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HOUSE BILL NO. 1709

Offered January 17, 2020

A *BILL to amend and reenact §§ 2.2-1603 through 2.2-1606, 2.2-1608, 2.2-1609, 2.2-1610, 2.2-2311.1, 2.2-4310, 15.2-965.1, 23.1-1002, 23.1-1017, and 23.1-3138 of the Code of Virginia, relating to the Department of Small Business and Supplier Diversity; Virginia Public Procurement Act; definition of small business; LGBT-owned business.*

Patron—Heretick

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-1603 through 2.2-1606, 2.2-1608, 2.2-1609, 2.2-1610, 2.2-2311.1, 2.2-4310, 15.2-965.1, 23.1-1002, 23.1-1017, and 23.1-3138 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-1603. Department of Small Business and Supplier Diversity created; appointment of Director; offices; personnel.

A. There is hereby created a Department of Small Business and Supplier Diversity (the Department), which shall be headed by a Director appointed by the Governor to serve at his pleasure. The Director shall also serve as a special assistant to the Governor for small, women-owned, *LGBT-owned*, and minority-owned business development.

B. The Director of the Department shall, under the direction and control of the Governor, exercise the powers and perform the duties conferred or imposed upon him by law and perform such other duties as may be required by the Governor.

C. The Department shall have its main office in Richmond and may have branch offices as may be necessary, as determined by the Director subject to the approval of the Secretary of Commerce and Trade.

§ 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, *LGBT-owned*, or minority-owned business or (ii) an employment services organization, for the purpose of reporting small, women-owned, *LGBT-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.

"*LGBT-owned business*" means a business that is at least 51 percent owned by one or more lesbian, gay, bisexual, or transgender 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 lesbian, gay, bisexual, or transgender individuals who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more lesbian, gay, bisexual, or transgender individuals.

"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

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59 Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and
60 who is regarded as such by the community of which this person claims to be a part.

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

64 "Minority-owned business" means a business that is at least 51 percent owned by one or more
65 minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation,
66 partnership, or limited liability company or other entity, at least 51 percent of the equity ownership
67 interest in the corporation, partnership, or limited liability company or other entity is owned by one or
68 more minority individuals who are U.S. citizens or legal resident aliens, and both the management and
69 daily business operations are controlled by one or more minority individuals, or any historically black
70 college or university, regardless of the percentage ownership by minority individuals or, in the case of a
71 corporation, partnership, or limited liability company or other entity, the equity ownership interest in the
72 corporation, partnership, or limited liability company or other entity.

73 "Small business" means a business that is at least 51 percent independently owned and controlled by
74 one or more individuals who are U.S. citizens or legal resident aliens and, together with affiliates, has
75 250 or fewer employees or average annual gross receipts of \$10 million or less averaged over the
76 previous three years. One or more of the individual owners shall control both the management and daily
77 business operations of the small business.

78 "State agency" means any authority, board, department, instrumentality, institution, agency, or other
79 unit of state government. "State agency" does not include any county, city, or town.

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

85 **§ 2.2-1605. Powers and duties of Department.**

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

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

90 2. Promote the mobilization of activities and resources of state and local governments, businesses and
91 trade associations, baccalaureate institutions of higher education, foundations, professional organizations,
92 and volunteer and other groups towards the growth of small businesses and businesses owned by women
93 and minorities, and facilitate the coordination of the efforts of these groups with those of state
94 departments and agencies;

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

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

103 5. Advise the Small Business Financing Authority on the management and administration of the
104 Small, Women-owned, *LGBT-owned*, and Minority-owned Business Loan Fund created pursuant to
105 § 2.2-2311.1;

106 6. Implement any remediation or enhancement measure for small, women-owned, *LGBT-owned*, or
107 minority-owned businesses as may be authorized by the Governor pursuant to subsection C of
108 § 2.2-4310 and develop regulations, consistent with prevailing law, for program implementation. Such
109 regulations shall be developed in consultation with the state agencies with procurement responsibility
110 and promulgated by those agencies in accordance with applicable law; and

111 7. Receive and coordinate, with the appropriate state agency, the investigation of complaints that a
112 business certified pursuant to this chapter has failed to comply with its subcontracting plan under
113 subsection D of § 2.2-4310. If the Department determines that a business certified pursuant to this
114 chapter has failed to comply with the subcontracting plan, the business shall provide a written
115 explanation.

