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HOUSE BILL NO. 1287

Offered January 20, 2022

A BILL to amend and reenact §§ 2.2-4323 and 2.2-4324 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.2-4328.2, relating to Virginia Public Procurement Act; preference for recycled materials.

Patron—Runion

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-4323 and 2.2-4324 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.2-4328.2 as follows:

§ 2.2-4323. Purchase programs for recycled goods; agency responsibilities.

A. All state agencies shall implement a purchase program for recycled goods and shall coordinate their efforts so as to achieve the goals and objectives established in subsection C as well as those set forth in §§ 10.1-1425.6, 10.1-1425.7, 10.1-1425.8, 2.2-4313, ~~2.2-4324~~, and 2.2-4326, and 2.2-4328.2.

B. The Department of Environmental Quality shall advise the Department of General Services concerning the designation of recycled goods. In cooperation with the Department of General Services, the Department of Environmental Quality shall increase the awareness of state agencies as to the benefits of using such products.

C. The Department of General Services shall:

1. Ensure that the Commonwealth's procurement guidelines for state agencies promote the use of recycled goods.

2. Promote the Commonwealth's interest in the use of recycled products to vendors.

3. Make agencies aware of the availability of recycled goods, including those that use post-consumer and other recovered materials processed by Virginia-based companies.

4. Make agencies aware of the availability of recycled materials and products certified as climate positive. For purposes of this subdivision, "climate positive" means having a negative carbon footprint.

D. All state agencies shall, to the greatest extent possible, adhere to the procurement program guidelines for recycled products to be established by the Department of General Services.

§ 2.2-4324. Preference for Virginia firms.

A. In the case of a tie bid, preference shall 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.

B. 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 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. Notwithstanding the provisions of subsections A and B, 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. 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.

§ 2.2-4328.2. Preference for recycled materials.

In determining the award of any contract for materials to be purchased for use by agencies of the Commonwealth, the Department of General Services shall procure using competitive sealed bidding, giving preference to bidders that supply materials containing recycled content, so long as such materials offer a cost competitive advantage over materials that do not contain recycled content.

2. That the Department of General Services (the Department) shall promulgate regulations to

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59 effectuate the provisions of § 2.2-4328.2 of the Code of Virginia, as created by this act. Such
60 regulations shall include provisions establishing a system that requires an incremental increase in
61 the percentage of recycled content required to be included in materials in order for a bidder to be
62 given preference in the procurement process, as follows: (i) 10 percent recycled content by
63 January 1, 2025; (ii) 20 percent recycled content by January 1, 2028; and (iii) 30 percent recycled
64 content by January 1, 2030.