

# DRAFT Meeting Minutes

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## Public Body Procurement Workgroup

### Meeting # 7

**Tuesday, August 22, 2023, 1:00 p.m.**

**House Room 1**

**The Capitol Building**

**1000 Bank Street, Richmond, Virginia 23218**

<https://dgs.virginia.gov/dgs/directors-office/pwg/>

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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 public comment, discussion, and concluded with draft recommendations by the Workgroup members. 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), Kerry Bates (Virginia Department of Transportation), Joshua Heslinga (Virginia Information Technologies Agency), 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), Jason Saunders (Department of Planning and Budget), Willis Morris (Department of Small Business and Supplier Diversity), and Joanne Frye (the Division of Legislative Services). Andrea Peek (House Appropriations Committee) and Mike Tweedy (Senate Finance and Appropriations Committee) were absent.

#### **I. Call to Order; Remarks by Chair**

***Joe Damico, Director***

**Department of General Services**

Mr. Damico called the meeting to order and thanked the Workgroup members for their hard work this year stating that today the Workgroups focus is on SB 1115 and SB 954.

## **II. Approval of Meeting Minutes from the August 8, 2023 Workgroup Meeting**

Mr. McHugh requested a correction to his comment made at the last meeting in section II of the draft minutes, replacing reflected with addressed, and replacing included with addressed.

Mr. Morris made a motion to approve the meeting minutes from the July 8, 2023 meeting as amended. The motion was seconded by Mr. Heslinga and unanimously approved by the Workgroup.

## **III. Public Comment on Draft Recommendation for SB 1115**

Mr. Damico invited the public to provide comment on the draft recommendations for SB 1115 and reminded everyone that there is a three-minute limit for each person speaking.

No comments were made.

## **IV. Finalize Recommendations on SB 1115**

Mr. Damico welcomed Senator DeSteph, patron of SB 1115, to the meeting and asked if the Senator would like to share any remarks before the Workgroup begins discussion to finalize recommendations. Senator DeSteph introduced Brett Vassey, President and CEO of the Virginia Manufacturers Association, and invited Mr. Vassey to speak.

Mr. Vassey thanked the Workgroup for their continued work on competitiveness of state procurement policy as it pertains to manufactured goods and thanked Senator DeSteph for two consecutive years of introducing legislation on this topic. Mr. Vassey stated that the two recommendations before the Workgroup for consideration will get the manufacturers where they want to be. He stated that one of the recommendations makes sure if an out of state bidder has an absolute or percentage preference that it is mandatorily applied in the state bid, and second, an artful solution rather than a point system of preference, is to allow a tie bid breaking option which has been utilized successfully in North Carolina. He concluded his remarks stating his support for the recommendations for consideration today.

Next, Senator DeSteph provided final remarks to the Workgroup. He shared that all states around Virginia have preferences for companies within their states and he wants to give preference to Virginia companies. He added that he appreciates the work done with tie bids where a Virginia business would be given the opportunity to match the lowest bidder from another state. Senator DeSteph mentioned that he has spoken to the Secretary of Transportation about this too and anything he can do to help Virginia businesses, he will. He concluded that he appreciates the recommendations provided and will incorporate them into the bill he moves forward this year.

Mr. Damico thanked the Senator for coming in and his collaboration.

Mr. Damico read the first recommendation before the Workgroup: The Workgroup recommends that the General Assembly consider amending subsection (A) of §2.2-4324 to allow in the instance of a tie bid for goods when there is not a resident of Virginia that an award preference shall then be given to goods that are manufactured in the United States. Mr. Heslinga made a motion to approve the recommendation. The motion was seconded by Ms. Innocenti and carried by a vote of 6-0<sup>1</sup>.

Next, Mr. Damico read the second recommendation before the Workgroup: The Workgroup recommends that the General Assembly consider amending §2.2-4324 to allow the next lowest responsive and responsible bidder who is a resident of Virginia, or a Virginia company, be given the option to match the price of the lowest responsive and responsible bidder in a procurement for goods who is a resident of another state. Mr. Morris made a motion to approve the recommendation. The motion was seconded by Mr. Heslinga and carried by a vote of 6-0<sup>2</sup>.