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

119 1. Encourage the training or retraining of individuals for specific employment opportunities at new or
120 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 described in Article 2 (§ 2.2-1611 et seq.).

C. All agencies of the Commonwealth shall assist the Department upon request and furnish such information and assistance as the Department may require in the discharge of its duties.

§ 2.2-1606. Powers of Director.

As deemed necessary or appropriate to better fulfill the duties of the Department, the Director may:

1. With the participation of other state departments and agencies, develop comprehensive plans and specific program goals for small, women-owned, *LGBT-owned*, and minority-owned business programs; establish regular performance monitoring and reporting systems to assure that goals of state agencies and institutions are being achieved; and evaluate the impact of federal and state support in achieving objectives.

2. Employ the necessary personnel or subcontract, according to his discretion, with localities to supplement the functions of business development organizations.

3. Assure the coordinated review of all proposed state training and technical assistance activities in direct support of small, women-owned, *LGBT-owned*, and minority-owned business programs to ensure consistency with program goals and to avoid duplication.

4. Convene, for purposes of coordination, meetings of the heads of departments and agencies, or their designees, whose programs and activities may affect or contribute to the purposes of this chapter.

5. Convene business leaders, educators, and other representatives of the private sector who are engaged in assisting the development of small, women-owned, *LGBT-owned*, and minority-owned business programs or who could contribute to their development for the purpose of proposing, evaluating, or coordinating governmental and private activities in furtherance of the objectives of this chapter.

6. Provide the managerial and organizational framework through which joint undertakings with state departments or agencies or private organizations can be planned and implemented.

7. Recommend appropriate legislative or executive actions.

8. Adopt regulations to implement certification programs for small, women-owned, *LGBT-owned*, and minority-owned businesses and employment services organizations, which regulations shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to subdivision B 2 of § 2.2-4002. Such certification programs shall allow applications for certification to be submitted by electronic means as authorized by § 59.1-496 and the applicant to affix thereto his electronic signature, as defined in § 59.1-480. Such certification programs shall deny certification to vendors from states that deny like certifications to Virginia-based small, women-owned, *LGBT-owned*, or minority-owned businesses and employment services organizations or that provide a preference for small, women-owned, *LGBT-owned*, or minority-owned businesses and employment services organizations based in that state that is not available to Virginia-based businesses. The regulations shall (i) establish minimum requirements for certification of small, women-owned, *LGBT-owned*, and minority-owned businesses and employment services organizations; (ii) provide a process for evaluating existing local, state, and private sector certification programs that meet the minimum requirements; and (iii) mandate certification without any additional paperwork of any small, women-owned, *LGBT-owned*, or minority-owned business that has obtained (a) certification under any federal certification program or (b) certification under any other certification program that is determined to meet the minimum requirements established in the regulations, and of any employment services organization that has been approved by the Department for Aging and Rehabilitative Services. All employment services organization certifications shall remain in effect until the Department is notified by the Department for Aging and Rehabilitative Services that such organization is no longer approved. The regulations shall also require as a prerequisite for approval that any out-of-state business applying for certification in Virginia as a small, women-owned, *LGBT-owned*, or minority-owned business have the equivalent certification in the business's state of origin. An out-of-state business located in a state that does not have a small, women-owned, *LGBT-owned*, or minority-owned business certification program shall be exempt from the requirements of this provision.

9. Establish an interdepartmental board in accordance with § 2.2-1608 to supply the Director with

information useful in promoting minority business activity.

§ 2.2-1608. Interdepartmental Board; cooperation with Department.

