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SENATE BILL NO. 1538

Offered January 20, 2017

A *BILL to amend and reenact § 2.2-4310 of the Code of Virginia, relating to the Virginia Public Procurement Act; participation of employment services organizations.*

Patron—Hanger

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-4310 of the Code of Virginia is amended and reenacted as follows:

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

A. In the solicitation or awarding of contracts, no public body shall discriminate against a bidder or offeror because of race, religion, color, sex, 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. Contracts and subcontracts awarded to employment services organizations shall be credited toward a ~~contractor's~~ 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.

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

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59 who is regarded as such by the community of which this person claims to be a part.

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

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

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

71 "Minority-owned business" means a business that is at least 51 percent owned by one or more
72 minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation,
73 partnership, or limited liability company or other entity, at least 51 percent of the equity ownership
74 interest in the corporation, partnership, or limited liability company or other entity is owned by one or
75 more minority individuals who are U.S. citizens or legal resident aliens, and both the management and
76 daily business operations are controlled by one or more minority individuals, or any historically black
77 college or university as defined in § 2.2-1604, regardless of the percentage ownership by minority
78 individuals or, in the case of a corporation, partnership, or limited liability company or other entity, the
79 equity ownership interest in the corporation, partnership, or limited liability company or other entity.

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

84 "Service disabled veteran business" means a business that is at least 51 percent owned by one or
85 more service disabled veterans or, in the case of a corporation, partnership, or limited liability company
86 or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or
87 limited liability company or other entity is owned by one or more individuals who are service disabled
88 veterans and both the management and daily business operations are controlled by one or more
89 individuals who are service disabled veterans.

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

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

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