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HOUSE BILL NO. 1668

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations
on January 30, 2019)

(Patron Prior to Substitute—Delegate Carr)

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.

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 Office of the Attorney General, (ii) 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 (iii) 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.

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 renewal.

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

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- 60 4. That the provisions of subsection D of § 2.2-4303.01 of the Code of Virginia, as created by this
61 act, shall become effective on July 1, 2020.
- 62 5. That the Department of General Services and the Virginia Information Technologies Agency
63 shall develop guidelines for state agencies to use when assigning staff to administer high-risk
64 contracts. Such guidelines shall provide that any staff designated as a contract administrator shall
65 have prior contract administration experience and shall direct an agency's chief procurement
66 officer to communicate to such contract administrator, when he first assumes his role, his
67 responsibilities for effectively administering the contract.
- 68 6. In implementing the provisions of this act, the Virginia Information Technologies Agency shall,
69 to the extent possible, collaborate with the Department of Planning and Budget to ensure that
70 implementation costs are funded by internal service funds.