A. The Interdepartmental Board established by the Director shall be composed of heads of the several departments and agencies of state government, or their respective designees, whose functions affect small, women-owned, *LGBT-owned*, and minority-owned businesses. The participating departments and agencies shall be determined by the Director of the Department. The Interdepartmental Board shall meet at the call of the Director and shall supply the Director with information useful in promoting small, women-owned, *LGBT-owned*, and minority-owned business development.

B. The head of each participating state department and agency or his designee shall furnish information, assistance, and reports to, and shall otherwise cooperate with, the Director in the performance of his duties as needed.

C. The head of each participating state department or agency shall, when so requested by the Director, designate an assistant or such other similar official to have primary and continuing responsibility for the participation and cooperation of that department or agency in matters concerning small, women-owned, *LGBT-owned*, and minority-owned businesses.

D. Each participating state department or agency shall, within constraints of law and availability of funding, continue all current efforts to foster and promote small, women-owned, *LGBT-owned*, and minority-owned businesses and to support small, women-owned, *LGBT-owned*, and minority-owned business programs, and shall cooperate with the Director in increasing the total state effort.

§ 2.2-1609. Use of vendors identified by public institutions of higher education as small, women-owned, LGBT-owned, and minority-owned businesses.

For purposes of compliance with § 2.2-4310, a public institution of higher education that meets the conditions prescribed in subsection A of § 23.1-1002 may procure goods, services, and construction from vendors identified by such public institutions of higher education as small, women-owned, *LGBT-owned*, or minority-owned businesses that the institution has certified as such based on criteria approved by the Department. An institution exercising the authority granted by this section shall establish and follow internal procedures and processes designed to verify whether or not a vendor qualifies to be certified as a small, women-owned, *LGBT-owned*, or minority-owned business under the Department-approved criteria and the certification requirements. The institution shall notify the Department promptly of the certification and shall provide the Department with a copy of its written certification identifying the vendor as a small, women-owned, *LGBT-owned*, or minority-owned business and all application materials submitted by the vendor to the institution. Such certification shall remain in effect unless and until the Department notifies the institution that the vendor does not meet the certification requirements.

§ 2.2-1610. Reports and recommendations; collection of data.

The Director shall, from time to time, submit directly or through an assistant to the Governor his recommendations for legislation or other action as he deems desirable to promote the purposes of this chapter.

The Director shall report, on or before November 1 of each year, to the Governor and the General Assembly the identity of the state departments and agencies failing to submit annual progress reports on small, women-owned, *LGBT-owned*, and minority-owned business procurement required by § 2.2-4310 and the nature and extent of such lack of compliance. The annual report shall include recommendations on the ways to improve compliance with the provisions of § 2.2-4310 and such other related matters as the Director deems appropriate.

The Director, with the assistance of the Comptroller, shall develop and implement a systematic data collection process that will provide information for a report to the Governor and General Assembly on state expenditures to small, women-owned, *LGBT-owned*, and minority-owned businesses during the previous fiscal year.

An institution exercising authority granted under this section shall promptly make available to the Department, upon request, copies of its procurement records, receipts, and transactions in regard to procurement from small, women-owned, *LGBT-owned*, and minority-owned businesses in order for the Department to ensure institution compliance with its approved reporting and certification criteria.

§ 2.2-2311.1. Creation, administration, and management of the Small, Women-owned, LGBT-owned, and Minority-owned Business Loan Fund.

A. For the purposes of this section:

"Eligible small business" means any person engaged in a for-profit business enterprise in the Commonwealth and such enterprise has (i) \$10 million or less in annual gross income under generally accepted accounting principles for up to each of its last three fiscal years or lesser time period if it has been in existence less than three years, (ii) fewer than 250 employees, or (iii) a net worth of \$1 million or less, or such business enterprise meets such other satisfactory requirements as the Board shall determine from time to time upon a finding that such business enterprise is in need of assistance.

"Fund" means the Small, Women-owned, *LGBT-owned*, and Minority-owned Business Loan Fund.

"*LGBT-owned business*" means a for-profit small business concern that is majority-owned by one or

more individuals who are lesbian, gay, bisexual, or transgender. In the case of a corporation, a majority of the stock shall be owned by one or more such individuals and the management and daily business operations shall be controlled by one or more of the lesbian, gay, bisexual, or transgender individuals who own it.

