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HOUSE BILL NO. 1404

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations
on February 7, 2024)

(Patrons Prior to Substitute—Delegates Ward and Torian [HB 716])

A BILL to amend and reenact §§ 2.2-1604, 2.2-1605, 2.2-1610, 2.2-4310, 2.2-4310.3, and 23.1-1017 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 16.1 of Title 2.2 an article numbered 4, consisting of sections numbered 2.2-1618 through 2.2-1622, relating to the Department of Small Business and Supplier Diversity; Small SWaM Business Procurement Enhancement Program established; disparity study report.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-1604, 2.2-1605, 2.2-1610, 2.2-4310, 2.2-4310.3, and 23.1-1017 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 16.1 of Title 2.2 an article numbered 4, consisting of sections numbered 2.2-1618 through 2.2-1622, as follows:

§ 2.2-1604. Definitions.

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

"Certification" means the process by which (i) a business is determined to be a small, women-owned, or minority-owned business or (ii) an employment services organization, for the purpose of reporting small, women-owned, and minority-owned business and employment services organization participation in state contracts and purchases pursuant to §§ 2.2-1608 and 2.2-1610.

"Covered institution" means a public institution of higher education operating (i) subject to a management agreement set forth in Article 4 (§ 23.1-1004 et seq.) of Chapter 10 of Title 23.1, (ii) under a memorandum of understanding pursuant to § 23.1-1003, or (iii) under the pilot program authorized in the appropriation act.

"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.

"Executive branch agency" means the same as that term is defined in § 2.2-2006.

"Historically black colleges and college or 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.

"Microbusiness" means a business that has been certified by the Department as a small business and has (i) 25 or fewer employees and (ii) average annual gross receipts of \$3 million or less over the previous three years.

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

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

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

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

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

"Minority-owned business" means a business that is at least 51 percent owned by one or more minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals who are U.S. citizens or legal resident aliens, and both the management and

60 daily business operations are controlled by one or more minority individuals, or any historically black
61 college or university, regardless of the percentage ownership by minority individuals or, in the case of a
62 corporation, partnership, or limited liability company or other entity, the equity ownership interest in the
63 corporation, partnership, or limited liability company or other entity.

64 *"Prime contractor" means the contractor that has full legal responsibility for completion of a*
65 *contract with a public body. A "prime contractor" may employ or manage one or more subcontractors*
66 *to carry out specific parts of the contract.*

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

71 *"Service disabled veteran-owned business" means a business that is at least 51 percent owned by one*
72 *or more service disabled veterans or, in the case of a corporation, partnership, or limited liability*
73 *company or other entity, a business in which at least 51 percent of the equity ownership interest in the*
74 *corporation, partnership, or limited liability company or other entity is owned by one or more*
75 *individuals who are service disabled veterans and both the management and daily business operations*
76 *are controlled by one or more individuals who are service disabled veterans.*

77 *"Small business" means a business that is at least 51 percent independently owned and controlled by*
78 *one or more individuals, or in the case of a cooperative association organized pursuant to Chapter 3*
79 *(§ 13.1-301 et seq.) of Title 13.1 as a nonstock corporation, is at least 51 percent independently*
80 *controlled by one or more members, who are U.S. citizens or legal resident aliens and, together with*
81 *affiliates, has 250 or fewer employees or average annual gross receipts of \$10 million or less averaged*
82 *over the previous three years. One or more of the individual owners or members shall control both the*
83 *management and daily business operations of the small business.*

84 *"Small SWaM business" means a small business certified by the Department as being small, any*
85 *subcategory of small, small women-owned, small minority-owned, or small service disabled*
86 *veteran-owned.*

87 *"Small SWaM business set-aside" means the reserving of a procurement for businesses that are small*
88 *SWaM businesses.*

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

91 *"SWaM" means small, women-owned, or minority-owned or related to a small, women-owned, or*
92 *minority-owned business.*

93 *"SWaM plan" means a written program, plan, or progress report submitted by a state agency to the*
94 *Department pursuant to § 2.2-4310.*

