

Department of Planning and Budget

2017 Fiscal Impact Statement

1. Bill Number: SB1129-S1

House of Origin	<input type="checkbox"/> Introduced	<input checked="" type="checkbox"/> Substitute	<input checked="" type="checkbox"/> Engrossed
Second House	<input checked="" type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

2. Patron: Ruff

3. Committee: General Laws

4. Title: Virginia Public Procurement Act; requirements for use of construction management contracts.

5. Summary: The substitute bill establishes a statewide policy for governmental procurement of construction management and design-build contracting procurement methods. The bill restricts the use of construction management and design-build contracting procurements by public bodies to projects with an estimated project cost that is expected to be greater than \$25 million but may be used when the estimated project cost is expected to be less than \$25 million, provided that the project is a complex project that has been approved in writing by the Department of General Services for state public bodies, the contracting officer for covered institutions of higher education, and the local governing body for local public bodies. Additional requirements for the use of construction management and design-build contracting procurements include the following: (i) a written determination must be provided stating that competitive sealed bidding is not practical or fiscally advantageous, (ii) a public notice of the Request for Qualifications must be posted on the Department of General Services' central electronic procurement website at least 30 days prior to the date set for receipt of qualification proposals, (iii) the contract must be entered into prior to the schematic phase of design, (iv) prior alternative procurement method experience cannot be required as a prerequisite for an award, (v) procedures must allow for a two-step competitive negotiation process, and (vi) price must be a critical basis for award of the contract. In addition, the bill requires that construction management contracts provide that no more than 10 percent of the construction work be performed by the construction manager and that the remaining construction work be performed by subcontractors. The bill establishes a procedure to appeal a public body's determination to procure construction on a construction management or design-build basis when the estimated project cost is expected to be less than \$25 million. For determinations made by state public bodies, the appeal is made to the Department of General Services, for covered institutions the appeal is made to the contracting officer of the institution, and for local public bodies, the appeal is made to the chief executive officer of the locality. The bill also defines "complex project" and "covered institution" and contains reporting requirements regarding the use of construction management and design-build contracting procurements by all public bodies.

6. Budget Amendment Necessary: Indeterminate. See Item 8, below.

7. Fiscal Impact Estimates: Fiscal impact is indeterminate. See Item 8, below.

- 8. Fiscal Implications:** The fiscal impact of this bill is indeterminate. The bill provides criteria for the use of construction management and design-build procurement methods by public bodies. Such methods may be used for construction projects when a written determination is made that competitive sealed bidding is not practical or fiscally advantageous and the project is either a) expected to cost more than \$25 million, or b) is a complex project of less than \$25 million and written approval is obtained from the Department of General Services for state public bodies, the contracting officer for covered institutions of higher education, or the local governing body for local public bodies. The bill also establishes a procedure allowing Class A contractors to appeal a public body's determination to procure on a construction management or design-build basis for projects of less than \$25 million.

Currently, determinations to procure construction on a construction management or design-build basis can only be challenged through litigation. The bill provides that appeals shall be made to the Department of General Services (DGS) for the projects of state bodies, other than those of covered institutions of higher education, which have designated Tier 3 procurement authority or are in a pilot program authorized under § 4-9.02 of the Appropriation Act. It is expected that the DGS Bureau of Capital Outlay Management (BCOM) will be responsible for reviewing and addressing appeals received for projects of state public bodies, with assistance from the public body. The impact of creating an administrative appeals process is indeterminate and will depend on the number of appeals.

For example, DGS estimates approximately 40 hours of BCOM staff time will be required to review and address each appeal. It expects a thorough review could be completed by a highly skilled project manager at an estimated cost of \$57.50 to \$62.50 per hour, depending on experience. Under these assumptions, 40 hours of review by a project manager would cost \$2,300 to \$2,500 per appeal. Since it may be possible for a construction management procurement project to have multiple appeals and there is no existing appeals process upon which estimates could be based, the number of appeals is unknown.

BCOM currently has very limited capacity to absorb additional workload with its current staffing level. Any additional workload would require BCOM to adjust priorities and could affect the timeliness of completing other work. Therefore, appeals for projects under DGS oversight authority may require additional BCOM staffing.

The reporting requirements in § 2.2-4383 of the substitute bill are not expected to have a state fiscal impact and are similar to reports currently required pursuant to Chapter 760, 2015 Acts of Assembly, and § 4-4.01 of Chapter 780, 2017 Acts of Assembly.

- 9. Specific Agency or Political Subdivisions Affected:** The Department of General Services, Institutes of Higher Education designated with Tier 3 procurement authority or in a pilot program authorized by the Appropriation Act, and all public bodies.

- 10. Technical Amendment Necessary:** No.

11. Other Comments: None.

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