"Minority-owned business" means a for-profit small business concern that is majority-owned by one or more individuals of an ethnic or racial minority. In the case of a corporation, a majority of the stock shall be owned by one or more such individuals and the management and daily business operations shall be controlled by one or more of the individuals of an ethnic or racial minority who own it.

"Women-owned business" means a for-profit small business concern that is majority-owned by one or more women. In the case of a corporation, a majority of the stock shall be owned by one or more women and the management and daily business operations shall be controlled by one or more of the women who own it.

B. There is created a permanent revolving loan fund to be known as the Small, Women-owned, *LGBT-owned*, and Minority-owned Business Loan Fund. The Fund shall be comprised of (i) moneys appropriated to the Fund by the General Assembly, (ii) moneys collected by the Authority as a result of loan repayments, (iii) all income from the investment of moneys held by the Fund, and (iv) any other moneys designated for deposit to the Fund from any source, public or private. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used to provide direct loans to eligible small, women-owned, *LGBT-owned*, and minority-owned businesses. The Fund shall be managed and administered by the Authority with guidance from the Director of the Department of Small Business and Supplier Diversity.

C. The Authority, or its designated agents, shall determine the qualifications, terms, and conditions for the use of the Fund and the accounts thereof.

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

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, *sexual orientation*, 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, women-owned, LGBT-owned, minority-owned,~~ and service disabled veterans *veteran-owned businesses*, 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, *LGBT-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 and service disabled veteran-owned businesses shall be credited toward the small business, women-owned, *LGBT-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, *LGBT-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. Any enhancement or remedial measure authorized by the Governor pursuant to this subsection for state public bodies may allow for small businesses certified by the Department of Small Business and Supplier Diversity or a subcategory of small businesses established as a part of the enhancement program to have a price preference over noncertified businesses competing for the same contract award on designated procurements, provided that the bid of the certified small business or the business in such subcategory of small businesses established as a part of an enhancement program does not exceed the low bid by more than five percent.

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

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

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

317 F. As used in this section:

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

322 "*LGBT-owned business*" means a business that is at least 51 percent owned by one or more lesbian,
323 gay, bisexual, or transgender individuals who are U.S. citizens or legal resident aliens, or in the case of
324 a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity
325 ownership interest in the corporation, partnership, or limited liability company or other entity is owned
326 by one or more lesbian, gay, bisexual, or transgender individuals who are U.S. citizens or legal resident
327 aliens, and both the management and daily business operations are controlled by one or more lesbian,
328 gay, bisexual, or transgender individuals.

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

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

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

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

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

344 "Minority-owned business" means a business that is at least 51 percent owned by one or more
345 minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation,
346 partnership, or limited liability company or other entity, at least 51 percent of the equity ownership
347 interest in the corporation, partnership, or limited liability company or other entity is owned by one or
348 more minority individuals who are U.S. citizens or legal resident aliens, and both the management and
349 daily business operations are controlled by one or more minority individuals, or any historically black
350 college or university as defined in § 2.2-1604, regardless of the percentage ownership by minority
351 individuals or, in the case of a corporation, partnership, or limited liability company or other entity, the
352 equity ownership interest in the corporation, partnership, or limited liability company or other entity.

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

357 "Service disabled veteran business" means a business that is at least 51 percent owned by one or
358 more service disabled veterans or, in the case of a corporation, partnership, or limited liability company
359 or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or
360 limited liability company or other entity is owned by one or more individuals who are service disabled
361 veterans and both the management and daily business operations are controlled by one or more
362 individuals who are service disabled veterans.

363 "Small business" means a business, independently owned and controlled by one or more individuals
364 who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees,
365 or annual gross receipts of \$10 million or less averaged over the previous three years. One or more of
366 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.

§ 15.2-965.1. Participation of small, women-owned, LGBT-owned, and minority-owned businesses.

