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HOUSE BILL NO. 1069

Offered January 11, 2006

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A BILL to amend and reenact §§ 2.2-204, 2.2-1400 through 2.2-1404, 2.2-1405, 2.2-2311, 2.2-3705.6, 2.2-4301, 2.2-4310, 3.1-18.14, 3.1-27.41, and 18.2-213.1 of the Code of Virginia, relating to the Department of Minority Business Enterprise; small, women and minority enterprise.

 Patron—Hall

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-204, 2.2-1400 through 2.2-1404, 2.2-1405, 2.2-2311, 2.2-3705.6, 2.2-4301, 2.2-4310, 3.1-18.14, 3.1-27.41, and 18.2-213.1 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-204. Position established; agencies for which responsible; additional duties.

The position of Secretary of Commerce and Trade (the Secretary) is created. The Secretary shall be responsible to the Governor for the following agencies: Department of Business Assistance, Virginia Economic Development Partnership Authority, Virginia Tourism Authority, Department of Labor and Industry, Department of Mines, Minerals and Energy, Virginia Employment Commission, Department of Professional and Occupational Regulation, Department of Housing and Community Development, Department of ~~Minority Business Enterprise~~ *Vendor Diversity and Development*, Virginia Housing Development Authority, Virginia Resources Authority, Virginia Racing Commission, Tobacco Indemnification and Community Revitalization Commission, and Board of Accountancy. The Governor, by executive order, may assign any state executive agency to the Secretary, or reassign any agency listed in this section to another Secretary.

The Secretary shall implement the provisions of the Virginia Biotechnology Research Act (§ 2.2-5500 et seq.).

Chapter 14.

Department of ~~Minority Business Enterprise~~ *Vendor Diversity and Development*.

§ 2.2-1400. Creation of Department of Vendor Diversity and Development; appointment of Director; offices; personnel.

A. There is created within the Office of the Governor a Department of ~~Minority Business Enterprise~~ *Vendor Diversity and Development* (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, and minority business enterprise*.

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.

D. *The Department, or with the approval of the Director, a division of the Department shall have the power to adopt regulations and issue guidelines necessary or incidental to the performance of the duties or execution of the powers conferred under this title and other relevant chapters, which regulations shall be adopted by the Department in accordance with the provisions of Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act.*

§ 2.2-1401. Definitions.

As used in this chapter unless the context requires a different meaning:

"Certification" means the process by which a business or business enterprise is determined to be a *small, women, or minority business enterprise* for the purpose of reporting *small, women, and minority business participation* in state contracts and purchases pursuant to §§ 2.2-1404 and 2.2-1405.

"Disadvantaged business enterprise" means a small business concern, as defined in 49 CFR Parts 23 and 26, that is at least 51% owned by one or more socially and economically disadvantaged individuals, or, in the case of any corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership, is owned by one or more socially and economically disadvantaged individuals and the management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

"Minority-owned business enterprise" means a business enterprise that is owned and controlled by one or more socially and economically disadvantaged persons. Such disadvantage may arise from

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59 cultural, racial, chronic economic circumstances or background or other similar cause. Such persons
60 include, but are not limited to Blacks, Hispanic Americans, Asian Americans, American Indians,
61 Eskimos, and Aleuts.

62 *"Small business enterprise" shall mean a business entity, including its affiliates, that (i) is*
63 *independently owned and operated and (ii) employs fewer than 250 full-time employees or has gross*
64 *annual sales of less than \$10 million.*

65 *"Women-owned business enterprise" means a business concern that is at least 51% owned by one or*
66 *more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership*
67 *or limited liability company or other entity, at least 51% of the equity ownership, is owned by one or*
68 *more women, and the management and daily business operations are controlled by one or more of such*
69 *individuals.*

70 § 2.2-1402. Additional powers and duties of Department.

71 The Department shall have the following additional powers and duties:

72 1. Coordinate as consistent with law the plans, programs and operations of the state government that
73 affect or may contribute to the establishment, preservation, and strengthening of *small, women, and*
74 *minority business enterprise enterprises.*

75 2. Promote the mobilization of activities and resources of state and local governments, businesses and
76 trade associations, universities, foundations, professional organizations, and volunteer and other groups
77 towards the growth of ~~minority business enterprises~~ *small businesses and businesses owned by women*
78 *and minorities*, and facilitate the coordination of the efforts of these groups with those of state
79 departments and agencies.