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

100 **§ 2.2-1605. Powers and duties of Department.**

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

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

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

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

113 4. Consistent with prevailing law and availability of funds, and according to the Director's discretion,
114 provide technical and management assistance to small, women-owned, and minority-owned businesses
115 and defray all or part of the costs of pilot or demonstration projects that are designed to overcome the
116 special problems of small, women-owned, and minority-owned businesses;

117 5. Advise the Small Business Financing Authority on the management and administration of the
118 Small, Women-owned, and Minority-owned Business Loan Fund created pursuant to § 2.2-2311.1;

119 6. *Implement the Small SWaM Business Procurement Enhancement Program established by Article 4*
120 *(§ 2.2-1618 et seq.);*

121 7. Implement any remediation or enhancement measure for small, women-owned, or minority-owned

businesses as may be authorized by the Governor pursuant to subsection C of § 2.2-4310 and develop regulations, consistent with prevailing law, for program implementation. Such regulations shall be developed in consultation with the state agencies with procurement responsibility and promulgated by those agencies in accordance with applicable law;

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

8. 9. Facilitate relationships between established businesses and start-up women-owned and minority-owned businesses by creating and administering a mentorship program under the provisions of § 2.2-1605.1.

10. *Conduct regular disparity studies as provided in § 2.2-1610.*

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

1. Encourage the training or retraining of individuals for specific employment opportunities at new or 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. Annually review and provide feedback on SWaM plans. The review shall focus on strategies state agencies can use to improve SWaM spending, increase procurement of goods and services from SWaM businesses, and meet procurement goals outlined in SWaM plans. The Department shall encourage state agencies to integrate such strategies with all current and future procurements. The Department shall suggest strategies that may be more effective or changes to strategies that have not been effective. Upon request of a state agency, the Department shall meet with the state agency one-on-one to discuss its SWaM goals and strategies and advise it on effective strategies. The Department shall research and compile information that state agencies can use to increase SWaM spending and shall develop and publish guidance on how state agencies can implement these strategies.

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.

§ 2.2-1610. 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, 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 Department shall include in its annual report information on the progress of the mentorship program established under § 2.2-1605.1.

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, 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, and minority-owned businesses in order for the Department to ensure institution compliance with its approved reporting and certification criteria.

The Director shall conduct, or contract with an independent entity to conduct, a disparity study every five years. The study shall evaluate the need for enhancement and remedial measures to address the disparity between the availability and the utilization of women-owned and minority-owned businesses.

183 The study shall recommend measures that consist of narrowly tailored procurement policies to address
184 documented statistical disparities between the availability and utilization of women-owned and
185 minority-owned businesses. The measures shall be consistent with rulings of the U.S. Supreme Court
186 regarding the available remedies that may be employed to address past discrimination and the need for
187 evidence to quantify past discrimination. The study shall incorporate the findings of past disparity
188 studies conducted by Virginia and evaluate Virginia's progress toward the recommendations of those
189 studies. The Director shall include the findings of each study in his annual report to the Governor and
190 General Assembly required by this section, beginning with the annual report required to be submitted by
191 this section in the first year after the year in which a disparity study is conducted pursuant to this
192 paragraph.

193 The Department shall, in accordance with the provisions of the previous paragraph, utilize the
194 results of the disparity study and the recommendations therein to update a statewide goal for SWaM
195 business procurement and similar individual goals for women-owned and minority-owned businesses for
196 the purpose of closing any disparity demonstrated by such study.

197 Article 4.

198 Procurement Enhancement Programs.

199 **§ 2.2-1618. Division of Procurement Enhancement created.**

200 The Division of Procurement Enhancement (the Division) is hereby created within the Department.
201 The purpose of the Division shall be to collaborate with the Department of General Services, the
202 Virginia Information Technologies Agency, the Department of Transportation, and covered institutions to
203 further the Commonwealth's efforts to meet the goals established in this article, as well as to implement
204 initiatives to enhance the development of small businesses, microbusinesses, women-owned businesses,
205 minority-owned businesses, and service disabled veteran-owned businesses in the Commonwealth.

