye, Haley, Tweedy, Saunders

⁸ Yes: Innocenti, McHugh, Heslinga, Pride, Damico

requiring an offeror to state in a proposal response exceptions to liability provisions in the Request for Proposal.

Next, the Workgroup considered the second recommendation. Pride shared that it is beneficial to be consistent in the Code and this option provides consistency. Heslinga noted that the Workgroup did not hear opposition or concern of negative impacts from the second recommendation. Heslinga made a motion to accept the second recommendation. Pride seconded the motion, and it carried by a vote of 4-1⁹.

Recommendation 2:

The Workgroup recommends that the General Assembly consider amending subsection (A)(3) of § 2.2-4302.2 to (i) insert language that prohibits public bodies from basing the scoring or evaluation of which offerors are selected for negotiations on exceptions stated in a proposal to any contractual terms or conditions and that such exceptions shall be considered during negotiation; and (ii) remove existing language for information technology procurements that prohibits public bodies from requiring an offeror to state in a proposal response exceptions to liability provisions in the Request for Proposal.

VI. Conclusion

The Workgroup would like to thank the stakeholders and interested parties for their participation, as well as the subject matter experts from VITA and DGS who provided presentations and technical expertise to assist the Workgroup in its deliberations.

⁹ Yes: Innocenti, Heslinga, Pride, Damico. No: McHugh

Appendix A: Letter Directing Study and Text of SB 912

This appendix contains the letter from the Senate directing the Workgroup to study SB 912 and the text of SB 912.

COMMONWEALTH OF VIRGINIA

SUSAN CLARKE SCHAAR
CLERK OF THE SENATE
POST OFFICE BOX 396
RICHMOND, VIRGINIA 23218



SENATE

March 24, 2023

Mr. Joseph F. Damico
Director, Department of General Services
1100 Bank Street, Suite 420
Richmond, Virginia 23219

Dear Joe:

This is to inform you that, pursuant to Rule 20 (o) of the Rules of the Senate of Virginia, the Senate Committee on Finance and Appropriations has referred the subject matters contained in Senate Bill 912, Senate Bill 954, and Senate Bill 1115 to the Procurement Workgroup for study. It is requested that the appropriate committee co-chairs and bill patrons receive written reports, with copies to this office, by November 1, 2023.

With kind regards, I am

Sincerely yours,

A handwritten signature in black ink, appearing to read "Susan Clarke Schaar".

Susan Clarke Schaar

SCS:gc

cc: Sen. Janet D. Howell, Co-Chair, Senate Committee on Finance and Appropriations
Sen. George L. Barker, Co-Chair, Senate Committee on Finance and Appropriations
Sen. Frank M. Ruff, Jr., Patron of SB 912
Sen. J. Chapman Petersen, Patron of SB 954
Sen. Bill DeSteph, Patron of SB 1115
Amigo Wade, Director, Division of Legislative Services
April Kees, Director, Senate Finance and Appropriations Committee

2023 SESSION**SB 912 Virginia Public Procurement Act; competitive negotiation, exceptions to contractual terms.**

Introduced by: [Frank M. Ruff, Jr.](#) | [all patrons](#) ... [notes](#) | [add to my profiles](#)

SUMMARY AS INTRODUCED:

Virginia Public Procurement Act; competitive negotiation; exceptions to contractual terms and conditions of the Request for Proposal. Prohibits a public body from requiring an offeror to state in a proposal any exception to any contractual terms or conditions, including any liability provisions, contained in a Request for Proposal for information technology. The bill also requires the offeror to state any such exception in writing at the beginning of negotiations, which exception shall be considered during negotiations. Current law only prohibits a public body from requiring an offeror to state in a proposal any exception to the liability provisions of the Request for Proposal.

FULL TEXT

01/05/23 Senate: Prefiled and ordered printed; offered 01/11/23 23101862D [pdf](#) | [impact statement](#)

HISTORY

01/05/23 Senate: Prefiled and ordered printed; offered 01/11/23 23101862D

01/05/23 Senate: Referred to Committee on General Laws and Technology

01/11/23 Senate: Reported from General Laws and Technology (14-Y 0-N)

01/11/23 Senate: Rereferred to Finance and Appropriations

02/02/23 Senate: Passed by indefinitely in Finance and Appropriations with letter (9-Y 6-N)

23101862D

SENATE BILL NO. 912

Offered January 11, 2023

Prefiled January 5, 2023

A BILL to amend and reenact § 2.2-4302.2 of the Code of Virginia, relating to Virginia Public Procurement Act; competitive negotiation; exceptions to contractual terms and conditions of Request for Proposal.

Patron—Ruff

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-4302.2 of the Code of Virginia is amended and reenacted as follows:

§ 2.2-4302.2. Process for competitive negotiation.

A. The process for competitive negotiation shall include the following:

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposal, indicating whether a numerical scoring system will be used in evaluation of the proposal, and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities, specifications or qualifications that will be required. Except with regard to contracts for architectural, professional engineering, transportation construction, or transportation-related construction services, a public body may include as a factor that will be used in evaluating a proposal the proposer's employment of persons with disabilities to perform the specifications of the contract. In the event that a numerical scoring system will be used in the evaluation of proposals, the point values assigned to each of the evaluation criteria shall be included in the Request for Proposal or posted at the location designated for public posting of procurement notices prior to the due date and time for receiving proposals. No Request for Proposal for construction authorized by this chapter shall condition a successful offeror's eligibility on having a specified experience modification factor;

2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of proposals by posting on the Department of General Services' central electronic procurement website or other appropriate websites. Public bodies may also publish in a newspaper of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. Posting on the Department of General Services' central electronic procurement website shall be required of (i) any state public body and (ii) any local public body if such local public body elects not to publish notice of the Request for Proposal in a newspaper of general circulation in the area in which the contract is to be performed. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities. In addition, proposals may be solicited directly from potential contractors. Any additional solicitations shall include certified businesses selected from a list made available by the Department of Small Business and Supplier Diversity; and

3. For goods, nonprofessional services, and insurance, selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. In the case of a proposal for information technology, as defined in § 2.2-2006, a public body shall not require an offeror to state in a proposal any exception to any contractual terms or conditions, including any liability provisions contained in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. The offeror shall state any exception to any contractual terms or conditions, including any liability provisions contained in the Request for Proposal in writing at the beginning of negotiations, and such exceptions shall be considered during negotiation. Price shall be considered, but need not be the sole or primary determining factor. After negotiations have been conducted with each offeror so selected, the public body shall select the offeror which, in its opinion, has made the best proposal and provides the best value, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror; or

4. For professional services, the public body shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with

INTRODUCED

SB912

59 emphasis on professional competence, to provide the required services. Repetitive informal interviews
60 shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and
61 performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In
62 addition, offerors shall be informed of any ranking criteria that will be used by the public body in
63 addition to the review of the professional competence of the offeror. The Request for Proposal shall not,
64 however, request that offerors furnish estimates of man-hours or cost for services. At the discussion
65 stage, the public body may discuss nonbinding estimates of total project costs, including, but not limited
66 to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. In accordance
67 with § 2.2-4342, proprietary information from competing offerors shall not be disclosed to the public or
68 to competitors. For architectural or engineering services, the public body shall not request or require
69 offerors to list any exceptions to proposed contractual terms and conditions, unless such terms and
70 conditions are required by statute, regulation, ordinance, or standards developed pursuant to § 2.2-1132,
71 until after the qualified offerors are ranked for negotiations. At the conclusion of discussion, outlined in
72 this subdivision, on the basis of evaluation factors published in the Request for Proposal and all
73 information developed in the selection process to this point, the public body shall select in the order of
74 preference two or more offerors whose professional qualifications and proposed services are deemed
75 most meritorious.

