



COMMONWEALTH OF VIRGINIA

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April 27, 2010

The Honorable Robert D. "Bobby" Orrock
Member, House of Delegates
P.O. Box 458
Thornburg, Virginia 22565

Dear Delegate Orrock:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether the George Washington Regional Commission qualifies as a locality, authority, or sanitation district for purposes of the procurement of professional services under competitive negotiation as defined in § 2.2-4301. Further, pursuant to the Virginia Public Procurement Act, you ask whether the sum of the Commission's contracts for architectural or professional engineering services contract may exceed \$500,000 for multiple construction projects.

Response

It is my opinion that the George Washington Regional Commission is not a locality, authority, or sanitation district for purposes of competitive negotiation as defined in § 2.2-4301. Therefore, it is my opinion that the sum of all the Commission's projects performed in one contract term for architectural or professional engineering services related to construction projects may not exceed \$500,000.

Applicable Law and Discussion

The George Washington Regional Commission ("GWRC") is a planning district commission, which includes the City of Fredericksburg and the Counties of Caroline, King George, Spotsylvania, and Stafford.¹ You indicate that GWRC wishes to establish a term contract for on-call design consultants. The Virginia Public Procurement Act² provides, in part, that:

A contract for architectural or professional engineering services relating to construction projects may be negotiated by a public body, for multiple projects Under such contract, ... the sum of all projects performed in one contract term shall not exceed

¹See <http://www.gwregion.org/> (last visited on April 9, 2010). I assume the correctness of this description for purposes of this opinion. Planning district commissions are created by agreement of localities comprising the district pursuant to the Regional Cooperation Act. See VA. CODE ANN. § 15.2-4203(A) (2008).

²See VA. CODE ANN. §§ 2.2-4300 to 2.2-4377 (2008 & Supp. 2009).

\$500,000 or, in the case of a state agency, as defined in § 2.2-4347, such greater amount as may be determined by the Director of the Department of General Services, not to exceed \$1 million, *except that in any locality or any authority or sanitation district with a population in excess of 80,000, the sum of all such projects shall not exceed \$5 million[.]*^{3]}

GWRC is not a sanitation district.⁴ Further, GWRC is not a “locality” as defined by General Assembly.⁵ Therefore, in order for GWRC to qualify for the exception to the contract limitation, it must be an “authority.”

The General Assembly has not defined the term “authority” for purposes of § 2.2-4301. It has, however, designated or authorized the creation of certain public entities as “authorities,”⁶ while designating or authorizing the creation of others as “commissions.”⁷ The *Virginia Code* constitutes a single body of law, and except where context indicates otherwise, it is presumed that its terms are used in a consistent manner.⁸ In my view, it would be incongruous to conclude that the term “authority” includes a planning district commission. The General Assembly has prescribed the terms that such districts may include in their name, and it does not permit the use of the term “authority.”⁹ Also, by including sanitation districts in the list of entities entitled to the exception to the contract limitation, the General Assembly indicates its intent to exclude other types of districts, such as planning districts.¹⁰

³Section 2.2-4301 (Supp. 2009) (emphasis added) (defining “competitive negotiation”).

⁴I note that sanitation districts are created under Title 21, *e.g.*, § 21-145. Planning district commissions, such as GWRC, are created pursuant to § 15.2-4203(A), a portion of the Regional Cooperation Act.

⁵*See* VA. CODE ANN. § 1-221 (2008) (defining “locality” as “a county, city, or town as the context may require”); *see also* § 1-202 (2008) (applying definitions in Chapter 2.1 of Title 1 to entire *Code* unless such construction is inconsistent with manifest intention of General Assembly).

⁶*See, e.g.*, § 15.2-4830 (2008) (creating Northern Virginia Transportation Authority); § 15.2-5102(A) (2008) (authorizing localities to create water authorities, sewer authorities, refuse collection and disposal authorities, or any combination thereof); § 15.2-5302 (2008) (mandating that cities establish hospital authorities); § 15.2-5403 (2008) (authorizing governing bodies of government units to create electric authorities).

⁷*See, e.g.*, § 15.2-823 (2008) (authorizing board of supervisors for urban county with executive form of government to establish commission on human rights); § 15.2-2210 (2008) (mandating that localities create local planning commission); § 15.2-4202 (2008) (defining “commission” as “planning district commission”); § 15.2-4503.1 (2008) (establishing Northern Virginia Transportation Commission); § 15.2-5200 (2008) (mandating that in each locality or group of localities where governing body[ies] declares need for hospital or health center, hospital or health center commission must be created).

⁸*See* 2001 Op. Va. Att’y Gen. 192, 193 (noting that *Code* constitutes single body of law, and legislature is presumed to have intended each enactment to have meaning that is consistent with other provisions of law).

⁹*See* § 15.2-4203(B)(1) (providing that “entity organized as a planning district commission under [the Regional Cooperation Act] may employ the name ‘regional council’ or ‘regional commission’ as a substitute for the name ‘planning district commission’”). Thus, the specific terms used in § 15.2-4203(B)(1) implies the absence of authorization to use any other designation. *See infra* note 10.

¹⁰*See, e.g.*, 2008 Op. Va. Att’y Gen. 126, 127 (noting that when statute creates specific grant of authority, authority is deemed to exist only to extent granted in the statute).

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Finally, an interpretation that the term "authority," as used in the definition of "competitive negotiation" in § 2.2-4301, includes a planning district commission would render superfluous the specific listing of "commission" in addition to "authority" in the definition of "public body" that is also contained in § 2.2-4301.¹¹ When the General Assembly intends to authorize a commission to do something, it knows how to express that intention.¹²

Conclusion

Accordingly, it is my opinion that the George Washington Regional Commission is not a locality, authority, or sanitation district for purposes of competitive negotiation as defined in § 2.2-4301. Therefore, it is my opinion that the sum of all the Commission's projects performed in one contract term for architectural or professional engineering services related to construction projects may not exceed \$500,000.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read "Ken Cuccinelli, II", with a horizontal line underneath the name.

Kenneth T. Cuccinelli, II
Attorney General

1:1512; 1:941/10-020

¹¹See 1996 Op. Va. Att'y Gen. 42, 42 (noting that interpretation is unreasonable if it renders part of list superfluous or meaningless).

¹²See 2008 Op. Va. Att'y Gen. 126, 128 n.5 and opinion cited therein (noting that when General Assembly intends statute to impose requirements, it knows how to express its intention).