

## **Department of Planning and Budget**

### **2016 Fiscal Impact Statement**

**1. Bill Number:** SB586

<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:** Ruff

**3. Committee:** General Laws and Technology

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

**5. Summary:** Restricts the use of construction management procurements by public bodies unless (i) the total project cost is \$50 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) construction management experience is not required or considered as part of the award, (v) price is the primary determining factor for award of the contract, and (vi) proposers provide for the participation of small, women-owned, and minority-owned businesses in the project. The bill provides that for projects where the total project cost is not expected to exceed \$50 million, a public body may use competitive negotiation to procure construction on a construction management basis if (i) the above requirements are met; (ii) the project is (a) of substantial historical value or interest or (b) significantly unique or extremely complex in nature; (iii) prior to any solicitation for such project, the public body notifies in writing the Director of the Department of General Services in the case of state public bodies, or the local governing body in the case of a local public body, of its intent to procure construction on a construction management basis; and (iv) the Director of the Department of General Services or the local governing body, as the case may be, makes a finding that the public body is in compliance with the requirements of this subsection, which finding shall be on a per project basis and shall be in writing. The findings for state public bodies shall be made by the Director under existing regulations and guidelines established by the Department of General Services. In addition, the bill defines "public body" for the purposes of the use of construction management for construction to include (i) public institutions of higher education that have executed a valid management agreement under the Restructured Higher Education Financial and Administrative Operations Act of 2005 (§ 23-38.88 et seq.) and (ii) localities and school divisions that were previously exempt based on the adoption of alternative policies and procedures based on competitive principles and generally applicable to procurement of goods and services by the locality or school division.

**6. Budget Amendment Necessary:** No.

**7. Fiscal Impact Estimates:** Preliminary; fiscal impact is indeterminate. See Item 8, below.

- 8. Fiscal Implications:** The fiscal impact of this bill is indeterminate. The bill provides certain criteria for construction management procurements and restricts its use to projects where a determination has been made that competitive sealed bidding is neither practicable or fiscally advantageous and the project is either expected to exceed \$50 million or is of substantial historic value, significantly unique, or extremely complex in nature. The Department of General Services (DGS) or the local governing body must also make a finding for any project not expected to exceed \$50 million that it is in compliance with the bill's provisions. It is indeterminate how this may affect construction project costs or the administrative workloads of public bodies with construction projects, DGS, and local governing bodies.

Some additional administrative workload may be expected to be placed on personnel resources at institutions of higher education required to report to DGS. Additional workload is also expected to be placed on personnel resources at DGS to review submissions from state agencies and institutions of higher education to utilize construction management procurement procedures. Any such costs are indeterminate.

Construction management procurements will be required to use price as the primary basis for award, require offerors to include a plan for the participation of small, women-owned, and minority-owned businesses in their proposal, enter into contracts prior to the schematic phase of design, and are prohibited from using specific construction management experience as a requirement for determining an offeror's eligibility or as a basis for awarding the contract. The impact of these requirements is indeterminate.

DGS began collecting and reporting information on the construction procurement methods of all public bodies on July 1, 2015, as part of a two-year reporting period required by Chapter 776, 2015 Acts of Assembly. The data is intended to be used to make recommendations for improvements in the selection of appropriate construction procurement methods. However, sufficient data and analysis is not yet available to draw conclusions on the expected impact of this bill.

- 9. Specific Agency or Political Subdivisions Affected:** All public institutions of higher education that have executed a valid management agreement under the Restructured Higher Education Financial and Administrative Operations Act of 2005; and, any public bodies required to comply with the amended section of the Virginia Public Procurement Act.

- 10. Technical Amendment Necessary:** No.

- 11. Other Comments:** This bill is identical to HB887, as introduced.