

Department of Planning and Budget

2021 Fiscal Impact Statement

1. Bill Number: HB2288

House of Origin	☐ Introduced	☒ Substitute	☐ Engrossed
Second House	☐ In Committee	☐ Substitute	☐ Enrolled

2. Patron: Williams Graves

3. Committee: Appropriations

4. Title: Virginia Public Procurement Act; construction contracts; requirement to submit list of subcontract

5. Summary: Requires bidders or offerors on contracts for construction of \$250,000 or more to submit along with their bid or proposal a list of all subcontractors, regardless of tier, that the bidder or offeror intends use on the contract to perform work valued at \$50,000 or more, including labor and materials, at the time of submitting the bid or proposal. The bill requires such list to include certain information about each contractor. The bill also requires the bidder or offer to submit (i) a statement declaring that the bidder or offeror has reviewed the qualifications and performance history of each subcontractor and found such qualifications and performance history to be sufficient to qualify the subcontractor to perform the subcontract work and (ii) a statement indicating that the bidder or offeror has received a written statement from each subcontractor verifying that such subcontractor (a) has not defaulted on any projects within the last three years, (b) is not currently suspended or disbarred by any public body, and (c) is not currently in bankruptcy. The bill allows the public body to disqualify listed subcontractors, but requires the public body to notify the bidder or offeror of such disqualification and allow the bidder or offeror reasonable time to find a qualified replacement. The bill provides that a public body may disqualify the bid or proposal of any bidder or offeror that does not submit the required list and statements, and any bidder or offeror that is found to have knowingly provided false information pursuant to this section shall be debarred from contracting with any public body for a period of up to one year. The provisions of the legislation are optional for localities with a population under 50,000.

6. Budget Amendment Necessary: No.

7. Fiscal Impact Estimates: Preliminary - Indeterminate, see Item 8.

8. Fiscal Implications: This legislation adds administrative requirements to contractors and subcontractors bidding on construction contracts of \$250,000 or greater. To the extent that such requirements may increase contractors' operating costs, the contractors may pass those costs along to the public body contracting for the work. Such costs are currently indeterminate.

When submitting the information required by the bill, a bidder or offeror's list of subcontractors includes only those it "intends at the time of submitting the bid or proposal to use" and this is the list the public body will review. The bidder or offeror may ultimately use other subcontractors than those listed. It is assumed that the public body will only review the list at the time of bid. The administrative impact for procuring public bodies is indeterminate.

The public body may disqualify a listed subcontractor if all of the required information for that subcontractor is not provided. If the public body chooses to do so, then it is required to notify the bidder or offeror of that decision and is required to give the bidder or offeror a reasonable amount of time to find a qualified replacement. The Department of General Services (DGS) notes that a bidder or offeror cannot change the price of their bid, but that a bidder/offeror may experience a change in costs as a result of the public body disqualifying a given subcontractor, and will need to absorb that cost change or withdraw the bid. DGS notes that the additional time for a bidder/offeror to find a replacement subcontractor may result in delays in the award process or start date on projects.

- 9. Specific Agency or Political Subdivisions Affected:** This bill as written applies to all public bodies subject to the Virginia Public Procurement Act issuing construction contracts of \$250,000 or more. This bill does not apply to higher education institutions operating under Management Agreements and Memoranda of Understanding in the operational area of procurement (currently eleven Level III and Level II institutions). Additionally, the bill will not apply to local governments that have exempted themselves from the VPPA as authorized by V. Code §2.2-4343 (9, 10, 11). The bill would be optional for localities with a population under 50,000.

10. Technical Amendment Necessary: No.

11. Other Comments: None.

Date: February 1, 2021

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