76 Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract
77 satisfactory and advantageous to the public body can be negotiated at a price considered fair and
78 reasonable and pursuant to contractual terms and conditions acceptable to the public body, the award
79 shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally
80 terminated and negotiations conducted with the offeror ranked second, and so on until such a contract
81 can be negotiated at a fair and reasonable price.

82 Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the
83 Request for Proposal, a public body may award contracts to more than one offeror.

84 Should the public body determine in writing and in its sole discretion that only one offeror is fully
85 qualified or that one offeror is clearly more highly qualified and suitable than the others under
86 consideration, a contract may be negotiated and awarded to that offeror.

87 B. Multiphase professional services contracts satisfactory and advantageous to the completion of
88 large, phased, or long-term projects may be negotiated and awarded based on a fair and reasonable price
89 for the first phase only, where the completion of the earlier phases is necessary to provide information
90 critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to entering into any
91 such contract, the public body shall (i) state the anticipated intended total scope of the project and (ii)
92 determine in writing that the nature of the work is such that the best interests of the public body require
93 awarding the contract.

94 For the purposes of subdivision A 1, "experience modification factor" means a value assigned to an
95 employer as determined by a rate service organization in accordance with its uniform experience rating
96 plan required to be filed pursuant to subsection D of § 38.2-1913.

Appendix B: May 2, 2023 Meeting Materials

This appendix contains the meeting materials from the May 2, 2023 Workgroup meeting.

1. Agenda
2. Meeting Materials
 - a. Public Body Procurement Workgroup 2023 Proposed Work Plan
3. Approved Meeting Minutes

Public Body Procurement Workgroup

<http://dgs.virginia.gov/dgs/directors-office/procurement-workgroup/>

Meeting # 1

Tuesday, May 2, 2023, 1:00 p.m.

House Room 1

The Virginia State Capitol

1000 Bank Street, Richmond, Virginia 23218

AGENDA

- I. **Call to Order; Remarks by Chair**
- II. **Introduction of Workgroup Members, Representatives, and Staff**
- III. **Approval of Meeting Minutes from the November 28, 2022 Workgroup Meeting**
- IV. **Recap of 2022 Work and Overview of Proposed 2023 Work Plan**
- V. **Consideration and Discussion of Public Comment, Presentations, and Other Information Received by the Workgroup on SB 272**
- VI. **Findings and Recommendations on SB 272**
- VII. **Public Comment**
- VIII. **Discussion**
- IX. **Adjournment**

Members

Department of General Services
Virginia Information Technologies Agency
Department of Planning and Budget
Virginia Association of State Colleges and
University Purchasing Professionals

Department of Small Business and Supplier Diversity
Virginia Department of Transportation
Virginia Association of Government Purchasing

Representatives

Office of the Attorney General
Senate Finance Committee

House Appropriations Committee
Division of Legislative Services

Staff

Jessica Budd, Legal Policy Analyst, DGS

Jessica Hendrickson, Director of Policy and Legislative Affairs, DGS

Public Body Procurement Workgroup

<http://dgs.virginia.gov/dgs/directors-office/procurement-workgroup/>

2023 PROPOSED WORK PLAN

Meeting #1 – May 2, 2023 at 1:00 p.m.

1. Introduction of Workgroup Members, Representatives, and Staff
2. Recap of 2022 Work and Overview of Proposed 2023 Work Plan

During the 2023 Session, the General Assembly unanimously passed two bills that implemented the recommendations from the Workgroup’s study of SB 550 (2022) [Sen. Bell] – SB 1313, patroned by Sen. Bell, and SB 2500, patroned by Del. Wiley.

The Workgroup began studying SB 272 (2022) [Sen. Hashmi] at its last meeting on November 28, 2022. The Workgroup must complete this study and report its findings and recommendations by December 1, 2023.

Additionally, during the 2023 Session, the General Assembly referred the following four new bills to the Workgroup for study:

- *SB 859 (2023), patroned by Senator Cosgrove, which would remove the requirement that local public bodies publish notice of a Request for Proposal on DGS’ central electronic procurement website (eVA) if they elect not to publish notice of the Request for Proposal in a newspaper of general circulation in the area in which the contract is to be performed. Currently, local public bodies must publish notice of a Request for Proposal either on eVA or in a newspaper of general circulation in the area in which the contract is to be performed. They may choose to also post such notice on an “appropriate website.” The bill would allow local public bodies to satisfy the VPPA’s notice requirements for a Request for Proposal by simply posting notice of the Request for Proposal on an “appropriate website.”*
- *SB 912 (2023), patroned by Senator Ruff, which would prohibit public bodies, in the case of proposals for information technology, from requiring offerors to state in their proposal any exceptions they may have to any of the contractual terms and conditions, including any liability conditions, contained in the Request for Proposal. The bill would require such offerors to instead state any such exceptions in writing at the beginning of negotiations, and require public bodies to consider such exceptions during negotiation.*
- *SB 954 (2023), patroned by Senator Petersen, which appears to (i) narrow the definition of “complex project” such that projects would be required to meet stricter criteria in order to be deemed complex and therefor appropriate for utilizing construction management and design-build (CM/DB) procurement methods; (ii) prohibit the use of CM/DB procurement methods for projects totaling less than \$5*

million; and (iii) for projects totaling between \$5 million and \$125 million, require public bodies to (a) obtain approval from the Secretary of Administration to use CM/DB procurement methods and (b) conduct a two-step procurement process in which the public body must first award a contract for preconstruction services, and, upon completion of such contract, award a second contract for construction services using competitive sealed bidding.

- SB 1115 (2023), patroned by Senator DeSteph, which would (i) require state public bodies to decrease the price of any bid offered by (a) seven percent for a “Virginia end product” and (b) two percent for a “U.S. end product”; (ii) require that when the lowest responsive and responsible bidder, after price preferences have been taken into account, who is a resident of Virginia is within five percent or \$10,000, whichever is less, of the lowest responsive and responsible bidder who is a resident of another state, the bidder who is a resident of Virginia be given the opportunity to match the price of the bidder who is a resident of another state; and (iii) provide that if a state public body receives three or more bids from manufacturers that use materials or product components made in Virginia or in the U.S., such public body may only select from among such bids.

The Workgroup must complete its studies of each of these bills and report its findings and recommendations to the bills’ patrons and the appropriate committee chairmen by November 1, 2023.

3. SB 272 – Make preliminary findings and recommendations.

Meeting #2 – May 16, 2023 at 1:00 p.m.

1. SB 272 – Finalize findings and recommendations.
2. SB 859 –
 - a. Hear presentations and public comment.
 - b. Make preliminary findings and recommendations.
3. SB 912
 - a. Hear presentations and public comment.
 - b. Make preliminary findings and recommendations.