80 3. Establish a center for the development, collection, summarization, and dissemination of
81 information that will be helpful to persons and organizations throughout the nation in undertaking or
82 promoting the establishment and successful operation of *small, women, and* minority business ~~enterprise~~
83 *enterprises.*

84 4. Within constraints of law and availability of funds, and according to the Director's discretion,
85 provide technical and management assistance to *small, women, and* minority business enterprises, and
86 defray all or part of the costs of pilot or demonstration projects that are designed to overcome the
87 special problems of *small, women, and* minority business enterprises.

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

91 6. *Implement any remediation or enhancement measure for small, women, or minority business*
92 *enhancement as may be authorized by the Governor pursuant to subsection C of 2.2-4310 and adopt*
93 *reasonable regulations, consistent with prevailing law, for program implementation.*

94 § 2.2-1403. Powers of Director.

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

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

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

103 3. Assure the coordinated review of all proposed state training and technical assistance activities in
104 direct support of the *small, women, and* minority enterprise ~~program~~ *programs* to ensure consistency with
105 program goals and to avoid duplication.

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

108 5. Convene business leaders, educators, and other representatives of the private sector who are
109 engaged in assisting the development of *small, women, and* minority business ~~enterprise~~ *enterprises* or
110 who could contribute to its development, for the purpose of proposing, evaluating or coordinating
111 governmental and private activities in furtherance of the objectives of this chapter.

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

114 7. Recommend appropriate legislative or executive actions.

115 8. Adopt reasonable regulations in accordance with the Administrative Process Act (§ 2.2-4000 et
116 seq.) to implement a certification program for *small, women, and* minority business enterprises. Such
117 certification process shall include consideration of other states' laws that may deny like certifications to
118 Virginia-based *small, women, and* minority business enterprises and that may provide preference for
119 *small, women, and* minority business enterprises based in that state.

120 9. Establish an interdepartmental board in accordance with § 2.2-1404 to supply the Director with

information useful in promoting minority business activity.

§ 2.2-1404. 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, and* minority business ~~enterprise enterprises~~. The participating departments and agencies shall be ~~determined by the Director of the Department~~ *the Departments of General Services, Transportation, Corrections, Social Services, Agriculture and Consumer Services, and Housing and Community Development, and the Virginia Information Technology Agency. Other members shall include the President of the Virginia Association of State Colleges and Universities Purchasing Professionals (VASCUPP) and any others determined by the Director of the Department.* The Interdepartmental Board shall meet at *least two times each year* at the call of the Director and shall supply the Director with information useful in promoting *small, women, and* minority business activity.

B. The head of each participating state department and agency or their designees 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, and* minority business ~~enterprise enterprises~~.

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

§ 2.2-1405. 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, and* minority 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, and* minority business enterprises during the previous fiscal year.

§ 2.2-2311. Creation, administration, and management of the Capital Access Fund for Disadvantaged Businesses.

A. For the purposes of this section:

"Disadvantaged business" means a for-profit small business concern that is majority-owned by one or more economically disadvantaged individuals. 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 economically disadvantaged individuals who own it.

"Economically disadvantaged individual" means an individual whose ability to compete in the free market has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business and competitive market area.

B. There is created in the state treasury a permanent nonreverting fund to be known as the Capital Access Fund for Disadvantaged Businesses (the Fund). The Fund shall be comprised of (i) moneys appropriated to the Fund by the General Assembly, (ii) all income from the investment of moneys held by the Fund, and (iii) 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 loan guarantees, loan loss reserves, and interest rate write downs. The Fund shall be managed by the Department of ~~Minority Business Enterprise~~ *Vendor Diversity and Development* (the Department) and administered by the Virginia Small Business Financing Authority (the Authority).

C. The operation of the Fund shall be as follows:

1. The Fund may be used as a special reserve fund to cover potential future losses from the loan portfolios of participating banks and lending institutions. The Authority shall (i) establish with one or more banks and lending institutions one or more accounts or pools for the Capital Access Fund for Disadvantaged Businesses and (ii) deposit into such accounts or pools moneys from the Fund in an

182 amount at least equal to the total of the sum of the bank or lending institutions and the individual
183 borrower's deposits, cash equivalents or other acceptable securities, including but not limited to letters of
184 credit, for each loan sought to be covered for future losses. Such matching sum by the Authority shall
185 not exceed fourteen percent of the principal amount of the loan. The Authority may require up to a one
186 hundred percent match by the individual borrowers pursuant to established guidelines.

