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HOUSE BILL NO. 814

Offered January 12, 2022

Prefiled January 12, 2022

A BILL to amend and reenact §§ 2.2-1604, 2.2-1605, and 2.2-4310 of the Code of Virginia, relating to the Department of Small Business and Supplier Diversity; agency procurement enhancement plans.

Patron—Torian

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-1604, 2.2-1605, and 2.2-4310 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-1604. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Certification" means the process by which (i) a business is determined to be a small, women-owned, or minority-owned business or (ii) an employment services organization, for the purpose of reporting small, women-owned, and minority-owned business and employment services organization participation in state contracts and purchases pursuant to §§ 2.2-1608 and 2.2-1610.

"Department" means the Department of Small Business and Supplier Diversity or any division of the Department to which the Director has delegated or assigned duties and responsibilities.

"Employment services organization" means an organization that provides community-based employment services to individuals with disabilities that is an approved Commission on Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Department for Aging and Rehabilitative Services.

"Historically black colleges and university" includes any college or university that was established prior to 1964; whose principal mission was, and is, the education of black Americans; and that is accredited by a nationally recognized accrediting agency or association determined by the Secretary of Education.

"Minority individual" means an individual who is a citizen of the United States or a legal resident alien and who satisfies one or more of the following definitions:

1. "African American" means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.

2. "Asian American" means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana Islands, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh, or Sri Lanka, and who is regarded as such by the community of which this person claims to be a part.

3. "Hispanic American" means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.

4. "Native American" means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.

"Minority-owned business" means a business that is at least 51 percent owned by one or more minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more minority individuals, or any historically black college or university, regardless of the percentage ownership by minority individuals or, in the case of a corporation, partnership, or limited liability company or other entity, the equity ownership interest in the corporation, partnership, or limited liability company or other entity.

"Small business" means a business that is at least 51 percent independently owned and controlled by one or more individuals who are U.S. citizens or legal resident aliens and, together with affiliates, has 250 or fewer employees or average annual gross receipts of \$10 million or less averaged over the previous three years. One or more of the individual owners shall control both the management and daily business operations of the small business.

"State agency" means any authority, board, department, instrumentality, institution, agency, or other

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59 unit of state government. "State agency" does not include any county, city, or town.

60 "SWaM" means small, women-owned, or minority-owned or related to a small, women-owned, or
61 minority-owned business.

62 "SWaM plan" means a written program, plan, or progress report submitted by a state agency to the
63 Department pursuant to § 2.2-4310.

64 "Women-owned business" means a business that is at least 51 percent owned by one or more women
65 who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited
66 liability company or other entity, at least 51 percent of the equity ownership interest is owned by one or
67 more women who are U.S. citizens or legal resident aliens, and both the management and daily business
68 operations are controlled by one or more women.

69 **§ 2.2-1605. Powers and duties of Department.**

70 A. The Department shall have the following powers and duties:

71 1. Coordinate as consistent with prevailing law the plans, programs, and operations of the state
72 government that affect or may contribute to the establishment, preservation, and strengthening of small,
73 women-owned, and minority-owned businesses;

74 2. Promote the mobilization of activities and resources of state and local governments, businesses and
75 trade associations, baccalaureate institutions of higher education, foundations, professional organizations,
76 and volunteer and other groups towards the growth of small businesses and businesses owned by women
77 and minorities, and facilitate the coordination of the efforts of these groups with those of state
78 departments and agencies;

79 3. Establish a center for the development, collection, summarization, and dissemination of
80 information that will be helpful to persons and organizations throughout the nation in undertaking or
81 promoting procurement from small, women-owned, and minority-owned businesses;

82 4. Consistent with prevailing law and availability of funds, and according to the Director's discretion,
83 provide technical and management assistance to small, women-owned, and minority-owned businesses
84 and defray all or part of the costs of pilot or demonstration projects that are designed to overcome the
85 special problems of small, women-owned, and minority-owned businesses;

86 5. Advise the Small Business Financing Authority on the management and administration of the
87 Small, Women-owned, and Minority-owned Business Loan Fund created pursuant to § 2.2-2311.1;

