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HOUSE BILL NO. 2845

Offered January 20, 2005

A BILL to encourage small business participation in state procurement transactions.

Patrons—Baskerville, BaCote, Bland, Eisenberg, Hall, Howell, A.T., Jones, D.C., Miles, Spruill, Van Yahres, Ward and Ware, O.

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. § 1. That all state agencies, including those with independent purchasing authority, the Department of General Services, and the Virginia Information Technology Authority, shall set aside exclusively for Virginia small businesses every acquisition of goods and services by a public body in state government anticipated to be under \$50,000, unless the purchasing officer finds that there is a reasonable expectation of fewer than two bids by small businesses. § 2. That the Department of General Services shall, in compliance with subsection B of § 2.2-4310, make such changes in eVA as are necessary to enhance participation by small businesses including (i) revising the eVA fee schedule to provide for an equal percentage fee for eVA transactions regardless of size of transaction, provided that the revenues generated by the fees collected shall not exceed the amounts required to maintain and upgrade the system and to meet contractual obligations entered into by the Commonwealth to develop and run the eVA system; (ii) modifying eVA to require purchasing officers using the system to select only small businesses as vendors for purchases under \$50,000, unless there are fewer than two small businesses registered who can provide the needed goods or services; and (iii) modifying eVA to ensure that before completing any transaction, purchasing officers are required to confirm that they have included registered small, woman- and minority-owned businesses in the pool from which bids are sought or purchases negotiated or made. The required changes in eVA shall be made as soon as practicable given constraints imposed by applicable contractual requirements and technical considerations. § 3. That the Department of General Services shall make such modifications in eVA as are necessary to ensure that purchasing decisions by individual purchasing officers can be audited to determine what proportion of the purchases they made or contracts they awarded went to small, woman- and minority-owned businesses. Such modifications shall ensure that a business is counted only in one category for each transaction. The Department of General Services shall provide reports annually to the public and to public bodies of the purchasing transactions made by individual purchasing officers showing the amount and proportion of purchases made by individual purchasing officers on eVA from small, woman- and minority-owned businesses. § 4. That the Department of General Services shall take appropriate action in compliance with subsection B of § 2.2-4310 of the Code of Virginia to ensure that all individual purchasing officers are aware that contracts negotiated under the Virginia Partners in Procurement (VIPP) program are not intended as exclusive contracts and that the purchasing officers may continue to make purchases from other vendors where justified by pricing, service, and value received. The Auditor of Public Accounts shall audit the implementation of the VIPP program to determine what impact the program has had on the ability of small businesses to compete for and obtain state contracts. § 5. That no new contracts shall be negotiated by a public body in the state government under the Virginia Partners in Procurement Program (also known as spend management) unless a written justification for using a statewide or bundled contract is submitted to and approved by the Governor in advance that (i) states why bundling or consolidated contracting is necessary and justified, (ii) identifies alternative purchasing or acquisition strategies that involve less consolidation that could be utilized, (iii) articulates the rationale for choosing a particular strategy over alternatives that could involve less bundling or consolidation, and (iv) specifies actions that will be taken to mitigate the effects of bundling by increasing subcontracting opportunities for small businesses or by encouraging the development of teams of small businesses to effectively compete for bundled or consolidated contracts that might be too large or diversified for individual small businesses to perform. § 6. That the Department of Minority Business Enterprises, in cooperation with the Department of Business Assistance shall (i) develop and publish minimum requirements for certification of small, woman- and minority-owned businesses; (ii) evaluate existing local, state, private sector and federal certification programs to determine which meet the requirements; and (iii) certify any prospective state vendor that has obtained certification under any program approved as meeting the minimum requirements without any additional paperwork or fee. § 7. That the Department of Minority Business Enterprises, with the cooperation of the Department of Planning and Budget, shall evaluate the costs and benefits of outsourcing the state certification processes to one or more existing private sector certifying agencies that utilize certification standards

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58 and procedures that meet minimum state requirements. § 8. That, notwithstanding any other provision of
59 law and to the extent permitted by federal program requirements, the Department of General Services,
60 the Virginia Technology Authority, the Department of Business Assistance, the Department of Minority
61 Business Enterprises and all other state agencies shall use the definition of small business set forth in
62 this act in establishing or implementing small business participation policies or programs under
63 subsection B of § 2.2-4310 of the Code of Virginia or providing state-funded services or benefits to
64 small businesses. § 9. That the Department of General Services, the Virginia Technology Authority, the
65 Department of Business Assistance, and the Department of Minority Business Enterprises are authorized
66 to issue such regulations as are necessary to implement this act. § 10. For the purposes of this act:
67 "Minority-owned business" means a business owned (at least 51 percent), operated, and controlled by a
68 one or more socially and economically disadvantaged persons. Such disadvantage may arise from
69 cultural, racial, chronic economic circumstances or background or other similar cause. Such persons
70 include, but are not limited to Blacks, Hispanic Americans, Asian Americans, American Indians,
71 Eskimos, and Aleuts. "Public body" means any legislative, executive or judicial body, agency, office,
72 department, authority, post, commission, committee, institution, or board of the Commonwealth created
73 by law to exercise some sovereign power or to perform some governmental duty, and empowered by law
74 to undertake the activities described in the Virginia Public Procurement Act (§ 2.2-4300 et seq.) of the
75 Code of Virginia. "Small business" means a corporation, partnership, sole proprietorship, or other
76 legal entity formed for the purpose of making a profit that is an independently owned and operated
77 business concern that has fewer than 250 employees or annual gross receipts of \$10 million or less
78 averaged over the previous three years. "Woman-owned business" means a business owned (at least 51
79 percent), operated, and controlled by a woman or women.
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