206 **§ 2.2-1619. Small SWaM Business Procurement Enhancement Program established; report.**

207 A. The Small SWaM Business Procurement Enhancement Program (the Program) is hereby
208 established to facilitate the participation of small SWaM businesses in state procurement. The goal of
209 the Program shall be the achievement of a 42 percent small SWaM business utilization rate, including a
210 five percent utilization rate directed to microbusiness utilization. For purposes of this section,
211 "utilization rate" means the percentage of discretionary spending directed to a particular subset of
212 business in relation to all discretionary spending by executive branch agencies and covered institutions
213 in procurement orders, prime contracts, and subcontracts. The 42-percent target shall be determined
214 based on the aggregate level of such discretionary spending by executive branch agencies and covered
215 institutions and shall not require each individual executive branch agency or covered institution to meet
216 the 42-percent target. The Department shall be responsible for implementing the Program. Executive
217 branch state agencies and covered institutions shall increase their utilization rates of small SWaM
218 businesses by three percent each year until achievement of the 42-percent target. If an executive branch
219 agency or covered institution is unable to increase its small SWaM business utilization rate by three
220 percent per year, such agency or institution shall establish and implement achievable goals to increase
221 its small SWaM business utilization rate and include such goals in its SWaM business procurement plan
222 required by § 2.2-1621. In addition, for all new capital outlay construction solicitations that are issued,
223 there shall be a target goal of 50 percent subcontracting to small SWaM businesses in instances where
224 the prime contractor is not a small SWaM business.

225 B. The Program shall include a small SWaM business set-aside for the purchase of goods, services,
226 and construction by executive branch agencies and covered institutions. Purchases up to \$100,000 shall
227 be set aside for award to small SWaM businesses. Such set-aside may allow for small SWaM businesses
228 to have a price preference over noncertified businesses competing for the same contract award on
229 designated procurements, provided that the bid of the small SWaM business does not exceed the low bid
230 by more than five percent. An executive branch agency or covered institution may open a solicitation to
231 all bidders or offerors (i) where it is determined that fewer than two certified small SWaM businesses
232 are available for competition using data from the Department of General Services' central electronic
233 procurement website known as eVA or procurement systems utilized by covered institutions that are
234 integrated with eVA or (ii) where bids or offers do not result in a fair and reasonable price. The
235 Department shall develop guidance for determining whether a price is fair and reasonable.

236 **§ 2.2-1620. SWaM business subcontracting plan required for certain proposals or bids.**

237 A. For purchases over \$100,000, executive branch agencies and covered institutions shall require
238 each bidder or offeror to include in each bid or proposal a SWaM business subcontracting plan
239 detailing intended subcontractor participation of such businesses whenever the prime contractor will rely
240 on subcontractors to meet the applicable goals established in § 2.2-1619. Nothing in this section shall
241 prohibit a bidder or offeror from submitting a SWaM business subcontracting plan when SWaM
242 business participation deviates from the applicable goals established in § 2.2-1619. The Department
243 shall develop guidelines for considering any such SWaM business subcontracting plan. Each bidder or
244 offeror awarded a contract shall comply with the SWaM business subcontracting plan that is included in

its bid or proposal.

B. Whenever the actual subcontractor participation does not meet the level included in the SWaM business subcontracting plan, the prime contractor shall provide a written explanation of the prime contractor's good faith efforts to comply with the SWaM business subcontracting plan, which shall be made a part of the contract file. The Department, with assistance from the Department of General Services, the Department of Transportation, the Virginia Information Technologies Agency, and covered institutions, shall (i) establish a uniform methodology for evaluating and monitoring SWaM business subcontracting plans, (ii) establish and conduct panels to review the failure of prime contractors to comply with their SWaM business subcontracting plans, and (iii) implement processes for producing reliable data on (a) the utilization of SWaM business subcontractors by prime contractors and (b) the amounts paid by prime contractors to SWaM business subcontractors. Each executive branch agency and covered institution shall report such data on the Department of General Services' central electronic procurement website known as eVA unless otherwise directed by the Director of the Department and the Director of the Department of General Services. The record of a prime contractor's compliance with SWaM business subcontracting plan requirements, including reviews of the failure of such prime contractor to comply with its SWaM business subcontracting plan, shall be considered in the prospective award of a contract or renewal of an existing contract and may, if the prime contractor has been found to have not complied with its SWaM business subcontracting plan in good faith, result in the prime contractor being barred from being awarded a contract or renewal of an existing contract for a period of up to one year.

