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HOUSE BILL NO. 817

Offered January 12, 2022

Prefiled January 12, 2022

A BILL to amend and reenact §§ 2.2-4310 and 15.2-950 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.2-115.2, relating to grants and public procurement.

 Patron—Torian

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-4310 and 15.2-950 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.2-115.2 as follows:

§ 2.2-115.2. Grants issued by the Commonwealth; recruitment for certification for procurement enhancement.

For any grant program administered by the Governor or a state agency, the Governor or such agency shall inquire of the grant recipient whether it is a small business, women-owned business, or minority-owned business, as such terms are defined in § 2.2-1604, and whether it has obtained certification pursuant to subsection 8 of § 2.2-1606. If such inquiry reveals that a business is eligible but not certified, the Governor or state agency shall notify the Department of Small Business and Supplier Diversity, which shall contact such business, provide it with information on the certification process and its benefits, and encourage it to apply for certification.

§ 2.2-4310. Discrimination prohibited; participation of small, women-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, sexual orientation, gender identity, 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 and service disabled veteran-owned businesses shall be credited toward 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. 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.

D. 1. 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

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59 program as provided in subsection C, the public body shall include in every such contract of more than
60 \$10,000 the following:

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

64 2. *Any public body that solicits or awards a contract pursuant to this chapter shall inquire of the*
65 *bidder, offeror, or contractor whether it is a small business, women-owned business, or minority-owned*
66 *business and whether it has obtained certification pursuant to subsection 8 of § 2.2-1606. If such inquiry*
67 *reveals that a business is eligible but not certified, the public body shall notify the Department of Small*
68 *Business and Supplier Diversity, which shall contact such business, provide it with information on the*
69 *certification process and its benefits, and encourage it to apply for certification.*

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

74 F. As used in this section:

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

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

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

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

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

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

94 "Minority-owned business" means a business that is at least 51 percent owned by one or more
95 minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation,
96 partnership, or limited liability company or other entity, at least 51 percent of the equity ownership
97 interest in the corporation, partnership, or limited liability company or other entity is owned by one or
98 more minority individuals who are U.S. citizens or legal resident aliens, and both the management and
99 daily business operations are controlled by one or more minority individuals, or any historically black
100 college or university as defined in § 2.2-1604, regardless of the percentage ownership by minority
101 individuals or, in the case of a corporation, partnership, or limited liability company or other entity, the
102 equity ownership interest in the corporation, partnership, or limited liability company or other entity.

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

107 "Service disabled veteran business" means a business that is at least 51 percent owned by one or
108 more service disabled veterans or, in the case of a corporation, partnership, or limited liability company
109 or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or
110 limited liability company or other entity is owned by one or more individuals who are service disabled
111 veterans and both the management and daily business operations are controlled by one or more
112 individuals who are service disabled veterans.

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

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

120 "Women-owned business" means a business that is at least 51 percent owned by one or more women

121 who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited
122 liability company or other entity, at least 51 percent of the equity ownership interest is owned by one or
123 more women who are U.S. citizens or legal resident aliens, and both the management and daily business
124 operations are controlled by one or more women.

125 **§ 15.2-950. Appropriations and grants.**

126 A locality may make appropriations for the purposes for which it is empowered to levy taxes and
127 make assessments, for the support of the locality, for the performance of its functions, and the
128 accomplishment of all other lawful purposes and objectives, subject to such limitations as may be
129 imposed by law.

130 *For any grant program administered by a locality, the locality shall inquire of the grant recipient*
131 *whether it is a small business, women-owned business, or minority-owned business, as such terms are*
132 *defined in § 2.2-1604, and whether it has obtained certification pursuant to subsection 8 of § 2.2-1606.*
133 *If such inquiry reveals that a business is eligible but not certified, the locality shall notify the*
134 *Department of Small Business and Supplier Diversity, which shall contact such business, provide it with*
135 *information on the certification process and its benefits, and encourage it to apply for certification.*