

Department of Planning and Budget 2017 Fiscal Impact Statement

1. Bill Number: HB2366

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

2. Patron: Albo

3. Committee: General Laws

4. Title: Virginia Public Procurement Act; requirements for use of construction management contracts.

5. Summary: Restricts the use of construction management procurements by public bodies unless (i) the total estimated contract value is \$40 million or more, (ii) a written determination is provided stating that competitive sealed bidding is not practicable or fiscally advantageous, (iii) the contract is entered into prior to the schematic phase of design, (iv) prior alternative procurement method experience is not required as a prerequisite for an award, and (v) price is the primary determining factor for award of the contract. The bill provides that for projects where the total estimated contract value is not expected to exceed \$40 million, a public body may use competitive negotiation to procure construction on a construction management basis if the above requirements are met and the project is of substantial historical value or significantly unique or complex in nature. In addition, public bodies seeking to use construction management for projects where the total estimated contract value is not expected to exceed \$40 million must also obtain a written finding of compliance from the local governing body for local public bodies, from the Director of the Department of General Services for certain state public bodies, and from the respective contracting officer for public institutions of higher education designated with Tier 3 procurement authority. The bill also (i) establishes a procedure to appeal a public body's determination to procure construction on a construction management basis, (ii) prohibits combining multiple construction projects for the purpose of exceeding the \$40 million threshold, (iii) requires public bodies to make available to the public, after award, all prequalification score sheets, award score sheets, and selection information for each project, (iv) establishes reporting requirements regarding the use of construction management by state public bodies, (v) directs the Auditor of Public Accounts to include, as part of his annual audit plan, a determination regarding whether a public institution of higher education designated with Tier 3 procurement authority is in compliance with the institution's internal review process in the selection of procurement method for construction, and (vi) requires all state public bodies to post on the central electronic procurement website of the Department of General Services approved projects and approved procurement methods for construction at least 30 days prior to soliciting for design services for such construction projects.

6. Budget Amendment Necessary: Indeterminate. See Item 8, below.

7. Fiscal Impact Estimates: Fiscal impact is indeterminate. See Item 8, below.

- 8. Fiscal Implications:** The fiscal impact of this bill is indeterminate. The bill provides criteria for the use of construction management procurements by public bodies and establishes a procedure to appeal a public body's determination to procure construction on a construction management basis.

Currently, determinations to procure construction on a construction management basis can only be challenged through litigation. The Department of General Services (DGS) Bureau of Capital Outlay Management (BCOM) will be responsible for addressing appeals for projects under its construction oversight authority. The impact of creating an administrative appeals process is indeterminate and will depend on the number of appeals.

For example, DGS estimates approximately 40 hours of staff time will be required to address each appeal. It expects a thorough review could be completed by a highly skilled project manager at an estimated cost of \$57.50 to \$62.50 per hour, depending on experience. Under these assumptions, 40 hours of review by a project manager would cost \$2,300 to \$2,500 per appeal. Since it would be possible for a construction management procurement project to have multiple appeals and there is no existing appeals process upon which estimates could be based, the number of appeals is unknown.

BCOM currently has very limited capacity to absorb additional workload with its current staffing level. Any additional workload would require BCOM to adjust priorities and could affect the timeliness of completing other work. Therefore, appeals for projects under DGS oversight authority may require additional BCOM staffing.

The reporting and audit requirements in enactment clauses 2, 3, and 4 of the bill are consistent with existing requirements in § 4-4.01 of Chapter 780, 2017 Acts of Assembly, and are not expected to have a state fiscal impact.

- 9. Specific Agency or Political Subdivisions Affected:** Department of General Services, Institutes of Higher Education designated with Tier 3 procurement authority, and all public bodies.

- 10. Technical Amendment Necessary:** Yes; on lines 360 and 365, strike “§ 23-38.90” and insert “§ 23.1-1003”.

- 11. Other Comments:** None.

Date: 1/30/17
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