

15101489D

HOUSE BILL NO. 1854

House Amendments in [] — February 9, 2015

A BILL to amend and reenact §§ 2.2-1605 and 2.2-4310 of the Code of Virginia, relating to the Virginia Public Procurement Act; small, women-owned, and minority-owned businesses.

Patron Prior to Engrossment—Delegate Adams

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That §§ 2.2-1605 and 2.2-4310 of the Code of Virginia are amended and reenacted as follows:****§ 2.2-1605. Powers and duties of Department.**

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

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

2. Promote the mobilization of activities and resources of state and local governments, businesses and trade associations, universities, foundations, professional organizations, and volunteer and other groups towards the growth of small businesses and businesses owned by women and minorities, and facilitate the coordination of the efforts of these groups with those of state departments and agencies;

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

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

5. Manage the Capital Access Fund for Disadvantaged Businesses created pursuant to § 2.2-2311 and, in cooperation with the Small Business Financing Authority, determine the qualifications, terms, and conditions for the use of such Fund; and

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

7. *Receive and investigate complaints that a business certified pursuant to this chapter has subcontracted more than 60 percent of a contract awarded to a remedial or enhancement measure under subsection C of § 2.2-4310. If the Department determines that a business certified pursuant to this section has violated the contract provision required by subsection D of § 2.2-4310, the certification of such business shall be revoked for a period of one year. After the one-year period, the business may reapply for certification.*

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

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

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

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

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

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

6. Administer the Small Business Jobs Grant Fund Program and the Small Business Investment Grant Fund described in Article 2 (§ 2.2-1611 et seq.).

C. All agencies of the Commonwealth shall assist the Department upon request and furnish such

ENGROSSED

HB1854E

59 information and assistance as the Department may require in the discharge of its duties.

60 **§ 2.2-4310. Discrimination prohibited; participation of small, women-owned, minority-owned,**
61 **and service disabled veteran-owned business.**

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

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

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

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

88 *"During the performance of this contract, the contractor agrees that no more than 60 percent of the*
89 *contracted work will be subcontracted to a business that [~~is not certified~~ does not have the relevant*
90 *certification] as a small, women-owned, or minority-owned business, or a service disabled*
91 *veteran-owned business, except where there is a bona fide occupational qualification reasonably*
92 *necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous*
93 *places, available to employees and applicants for employment, notices setting forth the provisions of this*
94 *clause. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or*
95 *regulation shall be deemed sufficient posting."*

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

100 ~~E. F.~~ As used in this section:

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

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

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

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

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

116 "Minority-owned business" means a business that is at least 51 percent owned by one or more
117 minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation,
118 partnership, or limited liability company or other entity, at least 51 percent of the equity ownership
119 interest in the corporation, partnership, or limited liability company or other entity is owned by one or
120 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.

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

"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.

ENGROSSED

HB1854E