A. Any locality may enact an ordinance providing that whenever there exists (i) a rational basis for small business enhancement; or (ii) a persuasive analysis that documents a statistically significant disparity between the availability and utilization of women-owned, *LGBT-owned*, and minority-owned businesses, the chief executive of the local governing entity shall be authorized and encouraged to require implementation of appropriate enhancement and remedial measures consistent with prevailing law.

B. A small, women-owned, *LGBT-owned*, or minority-owned business that is certified by the Department of Small Business and Supplier Diversity pursuant to § 2.2-1606 shall not be required by any locality to obtain any additional certification to participate in any program designed to enhance the participation of such businesses as vendors or to remedy any documented disparity.

§ 23.1-1002. Eligibility for restructured financial and administrative operational authority and financial benefits.

A. The state goals for each public institution of higher education are to:

1. Consistent with its institutional mission, provide access to higher education for all citizens throughout the Commonwealth, including underrepresented populations, and consistent with subdivision 4 of § 23.1-203 and in accordance with anticipated demand analysis, meet enrollment projections and degree estimates as agreed upon with the Council. Each such institution shall bear a measure of responsibility for ensuring that the statewide demand for enrollment is met;

2. Consistent with § 23.1-306, ensure that higher education remains affordable, regardless of individual or family income, and through a periodic assessment determine the impact of tuition and fee levels net of financial aid on applications, enrollment, and student indebtedness incurred for the payment of tuition, mandatory fees, and other necessary charges;

3. Offer a broad range of undergraduate and, where appropriate, graduate programs consistent with its mission and assess regularly the extent to which the institution's curricula and degree programs address the Commonwealth's need for sufficient graduates in particular shortage areas, including specific academic disciplines, professions, and geographic regions;

4. Ensure that the institution's academic programs and course offerings maintain high academic standards by undertaking a continuous review and improvement of academic programs, course availability, faculty productivity, and other relevant factors;

5. Improve student retention so that students' progress from initial enrollment to a timely graduation and the number of degrees conferred increases as enrollment increases;

6. Consistent with its institutional mission, develop articulation agreements that have uniform application to all comprehensive community colleges and meet appropriate general education and program requirements at the baccalaureate institution of higher education, provide additional opportunities for associate degree graduates to be admitted and enrolled, and offer dual enrollment programs in cooperation with high schools;

7. Actively contribute to efforts to stimulate the economic development of the Commonwealth and the area in which the institution is located, and for those institutions subject to a management agreement pursuant to Article 4 (§ 23.1-1004 et seq.), in areas with below-state average income levels and employment rates;

8. Consistent with its institutional mission, increase the level of externally funded research conducted at the institution and facilitate the transfer of technology from university research centers to private sector companies;

9. Work actively and cooperatively with public elementary and secondary school administrators, teachers, and students to improve student achievement, upgrade the knowledge and skills of teachers, and strengthen leadership skills of school administrators;

10. Prepare a six-year financial plan consistent with § 23.1-306;

11. Conduct the institution's business affairs in a manner that (i) helps maximize the operational efficiencies and economies of the institution and the Commonwealth and (ii) meets all financial and administrative management standards pursuant to § 23.1-1001 specified by the Governor and included in the current general appropriation act, which shall include best practices for electronic procurement and

leveraged purchasing, information technology, real estate portfolio management, and diversity of suppliers through fair and reasonable consideration of small, women-owned, *LGBT-owned*, and minority-owned business enterprises; and

12. Seek to ensure the safety and security of students on campus.

B. Each public institution of higher education that meets the state goals set forth in subsection A on or after August 1, 2005, may:

1. Dispose of its surplus materials at the location where the surplus materials are held and retain any proceeds from such disposal as provided in subdivision B 14 of § 2.2-1124;

2. As provided in and pursuant to the conditions in subsection C of § 2.2-1132, contract with a building official of the locality in which construction is taking place and for such official to perform any inspection and certifications required to comply with the Uniform Statewide Building Code (§ 36-97 et seq.) pursuant to subsection C of § 36-98.1;