Meeting #3 – June 6, 2023 at 1:00 p.m.

1. SB 859 – Finalize findings and recommendations.
2. SB 912 – Finalize findings and recommendations.
3. SB 1115 –
 - a. Hear presentations and public comment.

Meeting #4 – June 27, 2023 at 1:00 p.m.

1. SB 1115 –
 - a. Review information received at previous meeting and receive any additional information.
 - b. Make preliminary findings and recommendations.

Meeting #5 – July 18, 2023 at 9:30 a.m.

4. SB 1115 – Finalize findings and recommendations.
5. SB 954 –
 - a. Hear presentations and public comment.

Meeting #6 – August 8, 2023 at 1:00 p.m.

2. SB 954 –
 - a. Review information received at previous meeting and receive any additional information.
 - b. Make preliminary findings and recommendations.

Meeting #7 – August 22, 2023 at 1:00 p.m.

1. SB 954 – Finalize findings and recommendations.

November 1, 2023

1. Reports on the Workgroup’s findings and recommendations on SB 859, SB 912, SB 954, and SB 1115 due to the bills’ patrons and committee chairmen.

December 1, 2023

1. Reports on the Workgroup’s findings and recommendations on SB 272 due to the General Assembly.

Approved Meeting Minutes

Public Body Procurement Workgroup

Meeting # 1

Tuesday, May 2, 2023, 1:00 p.m.
House Room 1
The Virginia State Capitol
1000 Bank Street, Richmond, Virginia 23218

<http://dgs.virginia.gov/dgs/directors-office/procurement-workgroup/>

The Public Body Procurement Workgroup (the Workgroup) met in-person in House Room 1 in the Capitol in Richmond, Virginia, with Joe Damico, Director of the Department of General Services (DGS), presiding. The meeting began with remarks from Mr. Damico, followed by discussion and recommendations for SB 272, public comment, and further discussion by the Workgroup members. Materials presented at the meeting are available through the [Workgroup's website](#).

Workgroup members and representatives present at the meeting included Joe Damico (Department of General Services), Willis Morris (Department of Small Business and Supplier Diversity), Joshua Heslinga (Virginia Information Technologies Agency), Lisa Pride (Virginia Department of Transportation), Jonathan Howe (Department of Planning and Budget), Patricia Innocenti (Virginia Association of Governmental Procurement), John McHugh (Virginia Association of State Colleges and University Purchasing Professionals), Leslie Haley (Office of the Attorney General), Andrea Peeks (House Appropriations Committee), and Mike Tweedy (Senate Finance and Appropriations Committee), and Joanne Frye, representing the Division of Legislative Services.

I. Call to Order; Remarks by Chair

Joe Damico, Director
Department of General Services

Mr. Damico called the meeting to order and thanked the House Clerk's Office for allowing the Workgroup to hold its meetings in House Room 1 in the Capital Building. He informed the Workgroup that this year he and Sandra Gill, Deputy Director of the Department of General Services, will alternate as Chair of the Workgroup.

II. Introduction of Workgroup Members, Representatives, and Staff

III. Approval of Meeting Minutes from the November 28, 2022 Workgroup Meeting

Mr. Tweedy made a motion to approve the meeting minutes from the November 28, 2022 meeting of the Workgroup. The motion was seconded by Ms. Pride and unanimously approved by the Workgroup.

IV. Recap of 2022 Work and Overview of Proposed 2023 Work Plan

Next, Mr. Damico asked Ms. Gill to present a recap of the work accomplished by the Workgroup in 2022, as well as the proposed workplan for the Workgroup's 2023 studies.

Mr. Gill reminded the group that two bills were originally referred to the Workgroup by the General Assembly in 2022 (SB 550 and SB 575), and that a third bill was referred to the Workgroup later in the year (SB 272). Ms. Gill provided a summary of the work undertaken by the Workgroup related to SB 575 (which pertained to the use of a total cost of ownership calculator for medium-duty and heavy-duty vehicles) and SB 550 (which pertained to payment of subcontractors). Ms. Gill noted that two bills (SB 1313 and SB 2500) were introduced and passed by the General Assembly during the 2023 Session that implemented the Workgroup's recommendations on SB 550.

Moving to the proposed 2023 work plan, Ms. Gill provided an overview of the four new bills that were referred to the Workgroup by the General Assembly during the 2023 Session: SB 859, patroned by Senator Cosgrove; SB 912, patroned by Senator Ruff; SB 954, patroned by Senator Petersen; and SB 1115, patroned by Senator DeSteph. She stated that the proposed work plan includes tentative dates for six additional meetings for the workgroup to complete its studies of these four bills.

V. Consideration and Discussion of Public Comment, Presentations, and Other Information Received by the Workgroup on SB 272

Ms. Gill noted that workgroup began its study of SB 272 at its last meeting on November 28, 2022. She provided the Workgroup with an overview of the information that was shared with the Workgroup on SB 272 at that meeting by stakeholders and subject matter experts. She also noted that since the last meeting DGS staff conducted a survey of local governments to determine the amount of concrete they use, but only six responses to the survey were received.

She then presented the Workgroup with several considerations for it to discuss as possible recommendations on SB 272. Those consideration were: (1) codify procurement preferences and initiatives in the bill for low carbon concrete, (2) address the issue with policy through preferences or incentives, (3) not make changes to the law or implement

policy because the industry is already moving towards low carbon concrete, (4) create tax incentives for the industry to move towards low carbon concrete, or (5) consider whether the Virginia Department of Environmental Quality should regulate CO₂ emissions for cement and concrete.

Mr. Damico asked Ms. Gill to clarify which agencies would be impacted by the bill as introduced. She stated that the bill amends the DGS code section, therefore agencies under DGS purview would be impacted and it would be DGS' responsibility to establish policy. Mr. Damico asked Ms. Gill for clarification as to how the Virginia Department of Transportation (VDOT) would be impacted by the bill, and she responded that the bill does not specifically exclude roads and bridges, however based on DGS' enabling legislation there could be an interpretation that roads and bridges are not under DGS' authority. Mr. Damico then confirmed with Ms. Gill that testimony provided to the Workgroup at its previous meeting indicated that VDOT uses approximately six percent of the total amount of concrete used in Virginia each year, and that DGS uses approximately one-half of one percent of the total amount of concrete used in Virginia each year.

Mr. Damico asked the Workgroup if they have any thoughts or comments. Ms. Pride stated that VDOT has been working diligently for several years to allow the use of lower carbon concrete in its specifications and to work with the industry to continue to lower the amount of carbon associated with the concrete it uses in its projects. She indicated that she would like the Workgroup to move forward with the third recommendation presented by Ms. Gill, which was to not impose additional requirements on the industry because they are already making progress on this issue and VDOT has also been moving in the right direction. She also reiterated how small the amount of concrete used by state agencies is compared to the private sector.

