

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.

26 "Department" means the Department of Small Business and Supplier Diversity or any division of  
27 the Department to which the Director has delegated or assigned duties and responsibilities.

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

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

33 "~~Historically black colleges and~~ college or university" includes any college or university that was  
34 established prior to 1964; whose principal mission was, and is, the education of black Americans; and that  
35 is accredited by a nationally recognized accrediting agency or association determined by the Secretary of  
36 Education.

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

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

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

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

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

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

55 "Minority-owned business" means a business that is at least 51 percent owned by one or more  
56 minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation,  
57 partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest  
58 in the corporation, partnership, or limited liability company or other entity is owned by one or more  
59 minority individuals who are U.S. citizens or legal resident aliens, and both the management and daily  
60 business operations are controlled by one or more minority individuals, or any historically black college  
61 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 to  
66 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 Veterans  
70 Affairs.

71 "Service disabled veteran-owned business" means a business that is at least 51 percent owned by  
72 one 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 individuals  
75 who are service disabled veterans and both the management and daily business operations are controlled  
76 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  
78 by 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 controlled  
80 by one or more members, who are U.S. citizens or legal resident aliens and, together with affiliates, has  
81 250 or fewer employees or average annual gross receipts of \$10 million or less averaged over the previous  
82 three years. One or more of the individual owners or members shall control both the management and  
83 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 veteran-  
86 owned.

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

89 "State agency" means any authority, board, department, instrumentality, institution, agency, or  
90 other 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  
96 women 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  
106 and trade associations, baccalaureate institutions of higher education, foundations, professional  
107 organizations, and volunteer and other groups towards the growth of small businesses and businesses  
108 owned by women and minorities, and facilitate the coordination of the efforts of these groups with those  
109 of state 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  
114 discretion, provide technical and management assistance to small, women-owned, and minority-owned  
115 businesses and defray all or part of the costs of pilot or demonstration projects that are designed to  
116 overcome the 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  
120 Article 4 (§ 2.2-1618 et seq.);

121           7. Implement any remediation or enhancement measure for small, women-owned, or minority-  
122 owned businesses as may be authorized by the Governor pursuant to subsection C of § 2.2-4310 and  
123 develop regulations, consistent with prevailing law, for program implementation. Such regulations shall  
124 be developed in consultation with the state agencies with procurement responsibility and promulgated by  
125 those agencies in accordance with applicable law;

126           ~~7-8.~~ Receive and coordinate, with the appropriate state agency, the investigation of complaints  
127 that a business certified pursuant to this chapter has failed to comply with its subcontracting plan under  
128 subsection D of § 2.2-4310. If the Department determines that a business certified pursuant to this chapter  
129 has failed to comply with the subcontracting plan, the business shall provide a written explanation; and

130           ~~8.~~9. Facilitate relationships between established businesses and start-up women-owned and  
131 minority-owned businesses by creating and administering a mentorship program under the provisions of  
132 § 2.2-1605.1.

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

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

137           1. Encourage the training or retraining of individuals for specific employment opportunities at new  
138 or expanding business facilities in the Commonwealth;

139           2. Develop and implement programs to assist small businesses in the Commonwealth in order to  
140 promote their growth and the creation and retention of jobs for Virginians;

141           3. Establish an industry program that is the principal point of communication between basic  
142 employers in the Commonwealth and the state government that will address issues of significance to  
143 business;

144           4. Make available to existing businesses, in conjunction and cooperation with localities, chambers  
145 of commerce, and other public and private groups, basic information and pertinent factors of interest and  
146 concern to such businesses;

147           5. Develop statistical reports on job creation and the general economic conditions in the  
148 Commonwealth; and

149           6. Annually review and provide feedback on SWaM plans. The review shall focus on strategies  
150 state agencies can use to improve SWaM spending, increase procurement of goods and services from  
151 SWaM businesses, and meet procurement goals outlined in SWaM plans. The Department shall encourage  
152 state agencies to integrate such strategies with all current and future procurements. The Department shall  
153 suggest strategies that may be more effective or changes to strategies that have not been effective. Upon  
154 request of a state agency, the Department shall meet with the state agency one-on-one to discuss its SWaM  
155 goals and strategies and advise it on effective strategies. The Department shall research and compile

156 information that state agencies can use to increase SWaM spending and shall develop and publish  
157 guidance on how state agencies can implement these strategies.