3. For each public institution of higher education that has in effect a signed memorandum of understanding with the Secretary of Administration regarding participation in the nongeneral fund decentralization program as set forth in the general appropriation act, as provided in subsection C of § 2.2-1132, enter into contracts for specific construction projects without the preliminary review and approval of the Division of Engineering and Buildings of the Department of General Services, provided that such institutions are in compliance with the requirements of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) and utilize the general terms and conditions for those forms of procurement approved by the Division of Engineering and Buildings and the Office of the Attorney General;

4. Acquire easements as provided in subdivision 4 of § 2.2-1149;

5. Enter into an operating/income lease or capital lease pursuant to the conditions and provisions in subdivision 5 of § 2.2-1149;

6. Convey an easement pertaining to any property such institution owns or controls as provided in subsection C of § 2.2-1150;

7. In accordance with the conditions and provisions in subdivision C 2 of § 2.2-1153, sell surplus real property that is possessed and controlled by the institution and valued at less than \$5 million;

8. For purposes of compliance with § 2.2-4310, procure goods, services, and construction from a vendor that the institution has certified as a small, women-owned, *LGBT-owned*, or minority-owned business enterprise pursuant to the conditions and provisions in § 2.2-1609;

9. Be exempt from review of its budget request for information technology by the CIO as provided in subdivision B 3 of § 2.2-2007.1;

10. Adopt policies for the designation of administrative and professional faculty positions at the institution pursuant to the conditions and provisions in subsection E of § 2.2-2901;

11. Be exempt from reporting its purchases to the Secretary of Education, provided that all purchases, including sole source purchases, are placed through the Commonwealth's electronic procurement system using proper system codes for the methods of procurement; and

12. Utilize as methods of procurement a fixed price, design-build, or construction management contract in compliance with the provisions of Chapter 43.1 (§ 2.2-4378 et seq.) of Title 2.2.

C. Each public institution of higher education that (i) has been certified during the fiscal year by the Council pursuant to § 23.1-206 as having met the institutional performance benchmarks for public institutions of higher education and (ii) meets the state goals set in subsection A shall receive the following financial benefits:

1. Interest on the tuition and fees and other nongeneral fund Educational and General Revenues deposited into the state treasury by the institution, as provided in the general appropriation act. Such interest shall be paid from the general fund and shall be an appropriate and equitable amount as determined and certified in writing by the Secretary of Finance to the Comptroller by the end of each fiscal year or as soon as practicable after the end of such fiscal year;

2. Any unexpended appropriations of the public institution of higher education at the end of the fiscal year, which shall be reappropriated and allotted for expenditure by the institution in the immediately following fiscal year;

3. A pro rata amount of the rebate due to the Commonwealth on credit card purchases of \$5,000 or less made during the fiscal year. The amount to be paid to each institution shall equal a pro rata share based upon its total transactions of \$5,000 or less using the credit card that is approved for use by all state agencies as compared to all transactions of \$5,000 or less using such card by all state agencies. The Comptroller shall determine the public institution's pro rata share and, as provided in the general appropriation act, shall pay the institution by August 15 of the fiscal year immediately following the year of certification or as soon as practicable after August 15 of such fiscal year. The payment to an institution of its pro rata share under this subdivision shall also be applicable to other rebate or refund programs in effect that are similar to that of the credit card rebate program described in this subdivision. The Secretary of Finance shall identify such other rebate or refund programs and shall determine the pro rata share to be paid to the institution; and

4. A rebate of any transaction fees for the prior fiscal year paid for sole source procurements made by the institution in accordance with subsection E of § 2.2-4303 for using a vendor that is not registered with the Department of General Services' web-based electronic procurement program commonly known as "eVA," as provided in the general appropriation act. Such rebate shall be certified by the Department of General Services and paid to each public institution by August 15 of the fiscal year immediately following the year of certification or as soon as practicable after August 15 of such fiscal year.

§ 23.1-1017. Covered institutions; operational authority; procurement.

