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SENATE BILL NO. 1115

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on February 1, 2023)

(Patrons Prior to Substitute—Senators DeSteph and McPike [SB 1176])

A BILL to amend and reenact § 2.2-4324 of the Code of Virginia, relating to Virginia Public Procurement Act; preference for products made or manufactured in Virginia and the U.S.; report.

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-4324 of the Code of Virginia is amended and reenacted as follows:

§ 2.2-4324. Preference for products made or manufactured in Virginia and the U.S.; recyclable content.

A. In the case of a tie bid, preference shall be given to goods produced in Virginia and goods, services, or construction provided by Virginia persons, firms, or corporations; otherwise the tie shall be decided by lot For the purposes of this section:

"End product" means the tangible product described in a solicitation for bids, including its component parts and its final form.

"Grown" means locally derived from any timber, agricultural product, aquaculture product, or livestock that is produced, cultivated, raised, or harvested upon the land or from the water.

"Made" or "manufactured" means assembled, fabricated, or processed into an end product, the price of which is substantially related to the cost of such assemblage, fabrication, or processing.

"Principal place of business" means the physical business location where the natural persons who direct, control, and manage the business's day-to-day operations are located.

"U.S. end product" means an end product made, manufactured, or grown in the United States.

"Virginia business" means a business that maintains a principal place of business within Virginia.

"Virginia end product" means an end product made, manufactured, or grown in Virginia.

B. In determining the award of any contract for goods, services, or construction, preference shall be given to Virginia end products and to Virginia businesses or Virginia residents, as applicable, in accordance with this section.

C. When evaluating bids for purposes of making an award determination, a state public body shall decrease the price of any bid offered (i) for a Virginia end product, by seven percent and (ii) for a U.S. end product, by two percent. If the lowest responsive and responsible bidder, after price preferences have been taken into account, who is a resident of Virginia is within five percent or \$10,000, whichever is less, of the lowest responsive and responsible bidder who is a resident of another state, then the bidder who is a resident of Virginia shall be granted the option to match the price of the bidder who is a resident of another state.

D. Whenever the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a percentage preference, a like preference shall be ~~allowed~~ granted to the lowest responsive and responsible bidder who is a resident of Virginia and is the next lowest bidder. If the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a price-matching preference, a like preference shall be ~~allowed~~ granted to responsive and responsible bidders who are residents of Virginia. If the lowest bidder is a resident contractor of a state with an absolute preference, the bid shall not be considered. The Department of General Services shall post and maintain an updated list on its website of all states with an absolute preference for their resident contractors and those states that allow their resident contractors a percentage preference, including the respective percentage amounts. For purposes of compliance with this section, all public bodies may rely upon the accuracy of the information posted on this website.

~~C. Notwithstanding the provisions of subsections B and C, in E.~~ In the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content, including waste tires and materials manufactured by advanced recycling factories.

D. For the purposes of this section, a Virginia person, firm or corporation shall be deemed to be a resident of Virginia if such person, firm or corporation has been organized pursuant to Virginia law or maintains a principal place of business within Virginia.

F. If a state public body receives three or more bids from a manufacturers that use materials or product components made in Virginia or in the United States, such body may only select from among those bids.

2. That the Secretary of Commerce and Trade and the Department of Taxation shall establish a work group of stakeholders, including representatives from the Virginia Manufacturers

60 Association, the Virginia Asphalt Association, the Virginia Transportation Construction Alliance,
61 the Virginia Recycling Association, and the Virginia Economic Development Partnership, to
62 recommend revisions to the recyclable materials tax credit, established pursuant to § 58.1-439.7 of
63 the Code of Virginia, that will contribute to an increase in recycled materials and the growth of
64 recyclable materials businesses to fulfill the expectations outlined in Executive Order 17 (2022).
65 The Secretary of Commerce and Trade shall submit an executive summary of the work group's
66 recommendations to the General Assembly and the Governor by November 1, 2023.