#### **V. Public Comment on SB 954**

Mr. Damico began by summarizing where the Workgroup left off at the last meeting. He stated that the last meeting resulted in four considerations for the Workgroup to review and that Ms. Peeks was interested in hearing back from the industry on their efforts to meet and further discuss SB 954. Moving into public comment, Mr. Damico reminded everyone of the three-minute limit per person.

Public comments in support of SB 954.

The first stakeholder to speak was Jack Dyer, owner of Gulf Seaboard General Contractors and President of the Virginia Contractor Procurement Alliance (VCPA). He thanked the Workgroup for the time put into SB 954 this summer and supports the recommendations before the Workgroup. Mr. Dyer referenced a letter sent on August 18, 2023 that has been provided to the Workgroup that included clarity on the recommendations.

The second stakeholder to speak was Matt Benka with the Virginia Contractor Procurement Alliance (VCPA). He shared their support for the recommendations before the Workgroup. Mr. Benka shared that the industry groups did meet and found some common ground on some issues and will continue to work together on the other issues.

The third stakeholder to speak was Brandon Spencer, Executive Vice President of Kembridge Construction. He stated that he supports the recommendations and appreciates the hard work put into this.

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<sup>1</sup> Yes: Ms. Innocenti, Mr. Morris, Mr. Heslinga, Mr. McHugh, Mr. Bates, Mr. Damico

<sup>2</sup> Yes: Ms. Innocenti, Mr. Morris, Mr. Heslinga, Mr. McHugh, Mr. Bates, Mr. Damico

The fourth stakeholder to speak was Tom Evans of Southwood Building Systems, sharing that he is a member of VCPA. He thanked the Workgroup for their hard work and that the recommendations are the best he has seen in 15 years of working on procurement issues and hopes they will move forward.

The fifth stakeholder to speak was Mark Meland, President of Century Construction. He shared that he fully supports the recommendations made by DGS.

The sixth stakeholder to speak was Todd Morgan, President and owner of MB Contractors in Roanoke, VA. He thanked the Workgroup for their hard work on SB 954 and as a member of VCPA and AGC, he hopes the Workgroup will support the recommendations as written.

The seventh stakeholder to speak was Morris Cephas, President of Cephas NeXt in Richmond, stated that he supports the recommendations and appreciates all of the hard work.

The eighth stakeholder to speak was Scott Shufflebarger, representing Virginia Association of Roofing Professionals. He commended the Workgroup on their hard work and efforts highlighting recommendation three and appreciates the efforts to have subcontractor work bid out as part of construction management.

The ninth stakeholder to speak was Tony Biller, President and CEO of Nielsen Builders. He stated that he fully supports DGS recommendations and has a few small tweaks/clarifications for consideration. He highlighted the reinstatement of design-bid-build as the default method of procurement for construction. He stated that he is happy to see a review process in place and likes that local public bodies would have a public hearing, and more opportunities for subcontractors.

#### Public comments in opposition.

The first stakeholder to speak in opposition was Colette Sheehy, Senior Vice President for Operations and State Government Relations at the University of Virginia (UVA). She stated that in 2005 Governor Warner and the General Assembly partnered with three institutions of higher education (Virginia Tech, William and Mary, and UVA) to change the relationship between those institutions and the Commonwealth. She stated she is probably one of the few people still around that was involved in that legislation and development of the restructured higher education financial and administrative operations act and the management agreements that followed in the next year for these three institutions. She stated the act and the management agreements set the context for higher education's position on this particular bill. She further explained that more than 18 years ago, Governor Warner as a private business executive saw the value and efficiency and cost effectiveness of delegating to institutions with the appropriate expertise the responsibility of transacting business at the local level without additional layers of approval by central agencies. She said she likes to think that Governor Youngkin, a private business executive, is focused on the same objectives of efficiency and cost

effectiveness and would support the continued ability of institutions to make decisions about key operational issues on their campuses. Ms. Sheehy stated that for those not familiar with the restructuring act, it is a very complex piece of legislation that requires accountability on the part of institutions in exchange for autonomy over certain business operations. She stated that everyone appreciates and recognizes the expertise that sits with DEB staff but no one knows a college campus better than those who work there every day. Concluding her remarks stating that institutions remain accountable to the Commonwealth and their board of supervisors.

