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HOUSE BILL NO. 1288

Offered January 21, 2016

A *BILL to amend and reenact §§ 2.2-1604 and 2.2-4310 of the Code of Virginia, relating to the Department of Small Business and Supplier Diversity; certification of employment services organizations; public procurement.*

Patrons—Hope and Mason

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:

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

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

64 **§ 2.2-4310. Discrimination prohibited; participation of small, women-owned, minority-owned,**
65 **and service disabled veteran-owned business and employment services organization.**

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

72 B. All public bodies shall establish programs consistent with this chapter to facilitate the participation
73 of small businesses ~~and~~, businesses owned by women, minorities, and service disabled veterans, *and*
74 *employment services organizations* in procurement transactions. The programs established shall be in
75 writing and shall comply with the provisions of any enhancement or remedial measures authorized by
76 the Governor pursuant to subsection C or, where applicable, by the chief executive of a local governing
77 body pursuant to § 15.2-965.1, and shall include specific plans to achieve any goals established therein.
78 State agencies shall submit annual progress reports on (i) small, women-owned, and minority-owned
79 business procurement ~~and on~~, (ii) service disabled veteran-owned business procurement, *and (iii)*
80 *employment services organization procurement* to the Department of Small Business and Supplier
81 Diversity in a form specified by the Department of Small Business and Supplier Diversity. *Contracts*
82 *and subcontracts awarded to employment services organizations shall be credited toward a contractor's*
83 *small business, women-owned, and minority-owned business contracting and subcontracting goals.* The
84 Department of Small Business and Supplier Diversity shall make information on service disabled
85 veteran-owned procurement available to the Department of Veterans Services upon request.

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

91 D. In awarding a contract for services to a small, women-owned, or minority-owned business that is
92 certified in accordance with § 2.2-1606, or to a business identified by a public body as a service
93 disabled veteran-owned business where the award is being made pursuant to an enhancement or remedial
94 program as provided in subsection C, the public body shall include in every such contract of more than
95 \$10,000 the following:

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

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

103 F. As used in this section:

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

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

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

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

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

120 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 as defined in § 2.2-1604, 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.

"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.