Mr. Damico asked Ms. Gill about DEQ's testimony at the previous meeting and whether they stated that they currently monitor CO₂ emissions from the production of cement and concrete. She stated that DEQ testified that they do not currently regulate CO₂ emissions from the production of cement and concrete. He then asked if there was any indication in the previous meeting as to whether DEQ is in a position to monitor the industry's commitment to move toward a CO₂ emissions-free cement and concrete manufacturing process. Ms. Gill stated the DEQ did not testify that they have any intent to regulate, monitor, or track CO₂ emissions from the production of cement and concrete. Mr. Damico asked the Workgroup members whether they feel that it would be appropriate to ask DEQ if they could monitor and report on the CO₂ emissions from the production of cement and concrete in order to track the industry's progress toward moving towards lower carbon concrete. Mr. Heslinga sought clarification as to whether Mr. Damico is contemplating asking DEQ to monitor the industry's progress as opposed to affirmatively regulating the industry's CO₂ emissions. Mr. Damico answered in the affirmative.

VI. Findings and Recommendations on SB 272

Mr. Damico asked Ms. Pride to restate her recommendation. Ms. Pride stated that she recommends that the Workgroup allow VDOT to continue the work that has done regarding permitting the use of lower carbon concrete in its specifications and allow the industry to continue the progress that it has made in reducing the amount of carbon in concrete, allow those two things to be the drivers of the reduction of carbon in concrete. Mr. Heslinga stated he would second the recommendation and sought clarification on the process of finalizing the recommendation. Mr. Damico called for a vote of the Workgroup. Prior to the voting Mr. Morris asked for clarification as to whether there would be voluntary reporting by VDOT and/or the industry on progress towards this initiative. Ms. Pride stated VDOT does not currently do such reporting, but they keep track of their specifications and could report on those changes. The Workgroup voted in favor of the recommendation made by Ms. Pride¹. Next, Mr. Damico asked the Workgroup for approval to engage DEQ regarding its capacity to monitor the industry's progress towards producing emissions-free cement. The Workgroup unanimously approved his request.

VII. Public Comment

The first stakeholder to comment was Walton Shephard with the Natural Resources Defense Council. Mr. Shephard stated that he wanted to clarify that the bill never contemplated imposing any requirements and that it only contemplated rewarding voluntary actions that the industry is indeed already taking. He asked the state to recognize those actions by codifying provisions that would use the state's purchasing power to show a preference for cleaner concrete or cement similar to provisions implemented in New Jersey. He acknowledged that Virginia does allow the use of cleaner cement and concrete but stressed that he would like the state proactively encourage its use.

Mr. Morris asked Mr. Shelton for clarification regarding the voluntary rewards system. Mr. Shephard responded that when bids come in and a particular bidder's concrete is verified to be cleaner than average, such bidder would receive a slight bonus in the bid stack. Mr. Damico asked for clarification as to how such a preference would work if there is one cement manufacturer in Virginia, and further asked about the potential cost impacts of bringing in lower carbon concrete from manufacturers located outside of Virginia. Mr. Shelton responded that he is not sure of the answers to such questions, but that he assumes that theoretically such procurement preference would still incentivize Virginia's one manufacturer to clean up its production process because the state could purchase cement from a producer in Maryland or North Carolina instead of the one manufacturer in Virginia.

¹ The votes on recommendation the recommendation were as follows: Yes – Patricia Innocenti, John McHugh, Jonathan Howe, Joe Damico, Lisa Pride, and Joshua Heslinga, Willis Morris; Abstain – Andrea Peeks, Mike Tweedy, Leslie Haley, and Joanne Frye

The second stakeholder to comment was Kisia Kimmons, a technical services manager with Roanoke Cement. Ms. Kimmons confirmed that Roanoke Cement is the only cement manufacturer in Virginia, but there are also several producers from outside of the state that deliver product within the state that also provide lower carbon cement products. She stated that such other products come from places such as South Carolina and various locations in the North East, and that some are imported.

Mr. McHugh asked whether low carbon concrete is more expensive than traditional concrete. Ms. Kimmons responded that typically in many markets Type II cement has cost the same as traditional Type I/II concrete and that it has been a one-to-one replacement. Ms. Frye asked whether the low carbon cement produced by Roanoke Cement is lower in carbon than the other low carbon cement products on the market. Ms. Kimmons responded that it can vary depending on the product. Mr. Heslinga asked if there are existing reporting on the adoption of lower carbon cement. Ms. Kimmons stated that she is not aware of any required reporting, however from a manufacturing perspective it is not difficult for them to provide replacement factor information. Mr. Morris asked Ms. Kimmons for clarification that Roanoke Cement is the only cement manufacturer in Virginia, which she confirmed, and asked whether they have experienced any supply chain challenges. Ms. Kimmons responded that they are not experiencing any such challenges at this time, and reiterated that the state has resources from other facilities as well that feed into this market.

The third stakeholder to comment was Phil Abraham with the Vectre Corporation. Mr. Abraham spoke to the Workgroup concerning its study of SB 550 last year and the legislation subsequently passed by the General Assembly during the 2023 Session (SB 1313 and HB 2500) implementing recommendations made by the Workgroup on SB 550. He expressed concern that SB 1313 and SB 2500 require contractors on public construction contracts to make payment to their subcontractors within 60 days of completion of their work regardless of whether such a contractor has received payment from the state or local government, as applicable, for such work. He shared that general contractors are concerned about how this requirement would impact them in situations in which they have not been paid by the state or local government and in which there has been no fault on the part of the contractor that would justify the state or local government to withhold such payment. Mr. Abraham stated that he would like to work with the Workgroup on a tweak to the law to address this concern.

Ms. Peeks asked Mr. Abraham whether the issue he described has occurred, or whether he is looking to address this potential situation in the event that it might occur. He stated that it is rare, but it has occurred.

Mr. Shephard, the first stakeholder to comment, spoke to the Workgroup again to clarify that cement is a component of concrete, so while the concrete used on a specific project is usually made locally to a project's location, the cement used in such concrete does not necessarily have to have been produced locally to the project's location.

VIII. Discussion

Mr. Tweedy asked if either VDOT or DGS track how much low carbon concrete they use. Both DGS and VDOT stated that they do not currently track this information.

IX. Adjournment

Mr. Damico adjourned the meeting at 1:53 p.m. and noted that the Workgroup's next meeting is tentatively scheduled for May 23, 2023. He stated, however, that this date may change and that once staff has finalized the meeting date and location such information will be announced to the Workgroup members and stakeholders.

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

Appendix C: May 16, 2023 Meeting Materials

This appendix contains the meeting materials from the May 16, 2023 Workgroup meeting.

1. Agenda
2. Meeting Materials
 - a. VITA Proposed Amendments
3. Approved Meeting Minutes

Public Body Procurement Workgroup

<http://dgs.virginia.gov/dgs/directors-office/procurement-workgroup/>

Meeting # 2

Tuesday, May 16, 2023, 1:00 p.m.