A. Subject to the express provisions of the management agreement, each covered institution may be exempt from the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.), except for § 2.2-4342, which shall not be construed to require compliance with the prequalification application procedures of subsection B of § 2.2-4317, provided, however, that (i) any deviations from the Virginia Public Procurement Act in the management agreement shall be uniform across all covered institutions and (ii) the governing board of the covered institution shall adopt, and the covered institution shall comply with, policies for the procurement of goods and services, including professional services, that shall (a) be based upon competitive principles, (b) in each instance seek competition to the maximum practical degree, (c) implement a system of competitive negotiation for professional services pursuant to §§ 2.2-4303.1 and 2.2-4302.2, (d) prohibit discrimination in the solicitation and award of contracts based on the bidder's or offeror's race, religion, color, sex, national origin, age, *sexual orientation*, or disability or on any other basis prohibited by state or federal law, (e) incorporate the prompt payment principles of §§ 2.2-4350 and 2.2-4354, (f) consider the impact on correctional enterprises under § 53.1-47, and (g) provide that whenever solicitations are made seeking competitive procurement of goods or services, it shall be a priority of the institution to provide for fair and reasonable consideration of small, women-owned, *LGBT-owned*, and minority-owned businesses and to promote and encourage a diversity of suppliers.

B. Such policies may (i) provide for consideration of the dollar amount of the intended procurement, the term of the anticipated contract, and the likely extent of competition; (ii) implement a prequalification procedure for contractors or products; and (iii) include provisions for cooperative arrangements with other covered institutions, other public or private educational institutions, or other public or private organizations or entities, including public-private partnerships, public bodies, charitable organizations, health care provider alliances or purchasing organizations or entities, state agencies or institutions of the Commonwealth or the other states, the District of Columbia, the territories, or the United States, and any combination of such organizations and entities.

C. Nothing in this section shall preclude a covered institution from requesting and utilizing the assistance of the Virginia Information Technologies Agency for information technology procurements and covered institutions are encouraged to utilize such assistance.

D. Each covered institution shall post on the Department of General Services' central electronic procurement website all Invitations to Bid, Requests for Proposal, sole source award notices, and emergency award notices to ensure visibility and access to the Commonwealth's procurement opportunities on one website.

E. As part of any procurement provisions of the management agreement, the governing board of a covered institution shall identify the public, educational, and operational interests served by any procurement rule that deviates from procurement rules in the Virginia Public Procurement Act (§ 2.2-4300 et seq.).

§ 23.1-1318. Procurement and information technology.

A. The Authority shall be exempt from the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.), except for § 2.2-4342, which shall not be construed to require compliance with the prequalification application procedures of subsection B of § 2.2-4317, if it adopts and complies with policies for the procurement of goods and services, including professional services, that (i) are based upon competitive principles; (ii) in each instance seek competition to the maximum practical degree; (iii) implement a system of competitive negotiation for professional services pursuant to §§ 2.2-4303.1 and 2.2-4302.2; (iv) prohibit discrimination in the solicitation and award of contracts based on the bidder's or offeror's race, religion, color, sex, national origin, age, *sexual orientation*, or disability or on any other basis prohibited by state or federal law; (v) incorporate the prompt payment principles of §§ 2.2-4350 and 2.2-4354; (vi) consider the impact on correctional enterprises under § 53.1-47; (vii) provide that whenever solicitations are made seeking competitive procurement of goods or services, it shall be a priority of the Authority to provide for fair and reasonable consideration of small, women-owned, *LGBT-owned*, and minority-owned businesses and to promote and encourage a diversity of suppliers; and (viii) identify the public, educational, and operational interests served by any procurement rule that deviates from procurement rules in the Virginia Public Procurement Act (§ 2.2-4300 et seq.).

B. The Authority shall be exempt from the provisions governing the Virginia Information Technologies Agency in Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2 and the provisions governing the

551 Information Technology Advisory Council in Article 35 (§ 2.2-2699.5 et seq.) of Chapter 26 of Title
552 2.2, if it adopts and complies with policies and professional best practices regarding strategic planning
553 for information technology, project management, security, budgeting, infrastructure, and ongoing
554 operations.