

Department of Planning and Budget 2023 Fiscal Impact Statement

1. Bill Number: SB1115-S1

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

2. Patron: DeSteph

3. Committee: General Laws and Technology

4. Title: Virginia Public Procurement Act; preference for products made or manufactured in Virginia.

5. Summary: Provides preference for a bidder who is a resident of Virginia over a bidder who is a resident of any other state in determining the award for any contract for goods, services, or construction under the Virginia Public Procurement Act. The bill requires a state agency to decrease by seven percent the price of any offer for a Virginia end product, defined in the bill, and to decrease by two percent the price of any offer for a U.S. end product, defined in the bill, when evaluating bids for purposes of making an award determination. When the lowest responsive and responsible bidder, after price preferences have been taken into account, is a resident of Virginia and the offer price is within \$10,000 or five percent, whichever is less, of the lowest responsive and responsible bidder who is a resident of another state, the Virginia resident shall be given the option to match the price of the nonresident bidder. Current allowance for granting price preferences to Virginia residents is made mandatory by the bill. The bill directs the Secretary of Commerce and Trade to convene a stakeholder work group to recommend revisions to the recyclable materials tax credit and report on the work group's recommendations by November 1, 2023. This bill is a recommendation of the Manufacturing Development Commission.

6. Budget Amendment Necessary: See item 8

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

8. Fiscal Implications:

The fiscal impact of this bill is indeterminate. Restrictions on available suppliers, generally, may impact the pool of bidders and may impact the price of goods procured.

Under the provisions of this bill, while evaluating bids for the purposes of making an award determination for any contract for goods, services, or construction, state public bodies are directed to decrease the price of any bid for Virginia end products or U.S. end products, as defined in the bill. Bidders will need to indicate if the end product is made in Virginia or the U.S., and then the state public body applies a seven percent price decrease for a Virginia end

product, a two percent price decrease for a non-Virginia end product made in the U.S., and no price decrease for international end products.

Figure 1 demonstrates a hypothetical situation where three bidders with different end product types all bid \$100,000. In this example, the bidder with the Virginia end product type would be determined to be the lowest bidder after the price adjustment is taken into account.

It should be noted that the price adjustment occurs only for the purposes of the evaluation phase of the bids, it does not affect the price of the bidder and the state agency still pays the initial price of the bid. SB1115 applies to scoring of the bids, not the actual bid price. The impact of these provisions is indeterminate, however, this scoring method may result in situations where a state public body is paying more for goods, services, or construction if the state public body would have otherwise picked a non-Virginia or non-U.S. end product.

Figure 1. Hypothetical State Agency Bid Evaluation			
End Product Type	Submitted Bid Amount	Price Adjustment	Bid amount after Price Adjustment for evaluation
Virginia	\$100,000	7%	\$93,000
U.S.	\$100,000	2%	\$98,000
International	\$100,000	n/a	\$100,000

The bill also permits that if the bidder is a resident of Virginia, the Virginia resident is allowed to match the price of nonresident bidders, given the offer is within five percent or \$10,000 of the nonresident bidder. This provision is not expected to impact price because the Virginia resident is allowed to match the lowest bid price.

The bill also requires that if a state public body receives three or more bids from a manufacturer that use materials or product components made in Virginia or in the United States, such body may only select from among those bids. This provision may also affect the prices ultimately paid by state public bodies to the extent that a manufacturer using non-Virginia or non-U.S. materials or product components offered a lower bid.

The bill directs the Secretary of Commerce and Trade and the Department of Taxation to establish a work group to make recommendations and issue a report by November 1, 2023 on revisions to the recyclable materials tax credit. The costs associated with this activity are de minimis and absorbable by both agencies.

9. Specific Agency or Political Subdivisions Affected: Portions of this bill apply to all public bodies and other portions apply only to state public bodies subject to the Virginia Public Procurement Act. This bill does not apply to higher education institutions operating under Management Agreements and Memoranda of Understanding in the operational area of procurement (currently fourteen Level III and Level II institutions). Additionally, the bill will 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