House Committee Room

Pocahontas Building

900 E. Main St, Richmond, Virginia

AGENDA

- I. **Call to Order; Remarks by Chair**
- II. **Approval of Meeting Minutes from the May 2, 2023 Workgroup Meeting**
- III. **Public Comment on Draft Recommendation for SB 272**
- IV. **Finalize Recommendation on SB 272**
- V. **Presentation on SB 859**
- VI. **Public Comment on SB 859**
- VII. **Findings and Recommendations on SB 859**
- VIII. **Presentation on SB 912**

The Honorable Frank M. Ruff, Jr.
Senate of Virginia
- IX. **Presentations on SB 912**

Joshua Heslinga
Virginia Information Technologies Agency
Jennifer Stieffenhofer
Virginia Association of Governmental Procurement
Leslie Allen
Office of the Attorney General
- X. **Public Comment on SB 912**
- XI. **Findings and Recommendations on SB 912**
- XII. **Public Comment**
- XIII. **Discussion**
- XIV. **Adjournment**

Members

Department of General Services
Virginia Information Technologies Agency
Department of Planning and Budget
Virginia Association of State Colleges and
University Purchasing Professionals

Department of Small Business and Supplier Diversity
Virginia Department of Transportation
Virginia Association of Governmental Procurement

Representatives

Office of the Attorney General
Senate Finance Committee

House Appropriations Committee
Division of Legislative Services

Staff

Sandra Gill, Deputy Director, DGS
Jessica Hendrickson, Director of Policy and Legislative Affairs, DGS

SB912 – VITA proposed amendment (alternative forms)

Amendment (showing changes to SB912 introduced version) – not IT only

....

41 3. For goods, nonprofessional services, and insurance, selection shall be made of two or more
42 offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of
43 the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal.
44 ~~In the case of a proposal for information technology, as defined in § 2.2-2006, a public body shall not~~
45 ~~require an offeror to state in a proposal any exception to any contractual terms or conditions, including~~
46 ~~any liability provisions contained in the Request for Proposal.~~ Negotiations shall then be conducted with
47 each of the offerors so selected. ~~The offeror shall state any exception to any contractual terms or~~
48 ~~conditions, including any liability provisions contained in the Request for Proposal in writing at the~~
49 ~~beginning of negotiations, and such~~ *A public body shall not base the scoring or evaluation of which offerors*
are selected for negotiations on exceptions stated in a proposal to any contractual terms or conditions. Any
exceptions shall be considered during negotiation. Price shall be

....

Amendment (showing changes to SB912 introduced version) – IT only

....

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43 the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal.
44 ~~In the case of a proposal for information technology, as defined in § 2.2-2006, a public body shall not~~
45 ~~require an offeror to state in a proposal any exception to any contractual terms or conditions, including~~
46 ~~any liability provisions contained in the Request for Proposal.~~ Negotiations shall then be conducted with
47 each of the offerors so selected. ~~The offeror shall state any exception to any contractual terms or~~
48 ~~conditions, including any liability provisions contained in the Request for Proposal in writing at the~~
49 ~~beginning of negotiations, and such~~ *In the case of a proposal for information technology, as defined in § 2.2-*
2006, a public body shall not base the scoring or evaluation of which offerors are selected for negotiations on
exceptions stated in a proposal to any contractual terms or conditions. Any exceptions shall be considered during
negotiation. Price shall be

....

Approved Meeting Minutes

Public Body Procurement Workgroup

Meeting # 2

Tuesday, May 16, 2023, 1:00 p.m.
House Committee Room
The Pocahontas Building
900 E. Main Street, Richmond, Virginia 23219

<http://dgs.virginia.gov/dgs/directors-office/procurement-workgroup/>

The Public Body Procurement Workgroup (the Workgroup) met in-person in the House Committee Room in the Pocahontas Building in Richmond, Virginia, with Joe Damico, Director of the Department of General Services (DGS), presiding. The meeting began with remarks from Mr. Damico, followed by finalization of the recommendation for SB 272, discussion and public comment on SB 912, and statements regarding SB 859. Materials presented at the meeting are available through the [Workgroup's website](#). A recording of the meeting is available on [the House of Delegates video streaming site](#).

Workgroup members and representatives present at the meeting included Joe Damico (Department of General Services), Willis Morris (Department of Small Business and Supplier Diversity), Joshua Heslinga (Virginia Information Technologies Agency), Lisa Pride (Virginia Department of Transportation), Jason Saunders (Department of Planning and Budget), Elizabeth Dooley (Virginia Association of Governmental Procurement), John McHugh (Virginia Association of State Colleges and University Purchasing Professionals), Leslie Haley (Office of the Attorney General), Mike Tweedy (Senate Finance and Appropriations Committee), and Joanne Frye (the Division of Legislative Services). A representative from the House Appropriations Committee was not in attendance.

I. Call to Order; Remarks by Chair

Joe Damico, Director
Department of General Services

Mr. Damico called the meeting to order and announced that Andrea Peeks with the House Appropriations Committee is not able to attend, and that Elizabeth Dooley is in attendance for the Virginia Association of Governmental Procurement.

II. Approval of Meeting Minutes from the May 2, 2023 Workgroup Meeting

Mr. Saunders requested a small amendment to the draft meeting minutes, citing that on page one “the Department of General Services” was missing after “Deputy Director of” and made a motion to approve the meeting minutes from the May 2, 2023 meeting of the Workgroup as amendment. The motion was seconded by Mr. Heslinga and unanimously approved by the Workgroup.

III. Public Comment on Draft Recommendation for SB 272

Next, Mr. Damico invited the public to provide comment on the draft recommendation for SB 272. There was no public comment.

Mr. Damico reminded the workgroup that at the last meeting, the Workgroup approved DGS’ request to engage DEQ to identify a process to monitor greenhouse gas emissions from cement manufacturing in Virginia. Mr. Damico asked Jessica Hendrickson to report DEQ’s response. Ms. Hendrickson reported that DEQ does not directly collect greenhouse gas emissions data from regulated sources in the state, however the sources of interest are required to submit annual reports of greenhouse gas emissions data to the EPA. The EPA data is publicly available and DEQ will add the link to the EPA report on DEQ’s greenhouse gas emissions inventory website for the purpose of reviewing and tracking specific facility emissions in the Commonwealth.

IV. Finalize Recommendation on SB 272

Draft of Final Recommendation for SB 272

The Workgroup finds that it is not appropriate at this time for the state to enact procurement incentives for the cement and concrete industries to reduce overall CO2 emissions resulting from the manufacturing cement and production of concrete that is used in state-funded projects because (i) the cement and concrete industries are already making significant strides to reduce overall CO2 emissions resulting from the manufacturing of cement and production of concrete and has committed to making additional progress in the future, (ii) the Virginia Department of Transportation permits and advocates for lower carbon concrete to be used in its specifications and has been working with the cement and concrete industries for several years to reduce the amount of CO2 associated with the concrete used in transportation projects, and (iii) the state agencies that use concrete on vertical construction projects use a very small amount of the total cement produced in Virginia each year (one-half percent).

Mr. Heslinga made a motion to move the recommendation forward and Mr. Pride seconded the motion. The motion carried by a vote of 8-0-2¹.

¹ Yes: Mr. Morris, Mr. McHugh, Ms. Dooley, Ms. Pride, Mr. Saunders, Mr. Heslinga, Ms. Haley, Mr. Damico.
Abstain: Ms. Frye, Mr. Tweedy

Mr. Damico made an additional motion to include in the report on SB 272 that DEQ is willing to stand up a link to the EPA database for reviewing greenhouse gas emissions on their website. Ms. Pride seconded the motion. The motion carried by a vote of 8-0-2².

V. Presentation on SB 859

None.

VI. Public Comment on SB 859

There was no public comment.

Mr. Damico shared that this bill will be redirected to a different workgroup under the Code Commission and made a motion to not discuss this bill while awaiting formal guidance from the Senate. Mr. Saunders seconded. The motion was unanimously approved.