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

160 **§ 2.2-1610. Reports and recommendations; collection of data.**

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

164 The Director shall report, on or before November 1 of each year, to the Governor and the General  
165 Assembly the identity of the state departments and agencies failing to submit annual progress reports on  
166 small, women-owned, and minority-owned business procurement required by § 2.2-4310 and the nature  
167 and extent of such lack of compliance. The annual report shall include recommendations on the ways to  
168 improve compliance with the provisions of § 2.2-4310 and such other related matters as the Director deems  
169 appropriate. The Department shall include in its annual report information on the progress of the  
170 mentorship program established under § 2.2-1605.1.

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

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

179 The Director shall conduct, or contract with an independent entity to conduct, a disparity study  
180 every five years. The study shall evaluate the need for enhancement and remedial measures to address the  
181 disparity between the availability and the utilization of women-owned and minority-owned businesses.  
182 The study shall recommend measures that consist of narrowly tailored procurement policies to address

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

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

195 Article 4.

196 Procurement Enhancement Programs.

197 **§ 2.2-1618. Division of Procurement Enhancement created.**

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

204 **§ 2.2-1619. Small SWaM Business Procurement Enhancement Program established; report.**

205 A. The Small SWaM Business Procurement Enhancement Program (the Program) is hereby  
206 established to facilitate the participation of small SWaM businesses in state procurement. The goal of the  
207 Program shall be the achievement of a 42 percent small SWaM business utilization rate, including a five  
208 percent utilization rate directed to microbusiness utilization. For purposes of this section, "utilization rate"  
209 means the percentage of discretionary spending directed to a particular subset of business in relation to all



210 discretionary spending by executive branch agencies and covered institutions in procurement orders,  
211 prime contracts, and subcontracts. The 42-percent target shall be determined based on the aggregate level  
212 of such discretionary spending by executive branch agencies and covered institutions and shall not require  
213 each individual executive branch agency or covered institution to meet the 42-percent target. The  
214 Department shall be responsible for implementing the Program. Executive branch state agencies and  
215 covered institutions shall increase their utilization rates of small SWaM businesses by three percent each  
216 year until achievement of the 42-percent target. If an executive branch agency or covered institution is  
217 unable to increase its small SWaM business utilization rate by three percent per year, such agency or  
218 institution shall establish and implement achievable goals to increase its small SWaM business utilization  
219 rate and include such goals in its SWaM business procurement plan required by § 2.2-1621. In addition,  
220 for all new capital outlay construction solicitations that are issued, there shall be a target goal of 50 percent  
221 subcontracting to small SWaM businesses in instances where the prime contractor is not a small SWaM  
222 business.

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

234 **§ 2.2-1620. SWaM business subcontracting plan required for certain proposals or bids.**

235 A. For purchases over \$100,000, executive branch agencies and covered institutions shall require  
236 each bidder or offeror to include in each bid or proposal a SWaM business subcontracting plan detailing

237 intended subcontractor participation of such businesses whenever the prime contractor will rely on  
238 subcontractors to meet the applicable goals established in § 2.2-1619. Nothing in this section shall prohibit  
239 a bidder or offeror from submitting a SWaM business subcontracting plan when SWaM business  
240 participation deviates from the applicable goals established in § 2.2-1619. The Department shall develop  
241 guidelines for considering any such SWaM business subcontracting plan. Each bidder or offeror awarded  
242 a contract shall comply with the SWaM business subcontracting plan that is included in its bid or proposal.