The second stakeholder to speak was Alex Iszard, the Assistant Vice President of Planning, Design and Construction at George Mason University (GMU). He shared that GMU has added over four million square feet during his fifteen year tenure and has utilized both CM and DB effectively to do so. The restructure act has three levels of autonomy and GMU was a level two at the onset of this. He shared that in 2016 GMU moved to level 2.5, a pilot program, and achieved level three in 2021. He explained in July 2017 the new legislation moved CM and DB to its own section of the code and required covered institutions to review all CM/DB procurements. Since this, GMU has requested review of three projects, 2 CM and 1 DB, and prior to any submission they assess projects and ensure the procurement method truly suits the project and in all cases DGS has agreed with GMU's chosen method. He explained the GMU team and their lengthy experience, sharing that dozens of projects have been procured via DBB. Mr. Iszard explained that in an environment of ongoing escalation having a contractor onboard from the onset of the project allows for the use of early release packages to manage schedules and budgets, that GMU has been able to use real time cost and schedule data to determine the most effective structural systems during design, hold the CM accountable for their original fee, despite ongoing escalation, and hold them accountable for preconstruction services. He believes the current language provides appropriate safeguards to ensure competition and while still allowing state agencies to make appropriate decisions related to procurement.

The third stakeholder to speak was Bob Gordon with Virginia Tech (VT), sharing that he has been at VT for three decades overseeing capital financing and planning, design, construction and real estate management. He explained that it is critical that universities be able to maintain the authority to select capital delivery and procurement methods. He stated that for approximately the last two decades, the university has developed highly effective business practices to implement entire capital outlay programs, hundreds of millions of dollars over many projects, and have become experts at doing this at the local level since restructuring. He explained that this includes multiple reviews and approvals by their board of visitors and the reviews and approvals are essential to ensure we deliver the projects on schedule and on budget. Mr. Gordon said a key activity is selecting the project delivery and procurement strategy and they do this very early in the process when the six-year capital outlay plan is identified. Stating in the budget requests submitted to the board or state they identify and disclose the intended project delivery method with a justification. He explained that since VT has been doing this in 2018 under current code, VT has initiated 23 projects, 12 have been DBB, 10 CM, and 1 DB. He concluded his

remarks by asking the Workgroup to consider higher education to continue their authority to maintain for project delivery and procurement methods.

The fourth stakeholder to speak was Dan Pisaniello, the University Architect and Director of Facilities, Planning Design and Construction at William and Mary (WM). He explained that projects procured through CM are required to have a minimum of 90% of the work competitively bid, stating that procurement is only one part of the equitation. He said CM is a comprehensive project delivery method, not just an alternative delivery method that includes the owner, design professionals, and constructures. During the design phase the CM becomes a fully integrated part of the team allowing significant value added. He explained that under part one of the contract the CM provides cost estimating, reviews documents for constructability, schedule and sequences activities, research and market analysis for material selection, and a comprehensive evaluation strategy. He concluded with, in the absence of a CM, agencies will still need these services and could incur an administrative burden as those consultants may not be a fully integrated part of the design team.

The fifth stakeholder to comment was Craig Shorts, Associate Vice President of Business Services at James Madison University (JMU). Mr. Shorts pointed to the higher education handouts provided that explain the delivery method on compliance, competition, and executive order 35. He stated on the second page of the handout there is an illustration that shows logically how the CM method can help bring a project in on time or earlier. Time is money and the CM method is hugely important to complete projects on time. He explained that JMU had a athletics facility project valued at \$15 million that finished 130 days late due to complex HVAC components and if the project had been a CM instead of DBB he is 100% sure the project would have been completed on time. Since 2002, JMU has had 41 projects, 19 have been alternative delivery methods and they received nine offerors on average, with 22 DBB projects receiving only four bids on average. He pointed out that CM has more competition. He explained with CM, 90% of the work is done by subcontractors and there are outreach on the projects, not just to the general market but also SWaM vendors, sharing that they seek vendors who are eligible to be SWaM certified, too. He concluded his remarks sharing that of seven solicitations via alternative methods, five of those were awarded to small businesses.