C. Notwithstanding the foregoing, the provisions of this section shall not apply to Department of Transportation projects for the design or construction of highways.

D. Notwithstanding the foregoing, any covered institution shall provide the data or plans required by this section using the Department of General Services' central electronic procurement website known as eVA or by integration or interface with the eVA system.

§ 2.2-1621. Submission of SWaM business procurement plan; designation of SWaM business procurement enhancement liaison.

A. Each executive branch agency and covered institution shall submit to the Department on or before September 30, 2024, its SWaM business procurement plan, consistent with the provisions of this article, to include promotion and utilization of certified small, any subcategory of small, small women-owned, small minority-owned, and small service disabled veteran-owned businesses, and employment services organizations. Each executive branch agency and covered institution shall certify to the Department by September 30 of each subsequent year that it has reviewed, and updated as necessary to meet the requirements of this article and any guidance developed by the Department, its SWaM business procurement plan. If the SWaM business procurement plan is updated, it shall be submitted to the Department along with the annual certification.

B. The Department shall review and provide meaningful feedback to executive branch agencies and covered institutions regarding the plan required by subsection A in order to improve and accelerate compliance with the goals provided by this article. Executive branch agencies and covered institutions may revise and resubmit such plan to incorporate such feedback.

C. Any executive branch agency or covered institution that is unable to increase its small SWaM business utilization rate by three percent per year, as required by § 2.2-1619, shall include in the plan required by subsection A (i) an explanation as to why it is unable to comply with such goals and requirements and (ii) achievable goals to increase its small SWaM business utilization rate.

D. Each executive branch agency and covered institution shall designate an existing employee as a SWaM business procurement enhancement liaison whose responsibilities shall be to promote participation in the Small SWaM Business Procurement Enhancement Program by small SWaM businesses and to serve as an advocate for small SWaM businesses that hold active contracts with such executive branch agency or covered institution.

§ 2.2-1622. Report.

On or before November 30 of each year, the Department shall report to the Governor and the General Assembly on the implementation and effectiveness of the Small SWaM Business Procurement Enhancement Program.

§ 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.

306 B. All public bodies shall establish programs consistent with this chapter to facilitate the participation
307 of small businesses, businesses owned by women, minorities, and service disabled veterans, and
308 employment services organizations in procurement transactions. The programs established shall be in
309 writing and shall comply with the provisions of any enhancement or remedial measures authorized by
310 the Governor pursuant to subsection C or, where applicable, by the chief executive of a local governing
311 body pursuant to § 15.2-965.1, and shall include specific plans to achieve any goals established therein.
312 *Public bodies may rely on the recommendations of disparity studies conducted pursuant to § 2.2-1610 in*
313 *establishing programs under this subsection.* State agencies shall submit annual progress reports on (i)
314 small, women-owned, and minority-owned business procurement, (ii) service disabled veteran-owned
315 business procurement, and (iii) employment services organization procurement to the Department of
316 Small Business and Supplier Diversity in a form specified by the Department of Small Business and
317 Supplier Diversity. All state agencies shall cooperate with the Department of Small Business and
318 Supplier Diversity's annual review of their programs pursuant to § 2.2-1605 and shall update such
319 programs to incorporate any feedback and suggestions for improvement. Contracts and subcontracts
320 awarded to employment services organizations and service disabled veteran-owned businesses shall be
321 credited toward the small business, women-owned *business*, and minority-owned business contracting
322 and subcontracting goals of state agencies and contractors. The Department of Small Business and
323 Supplier Diversity shall make information on service disabled veteran-owned procurement available to
324 the Department of Veterans Services upon request.

325 C. Whenever there exists (i) a rational basis for small business or employment services organization
326 enhancement or (ii) a persuasive analysis that documents a statistically significant disparity between the
327 availability and utilization of women-owned and minority-owned businesses, the Governor is authorized
328 and encouraged to require state agencies to implement appropriate enhancement or remedial measures
329 consistent with prevailing law. *The Governor may rely on the recommendations of disparity studies*
330 *conducted pursuant to § 2.2-1610 in implementing requirements pursuant to this subsection.* Any
331 enhancement or remedial measure authorized by the Governor pursuant to this subsection for state public
332 bodies may allow for small businesses certified by the Department of Small Business and Supplier
333 Diversity or a subcategory of small businesses established as a part of the enhancement program to have
334 a price preference over noncertified businesses competing for the same contract award on designated
335 procurements, provided that the bid of the certified small business or the business in such subcategory
336 of small businesses established as a part of an enhancement program does not exceed the low bid by
337 more than five percent.