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

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

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

266 **§ 2.2-1621. Submission of SWaM business procurement plan; designation of SWaM business**  
267 **procurement enhancement liaison.**

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

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

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

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

290            **§ 2.2-1622. Report.**

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

294            **§ 2.2-4310. Discrimination prohibited; participation of small, women-owned, minority-**  
295 **owned, and service disabled veteran-owned businesses and employment services organizations.**

296            A. In the solicitation or awarding of contracts, no public body shall discriminate against a bidder  
297 or offeror because of race, religion, color, sex, sexual orientation, gender identity, national origin, age,  
298 disability, status as a service disabled veteran, or any other basis prohibited by state law relating to  
299 discrimination in employment. Whenever solicitations are made, each public body shall include  
300 businesses selected from a list made available by the Department of Small Business and Supplier  
301 Diversity, which list shall include all companies and organizations certified by the Department.

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

317 toward the small business, women-owned business, and minority-owned business contracting and  
318 subcontracting goals of state agencies and contractors. The Department of Small Business and Supplier  
319 Diversity shall make information on service disabled veteran-owned procurement available to the  
320 Department of Veterans Services upon request.

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

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

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

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

347 F. As used in this section:

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

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

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

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

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

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

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

370 in the corporation, partnership, or limited liability company or other entity is owned by one or more  
371 minority individuals who are U.S. citizens or legal resident aliens, and both the management and daily  
372 business operations are controlled by one or more minority individuals, or any historically black college  
373 or university as defined in § 2.2-1604, regardless of the percentage ownership by minority individuals or,  
374 in the case of a corporation, partnership, or limited liability company or other entity, the equity ownership  
375 interest in the corporation, partnership, or limited liability company or other entity.

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

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

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

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

394 "Women-owned business" means a business that is at least 51 percent owned by one or more  
395 women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited  
396 liability company or other entity, at least 51 percent of the equity ownership interest is owned by one or

397 more women who are U.S. citizens or legal resident aliens, and both the management and daily business  
398 operations are controlled by one or more women.

399 **§ 2.2-4310.3. Fiscal data pertaining to certain enhancement or remedial measures.**

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

406 **§ 23.1-1017. Covered institutions; operational authority; procurement.**

407 A. Subject to the express provisions of the management agreement, each covered institution may  
408 be exempt from the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.), except for §§  
409 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  
410 compliance with the prequalification application procedures of subsection B of § 2.2-4317, provided,  
411 however, that (i) any deviations from the Virginia Public Procurement Act in the management agreement  
412 shall be uniform across all covered institutions and (ii) the governing board of the covered institution shall  
413 adopt, and the covered institution shall comply with, policies for the procurement of goods and services,  
414 including professional services, that shall (a) be based upon competitive principles; (b) in each instance  
415 seek competition to the maximum practical degree; (c) implement a system of competitive negotiation for  
416 professional services pursuant to §§ 2.2-4303.1 and 2.2-4302.2; (d) prohibit discrimination in the  
417 solicitation and award of contracts on the basis of the bidder's or offeror's race, religion, color, sex, sexual  
418 orientation, gender identity, national origin, age, or disability or on any other basis prohibited by state or  
419 federal law; (e) incorporate the prompt payment principles of §§ 2.2-4350 and 2.2-4354; (f) consider the  
420 impact on correctional enterprises under § 53.1-47; and (g) provide that whenever solicitations are made  
421 seeking competitive procurement of goods or services, it shall be a priority of the institution to provide  
422 for fair and reasonable consideration of small, women-owned, and minority-owned businesses and to  
423 promote and encourage a diversity of suppliers.



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

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

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

439 E. As part of any procurement provisions of the management agreement, the governing board of a  
440 covered institution shall identify the public, educational, and operational interests served by any  
441 procurement rule that deviates from procurement rules in the Virginia Public Procurement Act (§ 2.2-  
442 4300 et seq.).

443 F. Notwithstanding any provision of law to the contrary, each covered institution shall be subject  
444 to the provisions of the Small SWaM Business Procurement Enhancement Program established in § 2.2-  
445 1619.

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

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

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

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

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