88 6. Implement any remediation or enhancement measure for small, women-owned, or minority-owned
89 businesses as may be authorized by the Governor pursuant to subsection C of § 2.2-4310 and develop
90 regulations, consistent with prevailing law, for program implementation. Such regulations shall be
91 developed in consultation with the state agencies with procurement responsibility and promulgated by
92 those agencies in accordance with applicable law; and

93 7. Receive and coordinate, with the appropriate state agency, the investigation of complaints that a
94 business certified pursuant to this chapter has failed to comply with its subcontracting plan under
95 subsection D of § 2.2-4310. If the Department determines that a business certified pursuant to this
96 chapter has failed to comply with the subcontracting plan, the business shall provide a written
97 explanation.

98 B. In addition, the Department shall serve as the liaison between the Commonwealth's existing
99 businesses and state government in order to promote the development of Virginia's economy. To that
100 end, the Department shall:

101 1. Encourage the training or retraining of individuals for specific employment opportunities at new or
102 expanding business facilities in the Commonwealth;

103 2. Develop and implement programs to assist small businesses in the Commonwealth in order to
104 promote their growth and the creation and retention of jobs for Virginians;

105 3. Establish an industry program that is the principal point of communication between basic
106 employers in the Commonwealth and the state government that will address issues of significance to
107 business;

108 4. Make available to existing businesses, in conjunction and cooperation with localities, chambers of
109 commerce, and other public and private groups, basic information and pertinent factors of interest and
110 concern to such businesses; and

111 5. Develop statistical reports on job creation and the general economic conditions in the
112 Commonwealth; and

113 6. *Annually review and provide feedback on SWaM plans. The review shall focus on strategies state
114 agencies can use to improve SWaM spending, increase procurement of goods and services from SWaM
115 businesses, and meet procurement goals outlined in SWaM plans. The Department shall encourage state
116 agencies to integrate such strategies with all current and future procurements. The Department shall
117 suggest strategies that may be more effective or changes to strategies that have not been effective. Upon
118 request of a state agency, the Department shall meet with the state agency one-on-one to discuss its
119 SWaM goals and strategies and advise it on effective strategies. The Department shall research and
120 compile information that state agencies can use to increase SWaM spending and shall develop and*

publish guidance on how state agencies can implement these strategies.

C. All agencies of the Commonwealth shall assist the Department upon request and furnish such information and assistance as the Department may require in the discharge of its duties.

§ 2.2-4310. Discrimination prohibited; participation of small, women-owned, minority-owned, and service disabled veteran-owned businesses and employment services organizations.

A. In the solicitation or awarding of contracts, no public body shall discriminate against a bidder or offeror because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by state law relating to discrimination in employment. Whenever solicitations are made, each public body shall include businesses selected from a list made available by the Department of Small Business and Supplier Diversity, which list shall include all companies and organizations certified by the Department.

B. All public bodies shall establish programs consistent with this chapter to facilitate the participation of small businesses, businesses owned by women, minorities, and service disabled veterans, and employment services organizations in procurement transactions. The programs established shall be in writing and shall comply with the provisions of any enhancement or remedial measures authorized by the Governor pursuant to subsection C or, where applicable, by the chief executive of a local governing body pursuant to § 15.2-965.1, and shall include specific plans to achieve any goals established therein. State agencies shall submit annual progress reports on (i) small, women-owned, and minority-owned business procurement, (ii) service disabled veteran-owned business procurement, and (iii) employment services organization procurement to the Department of Small Business and Supplier Diversity in a form specified by the Department of Small Business and Supplier Diversity. *All state agencies shall cooperate with the Department of Small Business and Supplier Diversity's annual review of their programs pursuant to § 2.2-1605 and shall update such programs to incorporate any feedback and suggestions for improvement.* Contracts and subcontracts awarded to employment services organizations and service disabled veteran-owned businesses shall be credited toward the small business, women-owned, and minority-owned business contracting and subcontracting goals of state agencies and contractors. The Department of Small Business and Supplier Diversity shall make information on service disabled veteran-owned procurement available to the Department of Veterans Services upon request.