VII. Findings and Recommendations on SB 859

None.

VIII. Presentation on SB 912

Senator Ruff began his remarks by explaining the importance of obtaining the best value at the best price in procurement. He shared that he would like to move forward with something to ensure taxpayers dollars are well spent and stated that there have been past instances where the state purchased technology that was not as successful as desired. Senator Ruff called on Mr. Andrew Lamar with the Richmond Technology Council to further explain.

Mr. Lamar, speaking on behalf of the Richmond Technology Council. He shared that during the 2023 session, SB 912 was introduced to bring a small change to the procurement act that they believe will result in more business participation in information technology procurements for the Commonwealth. Mr. Lamar stated that each of the nine regional technology councils support this change. He explained that in 2016 similar legislation was passed by the General Assembly regarding exceptions to liability terms and conditions, which resulted in more vendors having the opportunity to compete on the technical proposal and move to the negotiation phase. Mr. Lamar shared that the process being proposed is similar to architects and engineers, where exceptions to terms and conditions are not submitted with the proposal and are discussed at the negotiation stage which would be beneficial for information technology procurements.

Mr. Lamar shared that the problem members are facing is the increasing frequency in proposal scoring done by agencies on a vendor's willingness to wholly accept the terms and conditions in the proposal without the opportunity to discuss concerns or revisions.

² Yes: Mr. Morris, Mr. McHugh, Ms. Dooley, Ms. Pride, Mr. Saunders, Mr. Heslinga, Ms. Haley, Mr. Damico.
Abstain: Ms. Frye, Mr. Tweedy

He shared that some agencies score proposals based on whether a vendor takes exception to terms and conditions causing highly qualified vendors being ranked lower than less capable vendors. He stated that rewarding a vendor for not taking exceptions to terms and conditions is not the right approach. He shared that vendors who do not take exceptions or seek clarification should be a red flag to the Commonwealth and that Richmond Technology Council advocates for policies that increase opportunities and competition, and proposals should be evaluated on their merit, best solution, and ability to perform.

Mr. Lamar shared that SB 912 would allow agencies to select the most qualified proposals and allow for thoughtful conversations on appropriate terms and conditions. He stated that agencies can still insist on any terms they believe are essential for a particular contract and concluded his remarks by thanking Mr. Heslinga with VITA for continued dialogue and believes that a solution can be found that will help everyone meet their needs.

Mr. McHugh asked Mr. Lamar if the goal is to prohibit suppliers from proposing exceptions to terms and conditions at the time of the proposal? Mr. Lamar responded that, under SB912, the public body would be prohibited from requiring the vendor to state exceptions, however, that does not prohibit the vendor from indicating exceptions on their own. Mr. Lamar further explained that the goal is to allow evaluation of proposals based on the merit of the proposal and the technical abilities to perform and not exclude vendors from the process based on exceptions to terms and conditions without an understanding of those exceptions. Mr. Lamar expressed concern over public bodies scoring proposals when some proposals have redlines and others do not and the influence that might have over the scoring.

Mr. Damico thanked Mr. Lamar for speaking on behalf of Senator Ruff and the bill's proponents and providing a thorough explanation.

IX. Presentations on SB 912

Next, Mr. Damico called for presentations on SB 912 and indicated that each presenter is limited to three minutes.

Joshua Heslinga was the first to present the Workgroup and began by thanking Senator Ruff and Richmond Technology Council for their continued dialogue. He shared that VITA is not aware of instances identified by the proponents where suppliers are being scored significantly lower or excluded from negotiation due to suppliers taking exceptions to terms and conditions. Mr. Heslinga explained VITA's process for evaluating proposals and stated that in cases where VITA does score exceptions, it is usually a minor component that does not significantly impact the overall scoring. He stated that VITA agreed with the proponents of SB912 that increasing participation in procurement is a good thing, that negotiations can resolve a majority of contract issues identified, and that when suppliers quickly accept all terms and conditions without exceptions that does not always result in a better contract. Mr. Heslinga shared that if there are cases where vendors are being penalized or kicked out of negotiations because of a supplier's robust compliance department, that is a problem worth remedying. He

explained that the bill as introduced could have negative effects on public bodies, however, by denying public bodies information that is useful in the evaluation process, by potentially delaying the process, and by weakening the negotiation position of the public body. Mr. Heslinga stated that, by requiring exceptions be stated upfront, public bodies can better prepare for the negotiation process by ensuring the appropriate subject matter experts or legal resources are engaged.

Mr. Heslinga shared the proposed amendments VITA provided ahead of the meeting and explained that the proposed amendments address the problem identified by the bill's proponents by prohibiting public bodies from considering exceptions during the initial evaluation of proposals, while also addressing the concerns of public bodies by allowing public bodies to obtain exceptions with the submission of proposals. Mr. Heslinga concluded his remarks summarizing the two proposed amendments provided by VITA.

Jennifer Stieffenhofer with the Virginia Association of Governmental Procurement (VAGP) was second to present to the Workgroup. She shared that VAGP represents over 1,100 procurement professionals across Virginia and is unaware of practices that establish scoring criteria for exceptions to contractual terms and conditions as exceptions are addressed during the negotiation phase. She requested examples of such practices.

Gerrit VanVoorhees, the Director of Information Technology at the City of Petersburg was third to present to the Workgroup, representing the Virginia Local Government IT Executives (VaLGITE). Mr. VanVoorhees asked why information technology is singled out and why not change procurement across the state. He stated that he is unclear of the problem this is trying to solve. Mr. VanVoorhees shared that there are instances where it is important to know upfront the exceptions vendors take in order to avoid a prolonged process. He shared that he is unaware of vendors that have been excluded based solely on exceptions taken to terms and conditions. He concluded his remarks by stating that this change could cause problems by making the process less efficient and slower.

Michael Thomas with McGuireWoods Consulting was the fourth person to present. He shared that terms and conditions are there for a variety of reasons, relate to the type of proposal, and can influence the cost of services, which are better understood when discussed in negotiations. He stated that it is beneficial for vendors to think out of the box and offer more innovative proposals. He shared that the proposed terms and conditions that agencies include in the request for proposal do not always fit what is being proposed and stated that, while a redlined document can look daunting and overwhelming to the evaluation panel, allowing negotiations provides the opportunity for explanation and better understanding of the redlines.

Mr. Damico called on Pete Stamps, the Director of Purchases and Supply (DPS) at the Department of General Services, to speak on the process DPS has regarding exceptions to terms and conditions in proposals. Mr. Stamps shared that DPS requests vendors to document exceptions to terms and conditions in proposal responses, however, such exceptions are not evaluated until the negotiations stage.

Mr. Morris asked Mr. Stamps if he is aware of instances where a vendor has been scored lower for redlining terms and conditions. Mr. Stamps stated that he is unaware of instances where vendors have been scored lower for redlining terms and conditions.

Mr. Heslinga asked if the bill is amended to require that public bodies will not score contract exceptions as VITA has proposed, does DGS believe this should apply to more than information technology? Mr. Stamps replied that DPS does not currently score on contract exceptions, therefore it would have minimal impact.

Ms. Dooley asked Mr. Stamps if there is concern from DGS with not knowing all the information ahead of going into a negotiation and dealing with risks. Mr. Stamps stated that is why DPS asks for exceptions upfront, even though DPS does not evaluate on the information, it is used to prepare for negotiation.