Mr. McHugh asked Mr. Shorts for more detail on the outreach events and how effective they are for receiving more interest and more responses to the competitive subcontract packages issued. Mr. Shorts stated that CM allows agencies to negotiate the terms of outreach, the events the CM has to do, and more. In DBB, bids come back, and you get what you get, there are no provisions for things like this. He stated that in his experience it is an open book process explaining that the CM gets proposals from subcontractors and everyone evaluates and ensures the best value for project. One component is price but there are other components looked at when evaluating the subcontractors. He added that the outreach events are widely attended and advertised, and that social media is used, along with other platforms. He said there is no harm in using eVA to post notices and that would help get the word out and that the CM process allows for a much wider net to be cast for subcontractors than DBB allows.

Mr. Damico asked Mr. Shorts if he can describe how the small business opportunities are pursued under design-bid-build? Mr. Shorts replied, when a DBB is advertised it is advertised on the open market and small businesses can bid on the project. Mr. Damico followed up asking if when awarding to a prime contractor is there any outreach done by the prime contractor? Mr. Shorts stated that there are goals for the prime contractor to meet but no outreach occurs like it does with CM, explaining that in DBB that outreach has already taken place prior to the bid submission.

Mr. McHugh commented that that the intent of the Code of Virginia is that competition is sought to the maximum degree and with the alternative delivery methods there have been almost more than double the responses than with DBB.

The sixth stakeholder to speak was Glenn Thompson of W.M. Jordan Company, a general contractor and construction manager based in Virginia. He echoed the comments by JMU about the process from a construction manager perspective. Mr. Thompson said that they cast a wide net on every project and want as much competition as possible explaining that a considerable amount of time is spent as the bids come in and reviewing the bids with the client, and work to maximize the scope of the competition on each project. He supports the recommendation regarding using eVA to advertise subcontracting opportunities and opposes SB 954.

Mr. Damico asked Mr. Thompson if he bids on any work and if so, when he wins the job does his company do any small business outreach after award or is that done prior to bidding? Mr. Thompson replied that yes that he bids on work, explaining that the small business outreach occurs prior to submitting the bid with CM and with DBB he tries but cannot always maximize small business utilization.

The seventh stakeholder to speak was Michelle Gowdy, Executive Director with the Virginia Municipal League (VML). Ms. Gowdy spoke regarding local government, stating that they oppose recommendation one and three because adding another public hearing requirement is an additional administrative cost for localities and instead suggested a public notice that allows for input. She shared that there is currently a public notice work group that is looking into best practices for localities handling of public notices. She stated that VML opposes state mandates such as the requirement to use eVA.

Mr. Damico asked Ms. Gowdy if the process for local public bodies seeking funding for a capital project is done in public? She replied yes, explaining that they do a five-year capital plan through their governing boards and once a project is funded it will go out to bid with all appropriate public notices. Mr. Damico asked if there is an opportunity during the project development for the procurement method to be identified and allow for public comment to avoid having to hold a special hearing? Ms. Gowdy stated that there are opportunities and explained that both the planning commission and approving body both vote in public and the board or council makes a vote on the final procurement method at public meetings.

Mr. Saunders asked if it would be more in line with the local public body process to recommend that the procurement method be advertised and available for public comment during a regularly scheduled board meeting or public meeting? Ms. Gowdy stated that they can post the type of procurement on their website with the agenda so interested parties are aware of the procurement method being voted on at the meeting.

Mr. McHugh asked if local public bodies are required to use eVA? Ms. Gowdy replied that they are not required but many choose to use eVA and/or their website. She said that VAGP would prefer to have the option to continue to use eVA and use their own locality driven website. Mr. McHugh clarified that the concern from local public bodies is the mandate to use eVA, not the public notice itself? Ms. Gowdy stated that is correct.

The eighth stakeholder to speak was Brandon Robinson with the Association General Contractors (AGC). Mr. Robinson stated that he submitted additional ideas for the Workgroup to consider which is included in the meeting materials. He explained that the considerations AGC has put forward follow what he presented about two meetings ago which focused on transparency, the definition of complexity, and not using past CM experience during the scoring process. Mr. Robinson stated that he understands there is concern about amending the definition of complexity. He said that AGC supports posting in eVA or on local public bodies websites and has no issue with posting subcontracting opportunities on eVA to increase transparency.

