

Department of Planning and Budget

2022 Fiscal Impact Statement

1. Bill Number: HB374

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: Williams Graves

3. Committee: General Laws

4. Title: Virginia Public Procurement Act; construction contracts; requirement to submit list; penalty.

5. Summary: Requires all bidders or offerors on contracts for construction of \$250,000 or more to submit a list of subcontractors intended to be used and the following: (i) a statement declaring that the bidder or offeror has reviewed the qualifications and performance history of each listed subcontractor and found such qualifications and performance history to be sufficient to qualify the subcontractor to perform the subcontract work and (ii) a statement indicating that the bidder or offeror has received a written statement from each listed subcontractor verifying that such subcontractor (a) has not defaulted on any projects within the last three years, (b) has not been suspended or disbarred by any public body within the last three years, and (c) is not currently in bankruptcy. The bill allows the public body to disqualify any listed subcontractor but requires the public body to notify the bidder or offeror of such disqualification and allow the bidder or offeror reasonable time to find a qualified replacement. The bill provides that any bidder or offeror that does not submit the required list and statements may have its bid or proposal disqualified and that any bidder or offeror that is found to have knowingly provided false information shall be debarred from contracting with any public body for a period of up to one year and is guilty of perjury, a Class5 felony.

6. Budget Amendment Necessary: No.

7. Fiscal Impact Estimates: Preliminary – Indeterminate, see Item 8.

8. Fiscal Implications: This legislation adds administrative requirements to contractors and subcontractors bidding on construction contracts of \$250,000 or greater. To the extent that such requirements may increase contractors' operating costs, the contractors may pass those costs along to the public body contracting for the work. Such costs are currently indeterminate.

When submitting the information required by the bill, a bidder or offeror's list of subcontractors includes only those it "intends at the time of submitting the bid or proposal to use" and this is the list the public body will review. The bidder or offeror may ultimately use other subcontractors than those listed. It is assumed that the public body will only review the list at the time of bid. The administrative impact for procuring public bodies is indeterminate.

The public body may disqualify a listed subcontractor if all of the required information for that subcontractor is not provided. If the public body chooses to do so, then it is required to notify the bidder or offeror of that decision and is required to give the bidder or offeror a reasonable amount of time to find a qualified replacement. The Department of General Services (DGS) has indicated on a similar prior bill that a bidder or offeror cannot change the price of their bid, but that a bidder/offeror may experience a change in costs as a result of the public body disqualifying a given subcontractor, and will need to absorb that cost change or withdraw the bid. DGS noted that the additional time for a bidder/offeror to find a replacement subcontractor may result in delays in the award process or start date on projects.

For someone convicted of a Class 5 felony, a judge has the option of sentencing the offender to a term of imprisonment of not less than one year nor more than ten years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both. Therefore, this proposal could result in an increase in the number of persons sentenced to jail or prison.

There is not enough information available to reliably estimate the increase in jail population as a result of this proposal. However, any increase in jail population will increase costs to the state. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanor or otherwise local-responsible prisoner held in a jail and \$12.00 a day for each state-responsible prisoner. It also funds a considerable portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2021), the estimated total state support for local jails averaged \$37.58 per inmate, per day in FY 2020.

Due to the lack of data, the Virginia Criminal Sentencing Commission has concluded, pursuant to §30-19.1:4 of the Code of Virginia, that the impact of the proposed legislation on state-responsible (prison) bed space cannot be determined. In such cases, Chapter 552, 2021 Acts of Assembly, Special Session I, requires that a minimum impact of \$50,000 be assigned to the bill.

- 9. Specific Agency or Political Subdivisions Affected:** This bill applies to all public bodies subject to the Virginia Public Procurement Act. This bill does not apply to higher education institutions operating under Management Agreements or Memoranda of Understanding in the operational area of procurement (currently 13 Level III and Level II institutions). Additionally, the bill does not apply to local governments that have exempted themselves from the VPPA as authorized by V. Code §2.2-4343 (9,10,11).

10. Technical Amendment Necessary: No.

11. Other Comments: None.