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HOUSE BILL NO. 438

Offered January 12, 2022

Prefiled January 11, 2022

A BILL to amend and reenact § 2.2-4303.1 of the Code of Virginia, relating to the Virginia Public Procurement Act; limitations on single-project fees for architectural and professional engineering services; exceptions.

Patron—Sewell

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:**1. That § 2.2-4303.1 of the Code of Virginia is amended and reenacted as follows:****§ 2.2-4303.1. Architectural and professional engineering term contracting; limitations.**

A. A contract for architectural or professional engineering services relating to multiple construction projects may be awarded by a public body, provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the Request for Proposal, and (iii) the contract is limited to a term of one year or when the cumulative total project fees reach the maximum authorized in this section, whichever occurs first.

Such contracts may be renewable for four additional one-year terms at the option of the public body. The fair and reasonable prices as negotiated shall be used in determining the cost of each project performed.

B. The sum of all projects performed in a one-year contract term shall not exceed \$750,000, except that for:

1. A state agency, as defined in § 2.2-4347, the sum of all projects performed in a one-year contract term shall not exceed \$1 million;

2. Any locality with a population in excess of 50,000 or school division within such locality, or any authority, sanitation district, metropolitan planning organization, transportation district commission, or planning district commission, or any city within Planning District 8, the sum of all projects performed in a one-year contract term shall not exceed \$8 million and those awarded for any airport as defined in § 5.1-1 and aviation transportation projects, the sum of all such projects shall not exceed \$1.5 million;

3. Architectural and engineering services for rail and public transportation projects by the Director of the Department of Rail and Public Transportation, the sum of all projects in a one-year contract term shall not exceed \$5 million. Such contract may be renewable for two additional one-year terms at the option of the Director; and

4. Environmental location, design, and inspection work regarding highways and bridges by the Commissioner of Highways, the initial contract term shall be limited to two years or when the cumulative total project fees reach \$8 million, whichever occurs first. Such contract may be renewable for two additional one-year terms at the option of the Commissioner, and the sum of all projects in each one-year contract term shall not exceed \$5 million.

C. Competitive negotiations for such architectural or professional engineering services contracts may result in awards to more than one offeror, provided (i) the Request for Proposal so states and (ii) the public body has established procedures for distributing multiple projects among the selected contractors during the contract term. Such procedures shall prohibit requiring the selected contractors to compete for individual projects based on price.

D. The fee for any single project shall not exceed \$150,000; however, for architectural or engineering services for airports as defined in § 5.1-1 and aviation transportation projects, the project fee of any single project shall not exceed \$500,000, except that for:

1. A state agency as defined in § 2.2-4347, the project fee shall not exceed \$200,000, as may be determined by the Director of the Department of General Services or as otherwise provided by the Restructured Higher Education Financial and Administrative Operations Act (§ 23.1-1000 et seq.); and

2. Any locality with a population in excess of 50,000 or school division within such locality, or any authority, transportation district commission, or sanitation district, or any city within Planning District 8, the project fee shall not exceed \$2.5 million.

The limitations imposed upon single-project fees pursuant to this subsection shall not apply to (i) environmental, location, design, and inspection work regarding highways and bridges by the Commissioner of Highways or a locality with a population in excess of 400,000; or (ii) architectural and engineering services for rail and public transportation projects by the Director of the Department of Rail and Public Transportation.

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59 E. For the purposes of subsection B, any unused amounts from one contract term shall not be carried
60 forward to any additional term, except as otherwise provided by the Restructured Higher Education
61 Financial and Administrative Operations Act (§ 23.1-1000 et seq.).