There were no public comments for support or oppose in part, or neutral.

## **VI. Findings and Recommendations on SB 954**

Before moving into formal recommendations and voting, the Workgroup had an opportunity to discuss SB 954 and the testimony heard.

Mr. McHugh stated that VASCUPP submitted recommendations to the Workgroup that are a result of information heard today and over the summer. He explained that today the Workgroup heard the intent of the restructuring act and managements agreements, why they are relevant to the choice of project delivery methods for institutions, and how institutions have been delegated the authority to make fully informed decisions for themselves. Mr. McHugh stated that we learned how institutions administer their processes, have fair and equal access to funds, and shared how institutions engage their governing boards and how the governing boards hold institutions accountable for timely delivery of projects within budget. He added that the Workgroup learned about the benefits to small and diverse contractor communities also.

Mr. McHugh paraphrased from the VASCUPP handout included in the meeting materials stating; they heard the concerns about qualifications and recommend prohibiting listing previous CM experience as a prerequisite to the scoring process, transparency of the decisions for the project delivery method and recommend that all DEB related documents related to the advisory process be publicly posted on eVA, and recommend addressing



decisions made regarding the project delivery method for general funded projects to align with the DGS recommendation for local public bodies by modifying 43.1 to add the institutions governing board approval is required.

Mr. Damico asked Mr. McHugh about recommendation two that requires all DEB related documents related to the advisory process to be publicly posted on eVA. Mr. Damico explained that currently DEB has a form that institutions are required to complete that supports the institutions decision on the delivery method chosen which is then submitted to DEB for review. He explained that the document and justification is posted on the DGS website as a complete package. Mr. Damico asked Mr. McHugh for an understanding of what other documents he is looking at having posted? Mr. McHugh suggested that the documents that DEB posts should also be posted in eVA. Ms. Gill asked Mr. McHugh if he is proposing that institutions post these documents as an attachment when the institution posts a solicitation? Mr. McHugh replied that he wants to add more transparency to the process, the details and the decision behind the choice of alternative methods. Ms. Gill followed up asking if Mr. McHugh sees this posting of documents occurring when institutions solicit for preconstruction services? Mr. McHugh replied, yes.

Mr. Saunders inquired about recommendation three, asking Mr. McHugh if this recommendation would allow institutions in the case of general funded projects to have the institutions governing board overrule the recommendation by DEB on the project delivery method? Mr. McHugh stated that it would be any appropriated projects. Mr. Saunders asked if there is a sense of how many capital projects are general funded verses non-general funded? Mr. McHugh stated that the majority of funding is general fund.

Ms. Innocenti offered a recommendation for consideration from VAGP explaining that the eVA participation by local public bodies is inclusive of cities, counties, towns, and K-12 throughout the Commonwealth. She explained that they do use eVA for public notice because it is an effective tool. She stated that she supports the recommendation from VML which allows the option to post CM/DB opportunities on eVA or on the local public bodies local website. She indicated that she opposes the concept of having a required public hearing.

Next, Mr. Damico offered recommendations for the Workgroup to consider. Before proposing the recommendations, he explained that 43.1 of the Code was introduced by the General Assembly to make an attempt to bring state public bodies, institutions of higher education, and local public bodies into conformance with processes related to how CM/DB is procured. He explained that it is his understanding that 43.1 was purposely created because of the autonomy that institutions of higher education have and where the CM/DB language resided, in the VPPA, institutions of higher education were excluded because their autonomy and MOU/MOA's excluded them. He stated that his understanding of the intent of 43.1 is to have a set of criteria and processes that the industry can expect from public bodies when procuring these delivery methods, providing some common standards that the contractor community can rely on. Mr. Damico touched on the 2016 JLARC report and stated that DEB probably has the most experienced

number of professionals that are involved in the review of design documents that includes the building code official standpoint and their expertise on inspections. JLARC indicated that DBB is the default method, which they testified to at the last Workgroup meeting, and said that alternative methods may be beneficial for more complex and time sensitive projects, including that a dollar threshold is not the most effective criteria to use when determining a delivery method. He shared that today the Workgroup heard from JMU that a \$15 million project done as DBB may not have encountered significant delays had CM been used.