187 2. The Fund may also be used to guarantee up to ninety percent of the principal amount of any loan
188 to cover potential future losses from the loan portfolios of participating banks and lending institutions to
189 cover specific loans on such terms and conditions as set forth in established guidelines. Such guarantees
190 shall not exceed a term of five years.

191 3. The Fund may also be used to provide interest rate write downs or other payments to achieve a
192 concessionary rate of interest that shall be limited to seven percent of the balance of the Fund that is
193 unencumbered by any special reserves or guarantees or the income earned by the Fund from all sources
194 including fees, interest, or other investment income. No interest rate write down or payment to achieve a
195 concessionary rate shall extend for more than five years and such rates shall include provisions for an
196 increase in such rates to a near market rate but not more than the prime rate.

197 4. Provisions may be made for a borrower to use a combination of subdivisions C. 1., C. 2., and C.
198 3. pursuant to established guidelines.

199 D. The determination of economic disadvantage shall be made by the Director of the Department of
200 ~~Minority Business Enterprise~~ *Vendor Diversity and Development* pursuant to the guidelines developed in
201 accordance with subsections B and C.

202 E. The Department and the Authority, or their designated agents, shall determine the qualifications,
203 terms, and conditions for the use of the Fund and the accounts thereof. In connection with applications
204 for claims made against the Fund, the Department may require the production of any document,
205 instrument, certificate, legal opinion, or any other information it deems necessary or convenient. All
206 claims made against the Fund shall be approved by the Department and the Authority.

207 § 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets.

208 The following records are excluded from the provisions of this chapter but may be disclosed by the
209 custodian in his discretion, except where such disclosure is prohibited by law:

210 1. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-132.4
211 or 62.1-134.1.

212 2. Financial statements not publicly available filed with applications for industrial development
213 financings in accordance with Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2.

214 3. Confidential proprietary records, voluntarily provided by private business pursuant to a promise of
215 confidentiality from the Department of Business Assistance, the Virginia Economic Development
216 Partnership, the Virginia Tourism Authority, *Department of Vendor Diversity and Development*, or local
217 or regional industrial or economic development authorities or organizations, used by the Department, the
218 Partnership, the Authority, or such entities for business, trade and tourism development; and memoranda,
219 working papers or other records related to businesses that are considering locating or expanding in
220 Virginia, prepared by such entities, where competition or bargaining is involved and where, if such
221 records are made public, the financial interest of the governmental unit would be adversely affected.

222 4. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-239
223 et seq.), as such Act existed prior to July 1, 1992.

224 5. Fisheries data that would permit identification of any person or vessel, except when required by
225 court order as specified in § 28.2-204.

226 6. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections
227 provided to the Department of Rail and Public Transportation, provided such information is exempt
228 under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws
229 administered by the Surface Transportation Board or the Federal Railroad Administration with respect to
230 data provided in confidence to the Surface Transportation Board and the Federal Railroad
231 Administration.

232 7. Confidential proprietary records related to inventory and sales, voluntarily provided by private
233 energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy
234 contingency planning purposes or for developing consolidated statistical information on energy supplies.

235 8. Confidential proprietary information furnished to the Board of Medical Assistance Services or the
236 Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-331.12 et seq.) of
237 Chapter 10 of Title 32.1.

238 9. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and
239 cost projections provided by a private transportation business to the Virginia Department of
240 Transportation and the Department of Rail and Public Transportation for the purpose of conducting
241 transportation studies needed to obtain grants or other financial assistance under the Transportation
242 Equity Act for the 21st Century (P.L. 105-178) for transportation projects, provided such information is
243 exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other

laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration. However, the exemption provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.

10. Confidential information designated as provided in subsection D of § 2.2-4342 as trade secrets or proprietary information by any person who has submitted to a public body an application for prequalification to bid on public construction projects in accordance with subsection B of § 2.2-4317.