X. Public Comment on SB 912

The first stakeholder to comment was Chris Nolen, of McGuireWoods Consulting. Mr. Nolen explained the issue is that the request for proposals states that vendors are deemed to have accepted the terms and conditions in the proposal if no objection is taken. He stated that redlining of terms and conditions is based on the vendors view of risk and without context, it is impossible to know if the vendor really understands the agency proposal.

Mr. Damico asked Mr. Nolen his thoughts on the two ideas before the Workgroup, (i) do not ask vendors to identify exceptions with their proposal submission, or (ii) ask vendors to identify exceptions with their proposal submission and prohibit agencies from evaluating exceptions during the initial evaluation process. Mr. Nolen shared he understands wanting the information submitted at the beginning of the process and the question is whether the exceptions are a part of the proposal. Mr. Nolen stated a desire to ensure that stated exceptions are kept separate from scoring of the proposal. Mr. Lamar agreed with Mr. Nolen and stated a desire to work together to meet everyone's needs.

The second stakeholder to speak was Mark Perry, a member of VaLGITE. Mr. Perry explained the importance of knowing exceptions upfront in proposals before the process can proceed. He stated that there are many data and legal requirements and that knowing upfront will be more efficient. He expressed a desire to keep terms in there but understands not scoring in the initial phase. Mr. McHugh asked Mr. Perry about local government's evaluation of technical requirements, and Mr. Perry responded that it was important to know upfront to be efficient in the procurement process.

XI. Findings and Recommendations on SB 912

Mr. Heslinga stated that it appears there are no serious concerns with the conceptual approach proposed by VITA to allow public bodies to obtain vendors exceptions with the proposal submission and ensure that public bodies do not hold exceptions against suppliers during the initial review. He noted that there was still some questions about scope.

Mr. McHugh said that IT is very complex procurement and that he would question whether we need to expand this to everything, preferring to keep it focused on the original intent of IT.

Mr. Morris stated that it is good to know upfront what exceptions there are and that more information leads to better evaluations. He expressed concern about the behavior identified by the proponents, which may not be happening much but which would be a problem when it happens.

Mr. Saunders asked whether the comparable language for architects and engineers was in subparagraph (A)(4) of the statute and noted that it has an exception for required terms that is a somewhat different structure. Mr. Heslinga responded, noting that professional services feature negotiations with only one offeror at a time but the goods and nonprofessional services category often features negotiations with multiple suppliers at the same time, creating a greater need to know everything upfront. With respect to the “unless” clause noted by Mr. Saunders for the architects and engineers, Mr. Heslinga stated that not everyone agrees on what’s required and that such language introduces additional complexity.

Ms. Dooley commented that technology procurements are vastly different than architect and engineer contracts. She noted that offerors in technology procurements often bring forward other terms and agreements, such as cloud terms and software license agreements, which are then part of the overall consideration of the proposal package and how to proceed with the procurement and that it would do a disservice to taxpayers to go forward without that information.

Mr. Tweedy shared that, without a complete understanding of the impact to non-information technology procurements, the recommendation should be limited to information technology as that is how the bill was originally drafted and referred to the workgroup.

Mr. Tweedy asked about the existing statute’s language concerning exceptions to liability provisions. Mr. Heslinga responded that VITA would remove that language because there would not be a need for it with the across-the-board approach of not evaluating exceptions and that 2019 legislation dealt with liability provisions for IT projects.

Mr. Damico noted that it can be problematic for buyers to keep up with different requirements for different types of procurements and that consistency is important. He stated that he has heard from the buyer community that it is important to be well informed and avoid lengthening the procurement, but that he has also heard the vendor community’s concern that a redline should not prevent vendors from getting to the table, and that a middle of the road approach can meet both sets of concerns.

In response to Mr. Damico’s request for a conceptual recommendation, Mr. Heslinga made a motion to conceptually recommend that for information technology requests for proposals, public bodies would not be prohibited from asking for exceptions to terms and conditions in proposal responses and that any exceptions made by offerors would not be considered as part of the initial scoring or evaluation process for shortlisting offerors for negotiation. Ms. Pride stated that she agrees with the VITA proposals and would like to consider consistency when proposing changes to procurement code to clean up the inconsistencies and variations that make it challenging for procurement officers to navigate. After restatement of the motion, Ms. Dooley seconded. The motion passed 6-0-4.³

Mr. Damico requested a second conceptual recommendation that included non-IT nonprofessional services for further consideration at the next meeting. Mr. Heslinga made a motion for a second conceptual recommendation that for requests for proposals under subsection (A)(3) of §2.2-4302.2, public bodies would not be prohibited from asking for exceptions to terms and conditions in proposal responses and that any exceptions made by offerors would not be evaluated as part of the initial evaluation process for shortlisting offerors for negotiation. Ms. Pride seconded. By a show of hands, the motion was approved 4-2-4.⁴

XII. Public Comment

None.

XIII. Discussion

None.

XIV. Adjournment

Mr. Damico adjourned the meeting at 2:26 p.m. and noted that the Workgroup’s next meeting is scheduled for June 6, 2023.

For more information, see the [Workgroup’s website](#) or contact that Workgroup’s staff at pwg@dgs.virginia.gov.

³ Yes: Mr. Morris, Mr. McHugh, Ms. Dooley, Ms. Pride, Mr. Heslinga, Mr. Damico. Abstain: Ms. Frye, Mr. Tweedy, Mr. Saunders, Ms. Haley

⁴ Yes: Mr. Morris, Ms. Pride, Mr. Heslinga, Mr. Damico. No: Ms. Dooley, Mr. McHugh. Abstain: Ms. Frye, Ms. Haley, Mr. Tweedy, Mr. Saunders

Appendix D: June 6, 2023 Meeting Materials

This appendix contains the meeting materials from the June 6, 2023 Workgroup meeting.

1. Agenda
2. Meeting Materials
 - a. Draft Recommendations for SB 912
3. Approved Meeting Minutes

Public Body Procurement Workgroup

<http://dgs.virginia.gov/dgs/directors-office/procurement-workgroup/>

Meeting # 3

Tuesday, June 6, 2023, 9:30 a.m.

House Room 1

The Virginia State Capitol

1000 Bank Street, Richmond, Virginia 23218

AGENDA

- I. **Call to Order; Remarks by Chair**
- II. **Approval of Meeting Minutes from the May 16, 2023 Workgroup Meeting**
- III. **Update on SB 859**
- IV. **Presentation of Recommendation Options for SB 912**
- V. **Public Comment on Draft Recommendation Options for SB 912**
- VI. **Finalize Recommendation on SB 912**
- VII. **Introduction of the Study of SB 1115 – Procurement Preferences**
- VIII. **Public Comment on SB 1115**
- IX. **Public Comment**
- X. **Discussion**
- XI. **Adjournment**

Members

Department of General Services
Virginia Information Technologies Agency
Department of Planning and Budget
Virginia Association of State Colleges and
University Purchasing Professionals

Department of Small Business and Supplier Diversity
Virginia Department of Transportation
Virginia Association of Governmental Procurement

Representatives

Office of the Attorney General
Senate Finance Committee

House Appropriations Committee
Division of Legislative Services

Staff

Sandra Gill, Deputy Director, DGS
Jessica Hendrickson, Director of Policy and Legislative Affairs, DGS

Public Body Procurement Workgroup

Draft of Conceptual Recommendation Options for SB 912

Option 1 (specific to information technology)

The Workgroup recommends that the General Assembly consider amending subsection (A)(3) of § 2.2-4302.2 to (i) include language for information technology procurements that prohibits public bodies from basing the scoring or evaluation of which offerors are selected for negotiations on exceptions stated in a proposal to any contractual terms or conditions and that such exceptions shall be considered during negotiation; and (ii) remove existing language for information technology procurements that prohibits public bodies from requiring an offeror to state in a proposal response exceptions to liability provisions in the Request for Proposal.