Mr. Damico stated that the complex definition was approved in 2017 by the General Assembly and has not heard any concerns by the industry or public bodies that changes to the definition are needed. Through testimony he has heard that there may be a desire to make changes to the complex definition and if this is the case, the stakeholders can address this but DGS will not recommend amending the definition.

Mr. Damico summarized the data provided to the Workgroup from the VCPA, citing that the data shows a trend towards DBB being used more. The AGC data provided shows that DBB is used 74% of the time over the other procurement methods being used 26% of the time. He said that DBB is being used the majority of the time and he concludes from the data sets that there is consideration being given by the public bodies as to the method being selected. The small business community told the Workgroup that CM is more helpful to them and provides more business opportunities.

Mr. Damico spoke to transparency, sharing that the data the General Assembly requires DEB to report is to provide them the opportunity to see what is going on as it relates to public bodies decisions on procurement methods. This data shows that when DEB has reviewed a decision by state agencies on an alternative method of delivery, DEB has agreed with the chosen method 100% of the time. The data shows that when DEB has reviewed a decision by institutions of higher education, there have been eight instances where DEB did not agree with the chosen delivery method but the institution proceeded anyway, which is within their authority to do. He shared that DEB is current required to review the proposed method of delivery and make a decision if DEB agrees, or not, within five days. Mr. Damico stated that this information sets the stage and background as to what has been considered by DGS in offering the following three recommendations.

Mr. Damico offered three recommendations for the Workgroups consideration: the first recommendation is the General Assembly consider stating in 43.1 that DBB is the default method of procurement unless an alternative method (CM/DB) is approved by DGS/DEB for institutions of higher education and state public bodies, or in the case of local public bodies, the local governing board must approve the use of CM/DB in a public forum allowing for public comment on the use of CM/DB. The second recommendation is the General Assembly consider amending DGS authority in 43/1 from evaluating the proposed use of CM/DB by state public bodies and institutions of higher education to DGS/DEB making a final decision as to the use of CM/DB on each project. The third recommendation is that the General Assembly consider requiring public bodies to

advertise available subcontracting opportunities on the DGS central electronic procurement website, known as eVA, for CM/DB projects.

Mr. McHugh thanked Mr. Damico for going through the recommendations and asked if the intent of the recommendations today would result in potentially removing the threshold from the existing 43.1? Mr. Damico replied that he believes the responsibilities of the Workgroup are to make recommendations for the General Assembly to consider as they are the policy makers for the Commonwealth and if the decision by the General Assembly is that DBB is the default method and CM/DB requires DGS/DEB approval, then yes, DGS would work with the SOA to remove the dollar threshold as it relates to the selection of delivery method.

Mr. McHugh pointed to the first recommendation from Mr. Damico that states that DBB is the default method unless an alternative method is approved by DGS, explaining that in the Attorney General's testimony the Workgroup heard that this language is already in the Code, asking if it is necessary to make the same statement in another section of the Code. He continued his remarks sharing that the recommendation for local public bodies to go to their local governing board essentially aligns with the VACUPP recommendation and asked for consideration of modifying the recommendation. He explained that institutions of higher education governing boards consider more complicated things other than construction method and how it fits into the master plan, such as negotiations and discussions with multiple jurisdictions, funding and financing of buildings, and all of these are non-construction considerations that the board is aware of and made aware of during various meetings. He stated that he does not dispute that DEB is the right resource to rely on for advising the proper method but their review is isolated to construction and does not take the other important factors into consideration. He concluded his remarks on the DGS recommendations stating that in terms of the eVA posting requirement, he is not opposed to this and supports competition to the maximum degree, adding that today the Workgroup heard testimony on how outreach events are conducted.

Mr. Damico thanked Mr. McHugh for his comments, stating that he doesn't see the Workgroup as the policy making group but instead a group that informs the General Assembly that we have discussed the topic and provide considerations for their review as they address the issue going forward in the General Assembly. He stated that he will propose the DGS recommendations as written and if there is the desire to move forward different versions, the Workgroup has the discretion to do so. recommendations that DGS will move forward are being moved forward as written as there could be multiple recommendations for the GA to consider as they determine the proper use of these alternative methods.

Next the Workgroup made formal recommendations and voted on which will move forward.

