

## **Department of Planning and Budget**

### **2015 Fiscal Impact Statement**

**1. Bill Number:** HB1540

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

**2. Patron:** Albo

**3. Committee:** General Laws

**4. Title:** Virginia Public Procurement Act (VPPA); methods of procurement; job order contracting.

**5. Summary:** Clarifies that small purchase procedures include the procurement of construction and that any such procedures shall not waive compliance with the Uniform State Building Code. The bill also increases contract amounts for job order contracting and provides that (i) order splitting with the intent of keeping a job order under the maximum dollar amounts prescribed is prohibited, (ii) no public body shall issue or use a job order solely for the purpose of providing professional architectural or engineering services that constitute the practice of architecture or the practice of engineering; however, professional architectural or engineering services may be included on a job order where such professional services are (a) incidental and directly related to the job and (b) no more than 25 percent of the construction cost, not to exceed \$60,000, and (iii) job order contracting shall not be used for construction, maintenance, or asset management services for a highway, bridge, tunnel, or overpass. The bill removes the provision that allows a public body to discuss nonbinding estimates of total project costs, life-cycle costing, and, where appropriate, nonbinding estimates of price for services. The bill provides that negotiations may be held on proposed terms and conditions set out in the Request for Proposal. The bill also clarifies the provisions of the VPPA related to cooperative procurement and requires that by October 1, 2017, the Department of Small Business and Supplier Diversity; public institutions of higher education having level 2 or 3 authority under the Restructured Higher Education Financial and Administrative Operations Act of 2005; any state agency utilizing job order contracting; and the Virginia Association of Counties, the Virginia Municipal League, and the Virginia Association of Governmental Purchasing, on behalf of local public bodies working cooperatively, report their respective experiences and findings relating to (1) the appropriateness and effectiveness of job order contracting in general, (2) the project cost limitations set forth in subsections B and D of § 2.2-4303.1 as added by this bill, and (3) the architectural and professional engineering term contract limits set forth in § 2.2-4303.1 to the Chairmen of the House Committee on General Laws and the Senate Committee on General Laws and Technology. The bill further provides that its provisions shall not apply to any solicitation issued or contract awarded before July 1, 2015, except that the provisions of subsection B of § 2.2-4303.2, as added by this bill, shall apply to any renewal of a job order contract. The bill contains numerous technical amendments.

**6. Budget Amendment Necessary:** No

- 7. Fiscal Impact Estimates:** Fiscal impact is indeterminate. See Item 8.
- 8. Fiscal Implications:** The state fiscal impact is indeterminate. The bill implements multiple changes to the Virginia Public Procurement Act (VPPA), of which the following result in indeterminate fiscal impacts to the state and other public bodies subject to the VPPA:

*Negotiation of Contract Terms and Conditions:*

The bill provides that contract negotiations include negotiations of proposed contractual terms and conditions. Changes to contractual terms and conditions may affect contractual costs, the efficiency of contract administration, and state liabilities. Negotiation of contract terms may increase administrative needs resulting from the negotiation process itself, managing contracts with varying terms, and the process of comparing and making award determinations for contracts with both varying prices and terms.

Certain contractual terms and conditions are required by statute, regulation, or other policies, which also creates consistency across contracts. Some of these also may affect state liability. For instance, the Department of General Services (DGS), working with the Office of the Attorney General, has identified certain “General Terms and Conditions” that are required in all contracts under the authority of DGS. One example of these General Terms and Conditions is a requirement of minimum insurance coverages and limits for most contracts. If these coverages can be negotiated and are changed as a result, it could increase state liability should there be an insurance claim.

*Discussion of nonbinding cost estimates:*

The bill removes a public body’s ability to discuss nonbinding cost estimates during informal interviews with professional services offerors prior to narrowing the list of offerors and ranking them for sequential formal negotiation. Discussion of nonbinding cost estimates help to determine whether the offeror has a general understanding of the size and scope of the project and whether the estimated budget can be reasonably negotiated to a price acceptable to the public body. The restriction on discussing nonbinding cost estimates before the formal negotiation stage may increase the likelihood of public bodies realizing they cannot afford the offerors’ cost proposal after beginning the formal negotiation state, in which case the public body would need to start a negotiation process with the next offeror. Such a situation would impact time to complete the procurement process and may increase administrative costs.

*Report of Job Order Contracting Appropriateness and Effectiveness:*

The bill provides that certain entities including the Department of Small Business and Supplier Diversity, public institutions of higher education with level 2 or 3 authority under the Restructure Higher Education Financial and Administrative Operations Act of 2005, and state agencies utilizing job order contracting report on the appropriateness and effectiveness of job order contracting and architectural and professional engineering term contracting restrictions by October 1, 2017 to the Chairmen of the House Committee on General Laws and Senate Committee on General Laws and Technology. Currently, this requirement is

expected to have minimal financial impact and should be able to be absorbed by affected agencies.

This fiscal impact statement does not include any potential impact to the Virginia Department of Transportation and some higher education institutions granted procurement authority in the Virginia Higher Education Restructuring Act and will be revised to include any fiscal impacts.

- 9. Specific Agency or Political Subdivisions Affected:** Department of General Services, Department of Small Business and Supplier Diversity, and state agencies and other public bodies without an exception to the Virginia Public Procurement Act. Public institutions of higher education with level 2 or 3 authority under the Restructured Higher Education Financial and Administrative Operations Act of 2005 are subject to the reporting requirement.

- 10. Technical Amendment Necessary:** No

- 11. Other Comments:** Many of the bill's provisions are consistent with discussions in the VPPA workgroups conducted in 2014.

This bill contains some provisions similar to those in HB1835 and SB2248.

**Date:** 1/27/2015

**Document:** H:\GENERAL ASSEMBLY\2015 Session\DGS\HB1540\HB1540.doc