

Department of Planning and Budget 2024 Session Fiscal Impact Statement

1. Bill Number: SB242H1

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

2. Patron: McPike

3. Committee: General Laws

4. Title: Virginia Public Procurement Act; competitive negotiation; exceptions to contractual terms.

5. Summary: Removes the prohibition on a public body from requiring an offeror to state in a proposal any exception to any liability provisions contained in a Request for Proposal for information technology. The bill also requires an offeror to state any exception to any contractual terms or conditions in writing at the beginning of negotiations, which exception shall be considered at the time of responding to a Request for Proposal if so requested by the public body, but prohibits the public body from basing the scoring or evaluation on such exceptions when selecting offerors for negotiations. Current law only prohibits a public body from requiring an offeror to state in a proposal any exception to the liability provisions of the Request for Proposal. This bill is a recommendation from the Public Body Procurement Work Group.

6. Budget Amendment Necessary: No

7. Fiscal Impact Estimates: Preliminary, indeterminate—see item 8

8. Fiscal Implications: The bill removes a prohibition that public bodies shall not require offerors to disclose exceptions to liability provisions contained in a Request for Proposal (RFP) for information technology procurements. In procurements for goods, nonprofessional services, and insurance, the bill also requires offerors to disclose any exceptions to contractual terms or conditions at the time of responding to an RFP if requested by a public body. The bill also prevents public bodies from using the exceptions as a basis for scoring or evaluating which offerors are selected for negotiations.

The prevention of public bodies from scoring proposals based on contractual exceptions may lead to an indeterminate fiscal impact. The bill may affect public bodies' ability to negotiate for a preferred bid. Hypothetically, if an agency had two identically scoring bids for projects, and one of the offerors identified an exception to an important contractual term for the public body, the offeror with the exception could not be scored lower.

9. Specific Agency or Political Subdivisions Affected: This bill affects any public body (as defined by the Virginia Public Procurement Act) that does procurement of information technology, goods, nonprofessional services, or insurance.

10. Technical Amendment Necessary: None

11. Other Comments: This bill is similar to HB242 as amended.