Recommendation 1: [Consider] Prohibit state agencies and covered institutions from listing previous CM experience as a prerequisite or using such experience in the scoring process for prequal or award of a contract. Local governments are purposely left out. Mr.

McHugh made a motion move this recommendation forward. The motion was seconded by Mr. Bates and carried by a vote of 6-1<sup>3</sup>.

Recommendation 2: [Consider] all documents exchanged between agencies and covered institutions with the Division of Engineering and Buildings related to the advisory process of the selection of alternative methods (CM/DB) as a projects delivery method shall be also posted publicly to eVA. Mr. McHugh made a motion to move this recommendation forward. The motion was seconded by Ms. Innocenti. Prior to voting, Mr. Heslinga requested clarification on the wording, suggesting the removal of the word “advisory”. McHugh suggested changing advisory to current in the recommendation so it would read “consider all documents exchanged between agencies and covered institutions with the Division of Engineering and Buildings related to the current process of the selection of alternative methods (CM/DB) as a projects delivery method shall also be posted publicly to eVA. Mr. McHugh made a motion to move the recommendation forward as amended. The motion was seconded by Mr. Heslinga and carried by a vote of 6-1<sup>4</sup>.

Mr. Damico, having voted on the prevailing side of recommendation 1, would like to propose adding “consider” in front of that recommendation. Mr. McHugh made a motion to accept the addition. The motion was seconded by Mr. Heslinga and carried by a vote of 6-1<sup>5</sup>.

Recommendation 3: “Consider modifying 2.2-4381(F) as bolded: “If a covered institution elects to proceed with the project using a construction management or design-build procurement method despite the recommendation of the Department to the contrary, **for general fund funded projects, covered institutions shall request a review by its governing board and may proceed with construction management or design-build procurement method only upon receiving approval by tis governing board to not accept the recommendation of the Department. The covered institution should include the written statement of a covered institution’s Governing Board’s approval to not follow the recommendation of the Department in the procurement file. For all other projects,** if a covered institution elects to proceed with the project using a construction management or design-build procurement method despite the recommendation of the Department to the contrary, such covered institution shall state in writing its reasons therefor and any justification for not following the recommendation of the Department and submit same to the Department. The written statement of a covered institution’s decision to not follow the recommendation of the Department shall be maintained in the procurement file.” Mr. McHugh made a motion to move the recommendation forward. The motion was seconded by Ms. Innocenti and carried by a vote of 4-2-1<sup>6</sup>.

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<sup>3</sup> Yes; Innocenti, Morris, Heslinga, McHugh, Bates, Damico. Abstain: Saunders

<sup>4</sup> Yes; Innocenti, Morris, Heslinga, McHugh, Bates, Damico. Abstain: Saunders

<sup>5</sup> Yes; Innocenti, Morris, Heslinga, McHugh, Bates, Damico. Abstain: Saunders

<sup>6</sup> Yes; Innocenti, Morris, McHugh, Bates. No: Damico, Saunders. Abstain: Heslinga,

Recommendation 4: Workgroup recommend that local public bodies be required to post notice on eVA or their local website at least 14 days prior to the governing body making a decision to use either CM or DB on a particular project but that no public hearing be required. Ms. Innocenti made a motion to move the recommendation forward. The motion was seconded by Mr. McHugh, The motion did not carry by a vote of 2-4-1<sup>7</sup>.

Recommendation 5: The General Assembly consider stating in 43.1 that design-bid-build is the default method of procurement unless an alternative method (CM/DB) is approved by DGS' Division of Engineering and Buildings (DEB) for institutions of higher education and state public bodies, or in the case of local public bodies, the local governing board must approve the use of CM/DB in a public forum allowing for public comments on the proposed use of CM/DB. Mr. Morris made a motion to move the recommendation forward. The motion was seconded by Ms. Innocenti and carried by a vote of 6-1<sup>8</sup>.

Recommendation 6: The General Assembly consider amending DGS' authority in 43.1 from evaluating the proposed use of CM/DB by state public bodies and institutions of higher education to DGS' DEB making a final decision as to the use of CM/DB on each project. Mr. Saunders made a motion to move the recommendation forward. The motion was seconded by Mr. Morris and carried by a vote of 5-2<sup>9</sup>.

