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HOUSE BILL NO. 1668

Offered January 9, 2019

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A BILL to amend the Code of Virginia by adding a section numbered 2.2-4303.01, relating to the Virginia Public Procurement Act; high-risk contracts; report.

Patrons—Carr, Peace and Jones, S.C.

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 2.2-4303.01 as follows:

§ 2.2-4303.01. High-risk contracts; definition; review.

A. For the purposes of this section, "high-risk contract" means any public contract for the procurement of goods, services, insurance, or construction that is anticipated to either (i) cost in excess of \$10 million over the initial term of the contract or (ii) cost in excess of \$5 million over the initial term of the contract and meet at least one of the following criteria: (a) the goods, services, insurance, or construction that is the subject of the contract is being procured by two or more state public bodies; (b) the anticipated term of the initial contract, excluding renewals, is greater than five years; or (c) the state public body procuring the goods, services, insurance, or construction has not procured similar goods, services, insurance, or construction within the last five years.

B. Prior to issuing a solicitation for a high-risk contract, a state public body shall submit such solicitation for review by (i) the Department of General Services for solicitations for goods and nonprofessional and professional services that are not for information technology or road construction or design and (ii) the Virginia Information Technologies Agency for solicitations for goods and services related to information technology. Such review shall include an evaluation of the extent to which the solicitation complies with applicable state law and policy, as well as an evaluation of the appropriateness of the solicitation's terms and conditions. In addition, the review shall ensure that such solicitations for high-risk contracts contain distinct and measurable performance metrics and clear enforcement provisions, including penalties or incentives, to be used in the event that contract performance metrics or other provisions are not met.

C. Prior to awarding a high-risk contract, a state public body shall submit such contract for review by (i) the Office of the Attorney General, (ii) the Department of General Services for contracts for goods and nonprofessional and professional services that are not for information technology or road construction or design, and (iii) the Virginia Information Technologies Agency for contracts for goods and services related to information technology. Such review shall include an evaluation of the extent to which the contract complies with applicable state law and policy, as well as an evaluation of the legality and appropriateness of the contract's terms and conditions. In addition, the review shall ensure that such high-risk contracts contain distinct and measurable performance metrics and clear enforcement provisions, including penalties or incentives, to be used in the event that contract performance metrics or other provisions are not met.

D. The Department of General Services' central electronic procurement system shall serve as a centralized resource for all state public bodies on information related to the performance of high-risk contracts. All state public bodies shall submit information on high-risk contracts for inclusion in the system. Such information shall include, but not be limited to, the following information on each high-risk contract:

1. Scheduled contract performance dates and actual contract completion dates;
2. Contract award value and actual contract expenditures; and
3. Information on vendor performance, including any cure letters, formal complaints, and end-of-contract evaluations.

E. Employees designated as primary administrators of high-risk contracts shall be required to complete a training program on effective contract administration provided by the Department of General Services prior to commencing contract administration duties. Such training program shall focus on strategies to identify, mitigate, and control contract-related risk through effective contract administration, including effective monitoring of vendor performance and enforcement of contract provisions.

2. That any existing contract that (i) meets the definition of a high-risk contract and (ii) has two or more remaining renewal provisions shall be reviewed in accordance with the provisions of subsection C of § 2.2-4303.01 of the Code of Virginia, as created by this act, prior to any such

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59 renewal.

60 3. That the Department of General Services shall collaborate with the Virginia Information
61 Technologies Agency and the Office of the Attorney General on any improvements to the
62 Department's central electronic procurement system that are necessary to allow it to effectively
63 collect quantifiable and objective information related to the performance of high-risk contracts.
64 The Department of General Services, in collaboration with the Virginia Information Technologies
65 Agency and the Office of the Attorney General, shall submit a report to the House Committee on
66 Appropriations and the Senate Committee on Finance by November 1, 2019, including
67 recommendations for any such improvements.

68 4. That the provisions of subsection D of § 2.2-4303.01 of the Code of Virginia, as created by this
69 act, shall become effective on July 1, 2020.

70 5. That the Department of General Services and the Virginia Information Technologies Agency
71 shall jointly develop a comprehensive training program on the effective administration of high-risk
72 contracts, including effective monitoring of vendor performance and enforcement of contract
73 provisions. The Department of General Services and the Virginia Information Technologies Agency
74 shall solicit input from selected state agency staff, including existing procurement officers and
75 contract administrators, on the content of the training. The Department of General Services and
76 the Virginia Information Technologies Agency shall also develop a condensed, online training
77 course on effective contract administration for agency staff responsible for lower risk contracts.

78 6. That the requirement for primary administrators of high-risk contracts to complete a training
79 program pursuant to subsection E of § 2.2-4303.01 of the Code of Virginia, as created by this act,
80 shall become effective on a timetable established by the Department of General Services.