

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 2.2-4310 of the Code of Virginia, relating to Virginia Public Procurement*
 3 *Act; discrimination prohibited; military family-owned businesses.*

4 [H 2751]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 2.2-4310 of the Code of Virginia is amended and reenacted as follows:**

8 **§ 2.2-4310. Discrimination prohibited; participation of small, women-owned, minority-owned,**
 9 **military family-owned, and service disabled veteran-owned businesses and employment services**
 10 **organizations.**

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

17 B. All public bodies shall establish programs consistent with this chapter to facilitate the participation of
 18 small businesses, businesses owned by women, minorities, and service disabled veterans, *military family-*
 19 *owned businesses*, and employment services organizations in procurement transactions. The programs
 20 established shall be in writing and shall comply with the provisions of any enhancement or remedial
 21 measures authorized by the Governor pursuant to subsection C or, where applicable, by the chief executive of
 22 a local governing body pursuant to § 15.2-965.1, and shall include specific plans to achieve any goals
 23 established therein. State agencies shall submit annual progress reports on (i) small, women-owned, and
 24 minority-owned business procurement; (ii) service disabled veteran-owned business procurement; (iii)
 25 *military family-owned business procurement*; and ~~(iii)~~ (iv) employment services organization procurement to
 26 the Department of Small Business and Supplier Diversity in a form specified by the Department of Small
 27 Business and Supplier Diversity. All state agencies shall cooperate with the Department of Small Business
 28 and Supplier Diversity's annual review of their programs pursuant to § 2.2-1605 and shall update such
 29 programs to incorporate any feedback and suggestions for improvement. Contracts and subcontracts awarded
 30 to employment services organizations and service disabled veteran-owned *or military family-owned*
 31 businesses shall be credited toward the small business, women-owned, and minority-owned business
 32 contracting and subcontracting goals of state agencies and contractors. The Department of Small Business
 33 and Supplier Diversity shall make information on service disabled veteran-owned *or military family-owned*
 34 procurement available to the Department of Veterans Services upon request.

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

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

51 "If the contractor intends to subcontract work as part of its performance under this contract, the contractor
 52 shall include in the proposal a plan to subcontract to small, women-owned, minority-owned, and service
 53 disabled veteran-owned *and military family-owned* businesses."

54 E. In the solicitation or awarding of contracts, no state agency, department, or institution shall
 55 discriminate against a bidder or offeror because the bidder or offeror employs ex-offenders unless the state
 56 agency, department, or institution has made a written determination that employing ex-offenders on the

57 specific contract is not in its best interest.

58 F. As used in this section:

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

62 "*Military family*" means (i) a member of the uniformed forces, as defined in 10 U.S.C. § 101(a)(5), of the
63 United States or a reserve component thereof named under 10 U.S.C. § 10101, (ii) a veteran as defined in 38
64 U.S.C. § 101(2), or (iii) a dependent as defined in 50 U.S.C. § 3911(4) except that the support provided by
65 the service member to the individual shall have been provided 180 days immediately preceding an alleged
66 action that if proven true would constitute unlawful discrimination under this section instead of 180 days
67 immediately preceding an application for relief under 50 U.S.C. Chapter 50.

68 "*Military family-owned business*" means a business that is at least 51 percent owned by one or more
69 persons within the definition of "military family" or, in the case of a corporation, partnership, or limited
70 liability company or other entity, in which at least 51 percent of the equity ownership interest in the
71 corporation, partnership, or limited liability company or other entity is owned by one or more individuals
72 who are persons within the definition of "military family" and both the management and daily business
73 operations are controlled by one or more individuals who are persons within the definition of "military
74 family".

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

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

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

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

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

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

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

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

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

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

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

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

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