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HOUSE BILL NO. 1099

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws
on January 30, 2020)

(Patron Prior to Substitute—Delegate Carr)

A *BILL to amend and reenact §§ 2.2-4303.01 and 2.2-4303.1 of the Code of Virginia, relating to procurement; rail.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-4303.01 and 2.2-4303.1 of the Code of Virginia are amended and reenacted 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 with a state public body 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 (a) information technology or (b) road or rail construction or design, and (iii) the Virginia Information Technologies Agency for solicitations for goods and services related to information technology. Such reviews shall be completed within 30 business days and 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 (a) information technology or (b) road or rail construction or design, and (iii) the Virginia Information Technologies Agency for contracts for goods and services related to information technology. Such reviews shall be completed within 30 business days and 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. (Effective July 1, 2020) 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.

§ 2.2-4303.1. Architectural and professional engineering term contracting; limitations.

A. A contract for architectural or professional engineering services relating to multiple construction projects may be awarded by a public body, provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the Request for Proposal, and (iii) the contract is limited to a term of one year or when the cumulative total project fees reach the maximum authorized in this section, whichever occurs first.

Such contracts may be renewable for four additional one-year terms at the option of the public body. The fair and reasonable prices as negotiated shall be used in determining the cost of each project performed.

B. The sum of all projects performed in a one-year contract term shall not exceed \$750,000, except

60 that for:

61 1. A state agency, as defined in § 2.2-4347, the sum of all projects performed in a one-year contract
62 term shall not exceed \$1 million;

63 2. Any locality with a population in excess of 78,000 or school division within such locality, or any
64 authority, sanitation district, metropolitan planning organization, transportation district commission, or
65 planning district commission, or any city within Planning District 8, the sum of all projects performed in
66 a one-year contract term shall not exceed \$6 million and those awarded for any airport as defined in
67 § 5.1-1 and aviation transportation projects, the sum of all such projects shall not exceed \$1.5 million;

68 3. Architectural and engineering services for rail and public transportation projects by the Director of
69 the Department of Rail and Public Transportation, the sum of all projects in a one-year contract term
70 shall not exceed \$2 \$5 million. Such contract may be renewable for two additional one-year terms at the
71 option of the Director; and

72 4. Environmental location, design, and inspection work regarding highways and bridges by the
73 Commissioner of Highways, the initial contract term shall be limited to two years or when the
74 cumulative total project fees reach \$5 million, whichever occurs first. Such contract may be renewable
75 for two additional one-year terms at the option of the Commissioner, and the sum of all projects in each
76 one-year contract term shall not exceed \$5 million.

77 C. Competitive negotiations for such architectural or professional engineering services contracts may
78 result in awards to more than one offeror, provided (i) the Request for Proposal so states and (ii) the
79 public body has established procedures for distributing multiple projects among the selected contractors
80 during the contract term. Such procedures shall prohibit requiring the selected contractors to compete for
81 individual projects based on price.

82 D. The fee for any single project shall not exceed \$150,000; however, for architectural or
83 engineering services for airports as defined in § 5.1-1 and aviation transportation projects, the project fee
84 of any single project shall not exceed \$500,000, except that for:

85 1. A state agency as defined in § 2.2-4347, the project fee shall not exceed \$200,000, as may be
86 determined by the Director of the Department of General Services or as otherwise provided by the
87 Restructured Higher Education Financial and Administrative Operations Act (§ 23.1-1000 et seq.); and

88 2. Any locality with a population in excess of 78,000 or school division within such locality, or any
89 authority, transportation district commission, or sanitation district, or any city within Planning District 8,
90 the project fee shall not exceed \$2.5 million.

91 The limitations imposed upon single-project fees pursuant to this subsection shall not apply to
92 environmental, location, design, and inspection work regarding highways and bridges by the
93 Commissioner of Highways or architectural and engineering services for rail and public transportation
94 projects by the Director of the Department of Rail and Public Transportation.

95 E. For the purposes of subsection B, any unused amounts from one contract term shall not be carried
96 forward to any additional term, except as otherwise provided by the Restructured Higher Education
97 Financial and Administrative Operations Act (§ 23.1-1000 et seq.).