11. Confidential proprietary records that are voluntarily provided by a private entity pursuant to a proposal filed with a public entity or an affected local jurisdiction under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.), pursuant to a promise of confidentiality from the responsible public entity or affected local jurisdiction, used by the responsible public entity or affected local jurisdiction for purposes related to the development of a qualifying transportation facility or qualifying project; and memoranda, working papers or other records related to proposals filed under the Public-Private Transportation Act of 1995 or the Public-Private Education Facilities and Infrastructure Act of 2002, where, if such records were made public, the financial interest of the public or private entity involved with such proposal or the process of competition or bargaining would be adversely affected. In order for confidential proprietary information to be excluded from the provisions of this chapter, the private entity shall (i) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reasons why protection is necessary. For the purposes of this subdivision, the terms "affected local jurisdiction," "public entity" and "private entity" shall be defined as they are defined in the Public-Private Transportation Act of 1995 or in the Public-Private Education Facilities and Infrastructure Act of 2002. However, nothing in this subdivision shall be construed to prohibit the release of procurement records as required by § 56-573.1 or 56-575.16. Procurement records shall not be interpreted to include proprietary, commercial or financial information, balance sheets, financial statements, or trade secrets that may be provided by the private entity as evidence of its qualifications.

12. Confidential proprietary information or trade secrets, not publicly available, provided by a private person or entity to the Virginia Resources Authority or to a fund administered in connection with financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such information were made public, the financial interest of the private person or entity would be adversely affected, and, after June 30, 1997, where such information was provided pursuant to a promise of confidentiality.

13. Confidential proprietary records that are provided by a franchisee under § 15.2-2108 to its franchising authority pursuant to a promise of confidentiality from the franchising authority that relates to the franchisee's potential provision of new services, adoption of new technologies or implementation of improvements, where such new services, technologies or improvements have not been implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such records were made public, the competitive advantage or financial interests of the franchisee would be adversely affected. In order for confidential proprietary information to be excluded from the provisions of this chapter, the franchisee shall (i) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reason why protection is necessary.

14. Documents and other information of a proprietary nature furnished by a supplier of charitable gaming supplies to the Department of Charitable Gaming pursuant to subsection E of § 18.2-340.34.

15. Records and reports related to Virginia apple producer sales provided to the Virginia State Apple Board pursuant to §§ 3.1-622 and 3.1-624.

16. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) of Title 59.1, submitted by CMRS providers as defined in § 56-484.12 to the Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to § 56-484.15, relating to the provision of wireless E-911 service.

17. Records submitted as a grant application, or accompanying a grant application, to the Commonwealth Health Research Board pursuant to Chapter 22 (§ 23-277 et seq.) of Title 23 to the extent such records contain proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical or scholarly issues, when such information has not been publicly released, published, copyrighted or patented, if the disclosure of such information would be harmful to the competitive position of the applicant.

18. Confidential proprietary records and trade secrets developed and held by a local public body (i) providing telecommunication services pursuant to § 56-265.4:4 and (ii) providing cable television services pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 2 of Title 15.2, to the extent that

disclosure of such records would be harmful to the competitive position of the locality. In order for confidential proprietary information or trade secrets to be excluded from the provisions of this chapter, the locality in writing shall (i) invoke the protections of this subdivision, (ii) identify with specificity the records or portions thereof for which protection is sought, and (iii) state the reasons why protection is necessary.

19. Confidential proprietary records and trade secrets developed by or for a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) to provide qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of Title 56, where disclosure of such information would be harmful to the competitive position of the authority, except that records required to be maintained in accordance with § 15.2-2160 shall be released.

§ 2.2-4301. Definitions.

As used in this chapter:

"Affiliate" means an individual or business that controls, is controlled by, or is under common control with another individual or business. A person controls an entity if the person owns, directly or indirectly, more than 10 percent of the voting securities of the entity. For the purposes of this definition "voting security" means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general partnership interest shall be deemed to be a voting security.

"Best value," as predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to a public body's needs.

"Business" means any type of corporation, partnership, limited liability company, association, or sole proprietorship operated for profit.

"Competitive negotiation" is a method of contractor selection that includes the following elements:

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications that will be required of the contractor.

2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of proposals by posting in a public area normally used for posting of public notices and by publication in a newspaper or newspapers of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. Public notice may also be published on the Department of General Services' central electronic procurement website and other appropriate websites. Effective July 1, 2002, publishing by state agencies, departments and institutions on the public Internet procurement website designated by the Department of General Services shall be required. In addition, proposals may be solicited directly from potential contractors.

