

Recommendations

Development and Management of State Contracts in Virginia

RECOMMENDATION 1

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

RECOMMENDATION 2

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

RECOMMENDATION 3

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

RECOMMENDATION 4

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

RECOMMENDATION 5

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

RECOMMENDATION 6

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

RECOMMENDATION 7

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

RECOMMENDATION 8

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

RECOMMENDATION 9

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

RECOMMENDATION 10

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

RECOMMENDATION 11

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

RECOMMENDATION 12

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

RECOMMENDATION 13

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

RECOMMENDATION 14

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

RECOMMENDATION 15

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

RECOMMENDATION 16

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

RECOMMENDATION 17

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

RECOMMENDATION 18

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

RECOMMENDATION 19

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

RECOMMENDATION 20

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

RECOMMENDATION 21

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

RECOMMENDATION 22

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

RECOMMENDATION 23

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

RECOMMENDATION 24

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

RECOMMENDATION 25

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

RECOMMENDATION 26

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

RECOMMENDATION 27

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

RECOMMENDATION 28

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

RECOMMENDATION 29

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

RECOMMENDATION 30

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