

Department of Planning and Budget

2015 Fiscal Impact Statement

1. Bill Number: SB1371

House of Origin	<input checked="" type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
Second House	<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 (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 procuring professional architectural or engineering services, and (iii) job order contracting shall not be used for construction, maintenance, or asset management services for a highway, bridge, tunnel, or overpass. In addition, the bill removes the requirement that a determination be made in advance by a public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, in order for goods, services, or insurance to be procured by competitive negotiation. The bill 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 the appropriateness and effectiveness of job order contracting in general, the job order project cost limitations as added by this bill, and the architectural and professional engineering term contract limits 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 and is a recommendation of the General Laws Special Joint Subcommittee Studying the Virginia Public Procurement Act.

6. Budget Amendment Necessary: No

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

- 8. Fiscal Implications:** SB1371 provides multiple changes to construction and professional services procurement requirements in the Virginia Public Procurement Act (VPPA). VPPA requirements apply to all state agencies and other public bodies without exceptions to the Act.

Cooperative Construction Contracts with Other Public Bodies

The bill eliminates the ability for public bodies to participate in cooperative construction services contracts with other public bodies. Currently, the VPPA allows public bodies to use another public bodies' construction contract, except for local public bodies where the construction is in excess of \$200,000 and more than 75 miles from the procuring public body. This may result in a reduction of any administration efficiencies realized by public bodies utilizing cooperative construction contracts, as public bodies will need to conduct a separate procurement process for such construction projects.

Job Order Contract Procurement

The bill prohibits procurement of architectural or engineering (A/E) services through a job order contract (JOC). The Commonwealth has not yet implemented JOC; therefore, this restriction is not expected to impact current procurement practices or costs. If JOC is implemented for construction services in the future, the A/E prohibition may limit potential administrative efficiencies if A/E services are also needed to complete the construction project, as a separate A/E procurement process would be required.

JOC construction contract limits are increased from \$400,000 to \$500,000 for individual project fees and \$2 million to \$5 million cumulatively per one year term. Public bodies have the option to renew contracts for two additional one-year terms in comparison to the four additional one-year terms currently allowed. The impact of these changes is indeterminate, as JOC has not yet been implemented in the Commonwealth. JOC contracts could potentially create administrative efficiencies by eliminating the need for separate procurement processes for each construction project, but may also forego opportunities to procure individual projects at the lowest possible cost.

Small Purchase Procedures for Construction:

The bill clarifies that small purchase procedures may be used for construction if the total cost of construction is less than \$100,000. Small purchase procedures often require less formal procurement procedures. The bill also specifies that small purchase procedures shall not waive compliance with the Uniform Statewide Building Code. Small purchase procedures are currently used for construction under \$5,000. No fiscal impact is expected from this provision.

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 Restructured 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. This requirement is expected to have minimal financial impact and should be able to be absorbed by affected agencies.

Written Determination Competitive Sealed Bidding not Practicable or Advantageous

The bill removes the requirement that a determination be made in advance and explained in writing for instances where competitive sealed bidding is not feasible or fiscally advantageous in order for goods, services, or insurance to be procured by competitive negotiation. Public bodies would no longer be required to document and maintain records to justify such determinations, which may provide some administrative efficiencies. No fiscal impact is expected from this provision.

- 9. Specific Agency or Political Subdivisions Affected:** Department of General Services, state agencies and other public bodies without an exception to the Virginia Public Procurement Act. The Department of Small Business and Supplier Diversity and 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 HB2248.

Date: 2/8/2015

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