3. a. Procurement of professional services. The public body shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the public body may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the public body shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the public body can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

A contract for architectural or professional engineering services relating to construction projects may be negotiated by a public body, for multiple projects provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the Request for Proposal, and (iii) the

contract term is limited to one year or when the cumulative total project fees reach the maximum cost authorized in this paragraph, whichever occurs first. For state public bodies, such contract, except those awarded for environmental, location, design and inspection work regarding highways and bridges by the Commonwealth Transportation Commissioner may be renewable for four additional one-year terms at the option of the public body. For local public bodies, such contract may be renewable for two additional one-year terms at the option of the public body. Under such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of each project performed, (b) except those awarded for environmental, location, design and inspection work regarding highways and bridges by the Commonwealth Transportation Commissioner, the sum of all projects performed in one contract term shall not exceed \$500,000 or, in the case of a state agency, as defined in § 2.2-4347, such greater amount as may be determined by the Director of the Department of General Services, not to exceed \$1 million, except that in any locality or any authority or sanitation district with a population in excess of 80,000, the sum of all such projects shall not exceed \$1 million; and (c) except those awarded for environmental, location, design and inspection work regarding highways and bridges by the Commonwealth Transportation Commissioner, the project fee of any single project shall not exceed \$100,000 or, in the case of a state agency, such greater amount as may be determined by the Director of the Department of General Services not to exceed \$200,000, except that in any locality or any authority or sanitation district with a population in excess of 80,000, such fee shall not exceed \$200,000. Any unused amounts from the first contract term shall not be carried forward to the additional term. Competitive negotiations for such contracts may result in awards to more than one offeror provided (1) the Request for Proposal so states and (2) the public body has established procedures for distributing multiple projects among the selected contractors during the contract term. For contracts for environmental location, design and inspection work regarding highways and bridges by the Commonwealth Transportation Commissioner, the sum of all projects in one contract term shall not exceed \$2 million and such contract may be renewable for two additional one-year terms at the option of the Commissioner.

Multiphase professional services contracts satisfactory and advantageous to the Department of Transportation for environmental, location, design and inspection work regarding highways and bridges may be negotiated and awarded based on a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases.

Multiphase professional services contracts satisfactory and advantageous to a local public body for environmental, location, design and inspection work regarding construction of infrastructure projects may be negotiated and awarded based on qualifications at a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to the procurement of any such contract, the local public body shall state the anticipated intended total scope of the project and determine in writing that the nature of the work is such that the best interests of such public body require awarding the contract.

b. Procurement of other than professional services. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the public body shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

"Competitive sealed bidding" is a method of contractor selection, other than for professional services, which includes the following elements:

1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the public body has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. When it is impractical to prepare initially a purchase description to support an award based on prices, an Invitation to Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by posting in a designated public area, or publication in a newspaper of general circulation, or both. Public notice may also be published on the Department of General Services' central electronic procurement

website and other appropriate websites. Effective July 1, 2002, posting by state agencies, departments and institutions on the public Internet procurement website designated by the Department of General Services shall be required. In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall include businesses selected from a list made available by the Department of Minority Business Enterprise *Vendor Diversity and Development*.

3. Public opening and announcement of all bids received.

4. Evaluation of bids based upon the requirements set forth in the invitation, which may include special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.

5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.

"Construction" means building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.

"Construction management contract" means a contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.

"Design-build contract" means a contract between a public body and another party in which the party contracting with the public body agrees to both design and build the structure, roadway or other item specified in the contract.

"Goods" means all material, equipment, supplies, printing, and automated data processing hardware and software.

"Informality" means a minor defect or variation of a bid or proposal from the exact requirements of the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

"Multiphase professional services contract" means a contract for the providing of professional services where the total scope of work of the second or subsequent phase of the contract cannot be specified without the results of the first or prior phase of the contract.

"Nonprofessional services" means any services not specifically identified as professional services in the definition of professional services.

"Potential bidder or offeror" for the purposes of §§ 2.2-4360 and 2.2-4364 means a person who, at the time a public body negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under the contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.

"Professional services" means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering. "Professional services" shall also include the services of an economist procured by the State Corporation Commission.

"Public body" means any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in this chapter.

"Public contract" means an agreement between a public body and a nongovernmental source that is enforceable in a court of law.

"Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance, and who has been prequalified, if required.

"Responsive bidder" means a person who has submitted a bid that conforms in all material respects to the Invitation to Bid.

"Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified goods or nonprofessional services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening.

"Services" means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

"Sheltered workshop" means a work-oriented rehabilitative facility with a controlled working environment and individual goals that utilizes work experience and related services for assisting the handicapped person to progress toward normal living and a productive vocational status.

§ 2.2-4310. Discrimination prohibited; participation of small, women- and minority-owned business.

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, 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 ~~Minority Business Enterprise~~ *Vendor Diversity and Development*.