Recommendation 7: The General Assembly consider requiring public bodies to advertise available subcontracting opportunities on the DGS central electronic procurement website, known as eVA, for CM/DB projects. Mr. Morris made a motion to move the recommendation forward. The motion was seconded by Mr. Heslinga and carried by a vote of 4-1-1<sup>10</sup>.

The Workgroup tabled a previously provided consideration to modify any SOA procedures rather than making legislative changes and provide a statement in the report that the SOA procedures would be modified as necessary in response to legislative changes made during the General Assembly session.

Mr. Morris, having voted on the prevailing side of recommendation 3, made a motion to reconsideration of the vote. Mr. Heslinga seconded the motion and carried by a vote of 4-3<sup>11</sup>. Recommendation 3 was before the Workgroup again for voting. Mr. Morris made a motion to move recommendation 3 forward. The motion was seconded by Mr. Damico and failed to carry by a vote of 4-3<sup>12</sup>.

Ms. Innocenti made a motion to move forward a recommendation that the General Assembly consider requiring public bodies advertise available subcontracting

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<sup>7</sup> Yes: Innocenti, McHugh. No: Morris, Heslinga, Bates, Damico. Abstain: Saunders

<sup>8</sup> Yes: Innocenti, Morris, Heslinga, Bates, Damico, Saunders. No: McHugh

<sup>9</sup> Yes: Morris, Heslinga, Bates, Damico, Saunders. No: Innocenti, McHugh

<sup>10</sup> Yes: Morris, Heslinga, Bates, Damico, Saunders. No: Innocenti. Abstain: McHugh

<sup>11</sup> Yes: Morris, Heslinga, Damico, Saunders. No: Innocenti, McHugh, Bates

<sup>12</sup> Yes: Innocenti, McHugh, Bates. No: Morris, Heslinga, Damico, Saunders

opportunities on the DGS' central electronic procurement website, known as eVA, or the local government website for CM/DB projects. The motion was seconded by Mr. McHugh and failed by a vote of 4-2-1<sup>13</sup>

Mr. McHugh asked if there will be another opportunity to provide a recommendation for consideration. Mr. Damico stated that the recommendations voted on today will allow staff to put them into writing for the next meeting the Workgroup will have a final vote on the recommendations to include in the report and if at this time a member would like to propose another recommendation for the Workgroup to vote on, they can.

## **VII. Public Comment**

None.

## **VIII. Discussion**

None.

## **IX. Adjournment**

Mr. Damico adjourned the meeting at 3:13 p.m. and noted that the next Workgroup meeting is scheduled for September 14, 2023 at 1:00 p.m. in the James Monroe Building, conference room C.

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

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<sup>13</sup> Yes: Innocenti, McHugh. No: Morris, Heslinga, Bates, Damico. Abstain: Saunders

# **Public Body Procurement Workgroup**

## **Draft Recommendations SB 954**

### **Recommendation 1:**

The General Assembly consider prohibiting state agencies and covered institutions from listing previous construction management (CM) experience as a prerequisite or using such experience in the scoring process for prequalified or award of a contract.

### **Recommendation 2:**

The General Assembly consider requiring all documents exchanged between agencies and covered institutions with the DGS Department of Engineering and Buildings (DEB) related to the current process of the selection of alternative methods, construction management or design-build (CM/DB), as a project's delivery method shall also be posted publicly to DGS' central electronic procurement system, known as eVA.

### **Recommendation 3:**

The General Assembly consider stating in Chapter 43.1 of Title 2.2 of the Code that design-bid-build is the default method of procurement unless an alternative method (CM/DB) is approved by DGS' Division of Engineering and Buildings (DEB) for institutions of higher education and state public bodies, or in the case of local public bodies, the local governing board must approve the use of CM/DB in a public forum allowing for public comment on the proposed use of CM/DB.

### **Recommendation 4:**

The General Assembly consider amending DGS' authority in Chapter 43.1 of Title 2.2 of the Code from evaluating the proposed use of CM/DB by state public bodies and institutions of higher education to DGS' DEB making a final decision as to the use of CM/DB on each project.

### **Recommendation 5:**

The General Assembly consider requiring public bodies to advertise available subcontracting opportunities on the DGS central electronic procurement website, known as eVA, for CM/DB projects.