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HOUSE BILL NO. 1929

Offered January 12, 2011

Prefiled January 11, 2011

A BILL to amend and reenact §§ 2.2-1111 and 2.2-4324 of the Code of Virginia, relating to the Virginia Public Procurement Act; price matching by Virginia businesses.

Patrons—Marshall, D.W., Athey, Bell, Richard P., Crockett-Stark, Habeeb, Iaquinto, James, Lingamfelter, Merricks, Poindexter, Rust and Villanueva

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That §§ 2.2-1111 and 2.2-4324 of the Code of Virginia are amended and reenacted as follows:**

§ 2.2-1111. Purchases to be made in accordance with the Virginia Public Procurement Act (§ 2.2-4300 et seq.) and regulations of Division; exempt purchases.

A. All purchases made by any department, division, officer or agency of the Commonwealth shall be made in accordance with the Virginia Public Procurement Act (§ 2.2-4300 et seq.) and such regulations as the Division may prescribe.

B. The regulations adopted by the Division shall:

1. Include a purchasing plan that shall be on file at the Division and shall be available to the public upon request;

2. Require that before any public body procures any computer system, equipment or software, it shall consider whether the proposed system, equipment or software is capable of producing products that facilitate the rights of the public to access official records under the Freedom of Information Act (§ 2.2-3700 et seq.) or other applicable law;

3. Require state public bodies to procure only shielded outdoor light fixtures and provide for waivers of this requirement when the Division determines that a bona fide operational, temporary, safety or specific aesthetic need is indicated or that such fixtures are not cost effective over the life cycle of the fixtures. For the purposes of this subdivision, "shielded outdoor light fixture" means an outdoor light fixture that is (i) fully shielded so that no light rays are emitted by the installed fixture above the horizontal plane or (ii) constructed so that no more than two percent of the total luminaire lumens in the zone of 90 to 180 degrees vertical angle is permitted, if the related output of the luminaire is greater than 3200 lumens. In adopting regulations under this subdivision, the Division shall consider national standards for outdoor lighting as adopted by the Illuminating Engineering Society of North America (IESNA).

For any project initiated on or after July 1, 2003, the Virginia Department of Transportation shall design all lighting systems in accordance with current IESNA standards and recommended practices. The lighting system shall utilize fixtures that minimize glare, light trespass, and skyglow, all as defined by the IESNA, while still providing a comfortable, visually effective, safe, and secure outdoor environment in a cost-effective manner over the life cycle of the lighting system;

4. Establish the conditions under which a public body may use, as a basis for the procurement of goods and nonprofessional services, a particular vendor's contract-pricing that has been negotiated and accepted by the U.S. General Services Administration;

5. Establish procurement preferences for products containing recycled oil (including reprocessed and rerefined oil products) and recycled antifreeze no later than December 31, 2002;

6. Establish conditions under which a public body shall demonstrate a good faith effort to ensure that state contracts or subcontracts for goods or services that involve the manual packaging of bulk supplies or the manual assemblage of goods where individual items weigh less than 50 pounds be offered to nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported employment services serving the handicapped;

7. Require that on or before October 1, 2009, and every two years thereafter, the Director of the Department of General Services shall solicit from each state agency and public institution of higher education a list of procurements falling under the Department's authority that were competed with the private sector that appear on the Commonwealth Competition Council's commercial activities list and were, until that time, being performed by each state agency and public institution of higher education during the previous two years, and the outcome of that competition. The Director shall make the lists available to the public on the Department of General Services' website; and

8. Establish the conditions under which state public bodies may procure diesel fuel containing, at a minimum, two percent, by volume, biodiesel fuel or green diesel fuel, as defined in § 45.1-394, for use

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58 in on-road internal combustion engines. The conditions shall take into consideration the availability of
59 such fuel and the variability in cost of biodiesel fuel with respect to unblended diesel fuel; *and*

60 *9. Establish price match procedures in accordance with subsection D of § 2.2-4324.*

61 C. The Division may make, alter, amend or repeal regulations relating to the purchase of materials,
62 supplies, equipment, nonprofessional services, and printing, and may specifically exempt purchases
63 below a stated amount or particular agencies or specified materials, equipment, nonprofessional services,
64 supplies and printing.

65 § 2.2-4324. Preference for Virginia products with recycled content and for Virginia firms.

66 A. In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or
67 services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be
68 decided by lot.

69 B. Whenever the lowest responsive and responsible bidder is a resident of any other state and such
70 state under its laws allows a resident contractor of that state a percentage preference, a like preference
71 shall be allowed to the lowest responsive and responsible bidder who is a resident of Virginia and is the
72 next lowest bidder. If the lowest bidder is a resident contractor of a state with an absolute preference,
73 the bid shall not be considered. The Department of General Services shall post and maintain an updated
74 list on its website of all states with an absolute preference for their resident contractors and those states
75 that allow their resident contractors a percentage preference, including the respective percentage
76 amounts. For purposes of compliance with this section, all public bodies may rely upon the accuracy of
77 the information posted on this website.

78 C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where
79 goods are being offered, and existing price preferences have already been taken into account, preference
80 shall be given to the bidder whose goods contain the greatest amount of recycled content.

81 *D. Notwithstanding the provisions of subsections A, B and C, whenever the lowest responsive and*
82 *responsible bidder is a resident of any other state, and the difference between such bidder's bid and the*
83 *bid of the next lowest responsive and responsible bidder who is a resident of Virginia is no more than*
84 *five percent or \$10,000, the Virginia bidder shall be given the opportunity to match the bid of the*
85 *out-of-state bidder. If the Virginia bidder matches the out-of-state bid, the contract shall be awarded to*
86 *the Virginia bidder. Any price match opportunity given under this subsection shall be done in*
87 *accordance with regulations of the Division of Purchases and Supply.*