

HOUSE BILL NO. 966

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws

on _____)

(Patron Prior to Substitute--Delegate Subramanyam)

A BILL to amend and reenact §§ 2.2-4310 and 2.2-4310.2 of the Code of Virginia, relating to the Virginia Public Procurement Act; executive branch agencies' goals for participation by small businesses; requirements.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-4310 and 2.2-4310.2 of the Code of Virginia are amended and reenacted as follows:

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

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

B. All public bodies shall establish programs consistent with this chapter to facilitate the participation of small businesses, businesses owned by women, minorities, and service disabled veterans, and employment services organizations in procurement transactions. The programs established shall be in writing and shall comply with the provisions of any enhancement or remedial measures authorized by the Governor pursuant to subsection C or, where applicable, by the chief executive of a local governing body pursuant to § 15.2-965.1, and shall include specific plans to achieve any goals established therein. State agencies shall submit annual progress reports on (i) small, women-owned, and minority-owned business procurement, (ii) service disabled veteran-owned business procurement, and (iii) employment services

27 organization procurement to the Department of Small Business and Supplier Diversity in a form specified
28 by the Department of Small Business and Supplier Diversity. The Department of Small Business and
29 Supplier Diversity shall require agencies to include in their annual progress reports information on how
30 many contracts set aside for small businesses pursuant to § 2.2-4310.2 were awarded to businesses not
31 certified by the Department of Small Business and Supplier Diversity and, for each such contract, the price
32 of the contract awarded to the winning bidder, the price offered by the lowest responsive and responsible
33 bidder, and the industry classification for the purchase. The annual report shall also include information
34 on how many set aside contracts were awarded to small businesses and how many contracts were awarded
35 to small businesses overall. The Department of Small Business and Supplier Diversity shall report
36 annually to the Governor and the General Assembly on its findings and the data collected from each
37 agency pursuant to the requirements described in this subsection.

38 Contracts and subcontracts awarded to employment services organizations and service disabled
39 veteran-owned businesses shall be credited toward the small business, women-owned, and minority-
40 owned business contracting and subcontracting goals of state agencies and contractors. The Department
41 of Small Business and Supplier Diversity shall make information on service disabled veteran-owned
42 procurement available to the Department of Veterans Services upon request.

43 C. Whenever there exists (i) a rational basis for small business or employment services
44 organization enhancement or (ii) a persuasive analysis that documents a statistically significant disparity
45 between the availability and utilization of women-owned and minority-owned businesses, the Governor
46 is authorized and encouraged to require state agencies to implement appropriate enhancement or remedial
47 measures consistent with prevailing law. Any enhancement or remedial measure authorized by the
48 Governor pursuant to this subsection for state public bodies may allow for small businesses certified by
49 the Department of Small Business and Supplier Diversity or a subcategory of small businesses established
50 as a part of the enhancement program to have a price preference over noncertified businesses competing
51 for the same contract award on designated procurements, provided that the bid of the certified small
52 business or the business in such subcategory of small businesses established as a part of an enhancement
53 program does not exceed the low bid by more than five percent.

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

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

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

66 F. As used in this section:

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

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

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

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

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

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

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

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

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

105 "Small business" means a business, independently owned and controlled by one or more
106 individuals who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer

107 employees, or annual gross receipts of \$10 million or less averaged over the previous three years. One or
108 more of the individual owners shall control both the management and daily business operations of the
109 small business.

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

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

117 **§ 2.2-4310.2. Executive branch agencies' goals for participation by small businesses;**
118 **requirements.**

119 A. Any executive branch agency's goals under § 2.2-4310 for participation by small businesses
120 shall include within the goals a minimum of three percent participation by service disabled veteran-owned
121 businesses as defined in §§ 2.2-2000.1 and 2.2-4310 when contracting for goods and services.

122 Each executive branch agency shall establish a set-aside program by which purchases (i) up to
123 \$100,000 for goods, nonprofessional services, or construction or (ii) up to \$80,000 for professional
124 services are set aside for award to small businesses certified by the Department of Small Business and
125 Supplier Diversity when the price quoted is fair and reasonable and does not exceed five percent of the
126 lowest responsive and responsible noncertified bidder. Purchases up to \$10,000 shall be set aside for award
127 to micro-businesses when the price quoted is fair and reasonable.

128 B. As used in this section, ~~"executive~~;

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

130 "Micro-business" means a business that has been certified by the Department of Small Business
131 and Supplier Diversity as a small business and has (i) 25 or fewer employees and (ii) average annual gross
132 receipts of \$3 million or less over the previous three years.

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