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SENATE BILL NO. 260

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on February 7, 2024)

(Patron Prior to Substitute—Senator DeSteph)

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

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 products with recycled content and for 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~~; otherwise the tie shall be decided by lot. *Preference shall then be given to goods produced in the United States.*

B. *If the lowest responsive and responsible bidder in a procurement of goods is not a Virginia resident, the next lowest responsive and responsible bidder who is a resident of Virginia shall be granted the option to match the price of the lowest responsive and responsible bidder who is not a Virginia resident.*

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 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.~~ 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.~~ 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.*