

VIRGINIA ACTS OF ASSEMBLY -- 2024 SESSION

CHAPTER 749

An Act to amend and reenact § 2.2-4324 of the Code of Virginia, relating to Virginia Public Procurement Act; Virginia resident preference; report.

[H 1361]

Approved April 8, 2024

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 Virginia goods, U.S. goods, and Virginia residents.

A. In the case of a tie bid, preference shall *first* be given to goods produced in Virginia; ~~goods or services or construction provided by Virginia persons, firms or corporations and preference shall then be given to goods produced in the United States;~~ otherwise the tie shall be decided by lot.

B. In the case of procurement of goods by manufacturers:

1. If (i) the lowest responsive and responsible bidder is not a resident of Virginia and (ii) the bid of any Virginia resident is within 10 percent of such bid, the lowest responsive and responsible bidder that is a Virginia resident shall be granted the option to match the price of the lowest responsive and responsible bidder.

2. If the lowest responsive and responsible bidder is a resident of a state other than Virginia and such state under its laws allows a resident of that state a percentage preference or price-matching preference for the procurement of goods, a like preference shall be granted to responsive and responsible bidders who are residents of Virginia.

3. An eligible bidder that is a Virginia resident shall be granted the greater of either preference pursuant to this subsection.

C. 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.~~ D. Notwithstanding the provisions of subsections A ~~and~~, B, and C, 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.

~~D.~~ E. 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. *To the extent that this section conflicts with federal law or regulations and application of this section to a project or procurement would render a public body ineligible to receive federal funds for such project or procurement, such project or procurement shall be exempt from the provisions of this section.*

2. That the provisions of this act shall expire on July 1, 2027.

3. That the Department of General Services shall report to the Governor, the General Assembly, and the Chairmen of the House Committee on General Laws and the Senate Committee on General Laws and Technology regarding the efficacy of this act, including any retaliatory action taken by other states, and any recommendations regarding this act. Such report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports no later than the first day of the 2025 Regular Session of the General Assembly and shall be posted on the General Assembly's website.