Option 2 (across the statutory category of goods, nonprofessional services, and insurance, including information technology)

The Workgroup recommends that the General Assembly consider amending subsection (A)(3) of § 2.2-4302.2 to (i) insert language that prohibits public bodies from basing the scoring or evaluation of which offerors are selected for negotiations on exceptions stated in a proposal to any contractual terms or conditions and that such exceptions shall be considered during negotiation; and (ii) remove existing language for information technology procurements that prohibits public bodies from requiring an offeror to state in a proposal response exceptions to liability provisions in the Request for Proposal.

Approved Meeting Minutes

Public Body Procurement Workgroup

Meeting # 3

Tuesday, June 6, 2023, 9:30 a.m.
House Room 1
The Virginia State Capitol
1000 Bank Street, Richmond, Virginia 23218

<http://dgs.virginia.gov/dgs/directors-office/procurement-workgroup/>

The Public Body Procurement Workgroup (the Workgroup) met in-person in House Room 1 in the Capitol in Richmond, Virginia, with Joe Damico, Director of the Department of General Services (DGS), presiding. The meeting began with remarks from Mr. Damico, followed by an update on SB 859, then a review and discussion of recommendations for SB 912, and concluded with the introduction of SB 1115. Materials presented at the meeting are available through the [Workgroup's website](#). A recording of the meeting is available on the [House of Delegates video streaming site](#).

Workgroup members and representatives present at the meeting included Joe Damico (Department of General Services), Joshua Heslinga (Virginia Information Technologies Agency), Lisa Pride (Virginia Department of Transportation), Patricia Innocenti (Virginia Association of Governmental Procurement), John McHugh (Virginia Association of State Colleges and University Purchasing Professionals), Leslie Haley (Office of the Attorney General), Mike Tweedy (Senate Finance and Appropriations Committee), Andrea Peeks (House Appropriations Committee) and Joanne Frye (the Division of Legislative Services). Members from the Department of Small Business and Supplier Diversity and Department of Planning and Budget did not attend.

I. Call to Order; Remarks by Chair

Joe Damico, Director
Department of General Services

Mr. Damico called the meeting to order and shared that members with the Department of Small Business and Supplier Diversity and Department of Planning and Budget are not in attendance.

II. Approval of Meeting Minutes from the May 16, 2023 Workgroup Meeting

Ms. Peeks requested an amendment to the bottom of page six, citing that it appears the last sentence is incomplete. Mr. Heslinga stated that the end of that sentence should include "...questions about scope." Mr. Heslinga made a motion to approve the meeting minutes from the May 16, 2023 meeting of the Workgroup as amended. The motion was seconded by Mr. Tweedy and unanimously approved by the Workgroup.

III. Update on SB 859

Next, Mr. Damico asked Staff to provide an update on SB 859. Jessica Hendrickson shared with the Workgroup that the Senate provided a letter redirecting the study of SB 859 to the Virginia Code Commission.

IV. Presentation of Recommendation Options for SB 912

Mr. Damico asked Staff to present the two draft conceptual recommendations for SB 912 as a result of the previous meeting. Ms. Hendrickson presented the following two options to the Workgroup.

Draft of Conceptual Recommendation Options for SB 912

Option 1 (specific to information technology)

The Workgroup recommends that the General Assembly consider amending subsection (A)(3) of § 2.2-4302.2 to (i) include language for information technology procurements that prohibits public bodies from basing the scoring or evaluation of which offerors are selected for negotiations on exceptions stated in a proposal to any contractual terms or conditions and that such exceptions shall be considered during negotiation; and (ii) remove existing language for information technology procurements that prohibits public bodies from requiring an offeror to state in a proposal response exceptions to liability provisions in the Request for Proposal.

Option 2 (across the statutory category of goods, nonprofessional services, and insurance, including information technology)

The Workgroup recommends that the General Assembly consider amending subsection (A)(3) of § 2.2-4302.2 to (i) insert language that prohibits public bodies from basing the scoring or evaluation of which offerors are selected for negotiations on exceptions stated in a proposal to any contractual terms or conditions and that such exceptions shall be considered during negotiation; and (ii) remove existing language for information technology procurements that prohibits public bodies from requiring an offeror to state in a proposal response exceptions to liability provisions in the Request for Proposal.

V. Public Comment on Draft Recommendation Options for SB 912

The first and only person to speak was Andrew Lamar, on behalf of the Richmond Technology Council. Mr. Lamar thanked the Workgroup for a very thoughtful and deliberate conversation at the last meeting and expressed his support of the two options presented for SB 912.

VI. Finalize Recommendation on SB 912

Mr. Damico began by asking the Workgroup for comments and feedback on option one as presented to the Workgroup by Staff. Mr. Heslinga stated that this is the one option that received consensus from the Workgroup at the last meeting. John McHugh made a motion to accept option one and Mr. Heslinga seconded the motion. The motion carried by a vote of 5-0¹.

Next, Mr. Damico asked the Workgroup for comments and feedback on option two as presented to the Workgroup, noting that at the last meeting this option was not supported by two members. He asked if the Workgroup would like to discuss moving this option forward. Ms. Pride shared that it is beneficial to be consistent in the Code and this option does that. Ms. Peeks asked if there is concern over how this option would impact other procurements if it were not specific to information technology. Mr. Damico shared that at the last meeting, DGS/DPS presented that requests for proposal procurements do not score on exceptions to terms and conditions, therefore DGS has no concerns if option two were to move forward. Mr. Heslinga shared that the Workgroup has not heard any opposition or concern of negative impacts from option two and shared there is no harm in supporting both options as the patron would determine which one to move forward. Mr. Heslinga made a motion to accept option two in addition to option one and Ms. Pride seconded the motion. The motion carried by a vote of 4-1².

VII. Introduction of the Study of SB 1115 – Procurement Preferences

Ms. Hendrickson provided an introduction to SB 1115 that is before the Workgroup.

VIII. Public Comment on SB 1115

None.

¹ Yes: Ms. Innocenti, Mr. McHugh, Mr. Heslinga, Ms. Pride, Mr. Damico

² Yes: Ms. Innocenti, Mr. Heslinga, Ms. Pride, Mr. Damico; No: Mr. McHugh

IX. Public Comment

None.

X. Discussion

Mr. McHugh confirmed that the review for SB 1115, the Workgroup should review the substitute version. Staff shared that the substitution version incorporated Senator McPike's SB 1176.

XI. Adjournment

Mr. Damico adjourned the meeting at 9:53 a.m. and noted that the Workgroup's next meeting is scheduled for June 27, 2023.

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