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HOUSE BILL NO. 1223

Offered January 17, 2014

A *BILL to amend and reenact §§ 2.2-1604 and 2.2-4310 of the Code of Virginia, relating to the Virginia Public Procurement Act; small, women, and minority-owned businesses.*

Patron—Yancey

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-1604 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:

"Business" means any legal entity organized in the United States or territory of the United States or the Commonwealth that regularly engages in lawful commercial transactions for profit and any historically Black college and university.

"Certification" means the process by which a business is determined to be a small, women-owned, or minority-owned business for the purpose of reporting small, women-owned, and minority-owned business 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 universities" 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.

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

"Women-owned business" means a business that is at least 51 percent owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited

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59 liability company or other entity, at least 51 percent of the equity ownership interest is owned by one or
60 more women who are U.S. citizens or legal resident aliens, and both the management and daily business
61 operations are controlled by one or more women.

62 **§ 2.2-4310. Discrimination prohibited; participation of small, women-owned, minority-owned,**
63 **and service disabled veteran-owned business.**

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

69 B. All public bodies shall establish programs consistent with this chapter to facilitate the participation
70 of small businesses and *all* businesses owned by women, minorities, and service disabled veterans in
71 procurement transactions. The programs established shall be in writing, *shall provide for fair and*
72 *equitable evaluations and opportunities for small businesses and all businesses owned by women,*
73 *minorities, or service disabled veterans,* and shall comply with the provisions of any enhancement or
74 remedial measures authorized by the Governor pursuant to subsection C or, where applicable, by the
75 chief executive of a local governing body pursuant to § 15.2-965.1, and shall include specific plans to
76 achieve any goals established therein. State agencies shall submit annual progress reports on small,
77 women-owned, and minority-owned business procurement and on service disabled veteran-owned
78 business procurement to the Department of Small Business and Supplier Diversity in a form specified by
79 the Department of Small Business and Supplier Diversity. The Department of Small Business and
80 Supplier Diversity shall make information on service disabled veteran-owned procurement available to
81 the Department of Veterans Services upon request.

82 C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive
83 analysis that documents a statistically significant disparity between the availability and utilization of
84 women-owned and minority-owned businesses, the Governor is authorized and encouraged to require
85 state agencies to implement appropriate enhancement or remedial measures consistent with prevailing
86 law.

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

91 E. As used in this section:

92 *"Business" means any legal entity organized in the United States or territory of the United States or*
93 *the Commonwealth that regularly engages in lawful commercial transactions for profit and any*
94 *historically Black college and university as that term is defined in § 2.2-1604.*

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

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

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

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

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

110 *"Minority-owned business" means a business that is at least 51 percent owned by one or more*
111 *minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation,*
112 *partnership, or limited liability company or other entity, at least 51 percent of the equity ownership*
113 *interest in the corporation, partnership, or limited liability company or other entity is owned by one or*
114 *more minority individuals who are U.S. citizens or legal resident aliens, and both the management and*
115 *daily business operations are controlled by one or more minority individuals.*

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

120 *"Service disabled veteran business" means a business that is at least 51 percent owned by one or*

more service disabled veterans 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 individuals who are service disabled veterans and both the management and daily business operations are controlled by one or more individuals who are service disabled veterans.

"Small business" means a business, 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 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 unit of state government. "State agency" shall not include any county, city, or town.

"Women-owned business" means a business that is at least 51 percent owned by one or more women 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 is owned by one or more women who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women.