C. Whenever there exists (i) a rational basis for small business or employment services organization enhancement or (ii) a persuasive analysis that documents a statistically significant disparity between the availability and utilization of women-owned and minority-owned businesses, the Governor is authorized and encouraged to require state agencies to implement appropriate enhancement or remedial measures consistent with prevailing law. Any enhancement or remedial measure authorized by the Governor pursuant to this subsection for state public bodies may allow for small businesses certified by the Department of Small Business and Supplier Diversity or a subcategory of small businesses established as a part of the enhancement program to have a price preference over noncertified businesses competing for the same contract award on designated procurements, provided that the bid of the certified small business or the business in such subcategory of small businesses established as a part of an enhancement program does not exceed the low bid by more than five percent.

D. In awarding a contract for services to a small, women-owned, or minority-owned business that is certified in accordance with § 2.2-1606, or to a business identified by a public body as a service disabled veteran-owned business where the award is being made pursuant to an enhancement or remedial program as provided in subsection C, the public body shall include in every such contract of more than \$10,000 the following:

"If the contractor intends to subcontract work as part of its performance under this contract, the contractor shall include in the proposal a plan to subcontract to small, women-owned, minority-owned, and service disabled veteran-owned businesses."

E. In the solicitation or awarding of contracts, no state agency, department, or institution shall discriminate against a bidder or offeror because the bidder or offeror employs ex-offenders unless the state agency, department, or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest.

F. As used in this section:

"Employment services organization" means an organization that provides community-based employment services to individuals with disabilities that is an approved Commission on Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Department for Aging and Rehabilitative Services.

"Minority individual" means an individual who is a citizen of the United States or a legal resident alien and who satisfies one or more of the following definitions:

1. "African American" means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.

2. "Asian American" means a person having origins in any of the original peoples of the Far East,

182 Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China,
183 Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana Islands, the Philippines, a U.S. territory of
184 the Pacific, India, Pakistan, Bangladesh, or Sri Lanka and who is regarded as such by the community of
185 which this person claims to be a part.

186 3. "Hispanic American" means a person having origins in any of the Spanish-speaking peoples of
187 Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and
188 who is regarded as such by the community of which this person claims to be a part.

189 4. "Native American" means a person having origins in any of the original peoples of North America
190 and who is regarded as such by the community of which this person claims to be a part or who is
191 recognized by a tribal organization.

192 "Minority-owned business" means a business that is at least 51 percent owned by one or more
193 minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation,
194 partnership, or limited liability company or other entity, at least 51 percent of the equity ownership
195 interest in the corporation, partnership, or limited liability company or other entity is owned by one or
196 more minority individuals who are U.S. citizens or legal resident aliens, and both the management and
197 daily business operations are controlled by one or more minority individuals, or any historically black
198 college or university as defined in § 2.2-1604, regardless of the percentage ownership by minority
199 individuals or, in the case of a corporation, partnership, or limited liability company or other entity, the
200 equity ownership interest in the corporation, partnership, or limited liability company or other entity.

201 "Service disabled veteran" means a veteran who (i) served on active duty in the United States
202 military ground, naval, or air service, (ii) was discharged or released under conditions other than
203 dishonorable, and (iii) has a service-connected disability rating fixed by the United States Department of
204 Veterans Affairs.

205 "Service disabled veteran business" means a business that is at least 51 percent owned by one or
206 more service disabled veterans or, in the case of a corporation, partnership, or limited liability company
207 or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or
208 limited liability company or other entity is owned by one or more individuals who are service disabled
209 veterans and both the management and daily business operations are controlled by one or more
210 individuals who are service disabled veterans.

211 "Small business" means a business, independently owned and controlled by one or more individuals
212 who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees,
213 or annual gross receipts of \$10 million or less averaged over the previous three years. One or more of
214 the individual owners shall control both the management and daily business operations of the small
215 business.

216 "State agency" means any authority, board, department, instrumentality, institution, agency, or other
217 unit of state government. "State agency" shall not include any county, city, or town.

218 "Women-owned business" means a business that is at least 51 percent owned by one or more women
219 who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited
220 liability company or other entity, at least 51 percent of the equity ownership interest is owned by one or
221 more women who are U.S. citizens or legal resident aliens, and both the management and daily business
222 operations are controlled by one or more women.