338 D. In awarding a contract for services to a small, women-owned, or minority-owned business that is
339 certified in accordance with § 2.2-1606, or to a business identified by a public body as a service
340 disabled veteran-owned business where the award is being made pursuant to an enhancement or remedial
341 program as provided in subsection C, *or when awarding a contract under the Small SWaM Business*
342 *Procurement Enhancement Program established in § 2.2-1619*, the public body shall include in every
343 such contract of more than \$10,000 the following:

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

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

351 F. As used in this section:

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

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

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

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

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

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

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

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

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

"Small business" means a business, independently owned and controlled by one or more individuals, or in the case of a cooperative association organized pursuant to Chapter 3 (§ 13.1-301 et seq.) of Title 13.1 as a nonstock corporation, controlled by one or more members, who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees, or annual gross receipts of \$10 million or less averaged over the previous three years. One or more of the individual owners or members 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~~ does 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.

§ 2.2-4310.3. Fiscal data pertaining to certain enhancement or remedial measures.

The Department of General Services shall make available a dashboard of purchase order reports from the Commonwealth's statewide electronic procurement system known as eVA. The dashboard shall include aggregated data showing (i) current fiscal year purchase orders, (ii) purchase orders from *the Small SWaM Business Procurement Enhancement Program established in § 2.2-1619* in the previous fiscal year, and (iii) other relevant data derived from any enhancement or remedial measure implemented by the Governor pursuant to subsection C of § 2.2-4310.

§ 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 §§ 2.2-4340, 2.2-4340.1, 2.2-4340.2, 2.2-4342, and 2.2-4376.2, 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 on the basis of the bidder's or offeror's race, religion, color, sex, sexual orientation, gender identity, national origin, age, 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, 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,

429 the term of the anticipated contract, and the likely extent of competition; (ii) implement a
430 prequalification procedure for contractors or products; and (iii) include provisions for cooperative
431 arrangements with other covered institutions, other public or private educational institutions, or other
432 public or private organizations or entities, including public-private partnerships, public bodies, charitable
433 organizations, health care provider alliances or purchasing organizations or entities, state agencies or
434 institutions of the Commonwealth or the other states, the District of Columbia, the territories, or the
435 United States, and any combination of such organizations and entities.

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

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

443 E. As part of any procurement provisions of the management agreement, the governing board of a
444 covered institution shall identify the public, educational, and operational interests served by any
445 procurement rule that deviates from procurement rules in the Virginia Public Procurement Act
446 (§ 2.2-4300 et seq.).

447 *F. Notwithstanding any provision of law to the contrary, each covered institution shall be subject to*
448 *the provisions of the Small SWaM Business Procurement Enhancement Program established in*
449 *§ 2.2-1619.*

450 **2. That, with the exception the provisions of this act amending § 2.2-1610, the provisions of the**
451 **first enactment of act shall become effective on January 1, 2025.**

452 **3. That the provisions of this act shall not apply to covered institutions, as defined in § 2.2-1604 of**
453 **the Code of Virginia, as amended by this act, until July 1, 2025.**

454 **4. That, notwithstanding the provisions of the third enactment of this act, the provisions of this act**
455 **shall not apply to hospitals and medical centers created under Article 3 (§ 23.1-2212 et seq.) of**
456 **Chapter 22 of Title 23.1 of the Code of Virginia or Chapter 24 (§ 23.1-2400 et seq.) of Title 23.1 of**
457 **the Code of Virginia.**

458 **5. That for the purposes of the five-year deadline for a disparity study pursuant to § 2.2-1610 of**
459 **the Code of Virginia, as amended by this act, the 2020 Commonwealth of Virginia Disparity Study**
460 **published in January 2021 shall be deemed the most recent disparity study, such that the next**
461 **disparity study shall be due on or before January 1, 2026.**