B. All public bodies shall establish programs consistent with this chapter to facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions. The programs established shall be in writing and shall include cooperation with the Department of ~~Minority Business Enterprise~~ *Vendor Diversity and Development*, the United States Small Business Administration, and other public or private agencies. State agencies shall submit annual progress reports on minority business procurement to the Department of ~~Minority Business Enterprise~~ *Vendor Diversity and Development*.

C. 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- 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. For the purposes of this subsection, "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.

D. 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.

§ 3.1-18.14. (Contingent effective date /- see Editor's note) Administration.

The Department shall administer this chapter as an element of the Office of Farmland Preservation (§ 3.1-18.9 et seq.) with the assistance and cooperation of the Department of Forestry, Department of Business Assistance, Department of ~~Minority Business Enterprise~~ *Vendor Diversity and Development*, and Virginia Cooperative Extension. The Virginia Agricultural Enterprise Program is herein established in order to administer the provisions of this chapter. The Department shall have the following powers and duties:

1. To establish criteria for determining what areas qualify as agricultural enterprise districts, and which criteria shall be the minimum required for implementation of the purposes of this chapter;

2. To monitor the implementation and operation of this chapter;

3. To conduct a continuing evaluation program of agricultural enterprise districts;

4. To assist localities in the designation of agricultural enterprise districts and in developing appropriate local policies and incentives to qualify for such designation; and

5. To administer and enforce the regulations adopted pursuant to this chapter.

§ 3.1-27.41. Creation of the board of trustees; membership.

A. The Rural Virginia Development Foundation shall be governed and administered by a board of trustees consisting of seventeen members. Members of the board shall be appointed by the Governor, subject to confirmation by the General Assembly. The board of trustees shall consist of the following individuals appointed by the Governor: Director of the Department of ~~Minority Business Enterprise~~ *Vendor Diversity and Development*, two department heads of state government, two representatives of the financial community, four members of the business community, four members of the education community, and four members who are elected local officials. Initially the trustees shall be appointed for the following terms: six for a term of four years, six for a term of three years, and two for a term of two years. Thereafter, successors to trustees whose terms expire shall be appointed for terms of four years. The Director of the Department of ~~Minority Business Enterprise~~ *Vendor Diversity and Development* and the two department heads of state government shall serve at the pleasure of the Governor. All trustees may be reappointed.

B. Trustees of the Foundation shall be reimbursed from Foundation funds for their actual traveling expenses incurred in the performance of their duties on behalf of the Foundation.

C. The board shall elect from its membership a chairman, vice-chairman, and other officers as it deems appropriate.

D. The chairman of the board, the treasurer, and any other person designated by the board to handle the funds of the Foundation shall give bond, with corporate surety, in such penalty as is fixed by the State Treasurer, conditioned upon the faithful discharge of their duties. The premium on the bonds shall be paid from funds available to the Foundation.

E. A majority of the members of the board serving at any one time shall constitute a quorum for the transaction of business.

551 § 18.2-213.1. Obtaining certification as minority or disadvantaged business enterprise by deception;
552 penalty.

553 A. Except as otherwise provided by § 18.2-498.3, a person shall be guilty of a Class 1 misdemeanor
554 if, in the course of business, he:

555 1. Fraudulently obtains or retains certification as a minority or disadvantaged business enterprise;

556 2. Willfully makes a false statement knowing it to be untrue, whether by affidavit, report or other
557 representation, to an official or employee of a public body for the purpose of influencing the
558 certification or denial of certification of any business entity as a minority or disadvantaged business
559 enterprise;

560 3. Willfully obstructs or impedes any agency official or employee who is investigating the
561 qualifications of a business entity which has requested certification as a minority or disadvantaged
562 business enterprise; or

563 4. Fraudulently obtains public moneys reserved for or allocated or available to minority or
564 disadvantaged business enterprises.

565 B. For the purposes of this section, "*disadvantaged business enterprise*" and "minority business
566 enterprise" shall have the same meaning as defined in § 2.2-1400. and "disadvantaged business
567 enterprise" means a small business that is both owned and controlled by minorities or by women. This
568 means that minorities or women must own fifty-one percent of the business, and that they must control
569 the management and daily operations of the business. Minorities include Blacks, Hispanics, Asian
570 Americans, American Indians and Alaskan Natives and members of other groups or other individuals
571 who the Small Business Administration (SBA) has determined are economically and socially
572 disadvantaged under Section 8 (a) of the Small Business Act.