













Support **reasonable reform** that represents **broad consensus** among stakeholders
SUPPORT SB 249 & HB 1108 – OPPOSE SB 18 & HB 1191

	SB 18 / HB 1191 OPPOSE	SB 249 / HB 1108 SUPPORT
<i>Supported by the largest contractor associations in Virginia.</i>		
<i>Supported by institutions of higher education.</i>		
<i>Supported by localities.</i>		
<i>Neutral to procurement method.</i>		
<i>Creates additional transparency for construction procurement.</i>		
<i>Was developed by and supported by a broad coalition of stakeholders.</i>		

The following groups urge you to support reasonable reform to the rules governing construction management at risk (CMAR) and other alternative delivery methods used in construction procurement. These bills reflect months of consensus building and compromise to find reforms that increase transparency, maintain market fairness, and are supported by the vast majority of stakeholders. They are the recommendations **most closely aligned with the DGS Public Procurement Working Group**.



Detailed Comparison of Procurement Bills

What follows is a comparison of the DGS report to the two procurement bills. Each of the first five rows address a recommendation from the DGS report, and how each bill addresses that recommendation. The last eight rows address provisions included in each bill that was not addressed in the DGS report. *Italics* represent exact language as found in the proposed legislation.

DGS Recommendations	SB 18 / HB 1191 OPPOSE	SB 249 / HB 1108 - Coalition bill SUPPORT
<p>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 prequalification or award of a contract.</p>	<p><i>In the selection of a contractor, a covered institution shall not consider the prior construction management or design-build experience of each contractor on comparable projects;</i></p>	<p><i>Prior construction management or design-build experience or previous experience with the Department's Bureau of Capital Outlay Management shall not be considered as a prerequisite or factor considered for award of a contract.</i></p>
<p>The General Assembly consider requiring all documents exchanged between agencies and covered institutions with the Department of General Services' Division 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 projects delivery method shall also be posted publicly to DGS' central electronic procurement system, known as eVA.</p>	<p><i>All documents issued or received by the Division pursuant to this section shall be posted on the Department's central electronic procurement website known as eVa.</i></p>	<p>Requires covered institution to <i>post all documents exchanged between the covered institution and the Department on the Department's central electronic procurement website, known as eVA prior to the date of submission of proposals;</i></p>

DGS Recommendations	SB 18 / HB 1191 OPPOSE	SB 249 / HB 1108 - Coalition bill SUPPORT
<p>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, construction management or design-build (CM/DB) is approved by the Department of General Services' 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.</p>	<p>Makes DBB preferred for state agencies, covered institutions, and local public bodies. <i>Design-bid-build that utilizes competitive sealed bidding is the preferred method of procurement for construction services.</i></p> <p>A local public body may choose CM/DB per the following procedure. <i>A local public body shall seek approval from its local governing body prior to using any alternative procurement method, including construction management and design-build for any construction project. Such approval is required prior to the issuance of any request for qualifications or proposals or any other solicitation request and shall be voted on as a specific item on the agenda by the local governing body at a regular public meeting of the local governing body.</i></p>	<p>Does not create preference for DBB.</p> <p>A local public body may choose CM/DB per the following procedure. <i>A local public body must make the decision to use a construction management or design-build method of procurement by adopting a resolution or motion to that effect prior to a Request for Qualifications being issued. The local public body shall publish a notice on the Department's central electronic procurement website, known as eVA, or its own website, at least fourteen days prior to the meeting at which such resolution or motion will be considered. The local public body shall also post a notice of the Request for Qualifications on the Department's central procurement website, known as eVA, or its own website at least 30 days prior to the date set for receipt of qualification proposals.</i></p>

DGS Recommendations	SB 18 / HB 1191 OPPOSE	SB 249 / HB 1108 - Coalition bill SUPPORT
<p>The General Assembly consider amending the Department of General Services' authority in Chapter 43.1 of Title 2.2 of the Code from evaluating the proposed use of construction management or design-build (CM/DB) by state public bodies and institutions of higher education to the Department of General Services Division of Engineering and Buildings (DEB) making a final decision as to the use of CM/DB on each project.</p>	<p>For state public bodies. <i>The Division shall evaluate the proposed procurement method selected by the state public body and approve or deny the use of the construction management or design-build procurement method-for the specific project.</i></p> <p>For covered institutions. <i>The Division shall evaluate the proposed procurement method selected by a covered institution approve or deny the use of the construction management or design-build procurement method-for the specific project.</i></p>	<p>Does not change process for state public bodies.</p> <p>For covered institutions, provides an avenue for institution to disagree with recommendation of DEB. <i>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, submit same to the Department, and secure approval from the board of visitors or governing board of the covered institution.</i></p>
<p>The General Assembly consider requiring public bodies to advertise available subcontracting opportunities on the Department of General Services' central electronic procurement website, known as eVA, for construction management and design-build (CM/DB) projects.</p>	<p>Requires that <i>public bodies shall advertise available subcontracting opportunities on the Department of General Services' central electronic procurement website known as eVA.</i></p>	<p>Makes no changes with regards to subcontracting opportunities.</p>
	<p>Tightens definition of complexity to include two requirements. Currently, code requires one.</p>	
	<p>Creates definition of design-bid-build.</p>	
	<p>Adds provision that "price is a critical basis for award of the contract" to requirements for state public bodies and covered institutions. Currently, only required for localities.</p>	
	<p>Removes consideration of "The project cost, expected timeline, and use;" from requirements for state public bodies and covered institutions.</p>	

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		Requires a project to be defined as “complex” for a state public body, covered institution, or local public body to use CM/DB.
		Requires “written determination” on project to include definition of complexity.
		Requires state public body, covered institution, and local public body <i>“to provide documentation of the processes used for the final selection to all the unsuccessful proposers, upon request.”</i>
		Requires annual report on CM/DB projects to include <i>“the qualifications that made the project complex for all construction management and design-build projects.”</i>

In summary, while SB 18/HB 1191 does follow some of the DGS recommendations, there are several additional provisions contained within which were not a part of the DGS report. First, SB 18/HB 1191 creates a much tighter definition of complexity. While AGCVA provided draft language on complexity to the DGS Working Group, the workgroup did not discuss changes to the definition of complexity nor made it a part of its recommendations. Second, SB 18/HB 1191 makes changes to the considerations around price and project timeline. Again, these were items not included in the DGS report. Similarly, the coalition bill (SB 249/HB 1108) includes several provisions providing additional transparency that were not included in the report. These provisions were a part of AGCVA’s comments to the workgroup.