

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act 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*
 3 *Code of Virginia and to amend the Code of Virginia by adding in Chapter 16.1 of Title 2.2 an article*
 4 *numbered 4, consisting of sections numbered 2.2-1618 through 2.2-1622, relating to the Department of*
 5 *Small Business and Supplier Diversity; Small SWaM Business Procurement Enhancement Program*
 6 *established.*

7 [H 1922]

8 Approved

9 **Be it enacted by the General Assembly of Virginia:**

10 **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**
 11 **amended and reenacted and that the Code of Virginia is amended by adding in Chapter 16.1 of Title**
 12 **2.2 an article numbered 4, consisting of sections numbered 2.2-1618 through 2.2-1622, as follows:**

13 **§ 2.2-1604. Definitions.**

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

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

19 "*Covered institution*" means a public institution of higher education operating (i) subject to a
 20 management agreement set forth in Article 4 (§ 23.1-1004 et seq.) of Chapter 10 of Title 23.1, (ii) under a
 21 memorandum of understanding pursuant to § 23.1-1003, or (iii) under the pilot program authorized in the
 22 appropriation act. "*Covered institution*" does not include hospitals and medical centers established pursuant
 23 to Article 3 (§ 23.1-2212 et seq.) of Chapter 22 of Title 23.1 or Chapter 24 (§ 23.1-2400 et seq.) of Title 23.1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

86 "SWaM" means small, women-owned, or minority-owned or related to a small, women-owned, or
 87 minority-owned business.

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

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

95 **§ 2.2-1605. Powers and duties of Department.**

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

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

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

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

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

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

114 6. *Implement the Small SWaM Business Procurement Enhancement Program established by Article 4 (§*
 115 *2.2-1618 et seq.);*

116 7. Implement any remediation or enhancement measure for small, women-owned, or minority-owned
 117 businesses as may be authorized by the Governor pursuant to subsection C of § 2.2-4310 and develop
 118 regulations, consistent with prevailing law, for program implementation. Such regulations shall be developed

119 in consultation with the state agencies with procurement responsibility and promulgated by those agencies in
120 accordance with applicable law;

121 7- 8. Receive and coordinate, with the appropriate state agency, the investigation of complaints that a
122 business certified pursuant to this chapter has failed to comply with its subcontracting plan under subsection
123 D of § 2.2-4310. If the Department determines that a business certified pursuant to this chapter has failed to
124 comply with the subcontracting plan, the business shall provide a written explanation; ~~and~~

125 8- 9. Facilitate relationships between established businesses and start-up women-owned and
126 minority-owned businesses by creating and administering a mentorship program under the provisions of §
127 2.2-1605.1; *and*

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

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

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

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

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

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

141 5. Develop statistical reports on job creation and the general economic conditions in the Commonwealth;
142 *and*

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

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

154 **§ 2.2-1610. Reports and recommendations; collection of data.**

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

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

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

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

172 *The Director shall conduct, or contract with an independent entity to conduct, a disparity study every five*
173 *years. The study shall evaluate the need for enhancement and remedial measures to address the disparity*
174 *between the availability and the utilization of women-owned and minority-owned businesses. The study shall*
175 *recommend measures that consist of narrowly tailored procurement policies to address documented*
176 *statistical disparities between the availability and utilization of women-owned and minority-owned*
177 *businesses. The measures shall be consistent with rulings of the Supreme Court of the United States*
178 *regarding the available remedies that may be employed to address past discrimination and the need for*
179 *evidence to quantify past discrimination. The study shall incorporate the findings of past disparity studies*
180 *conducted by Virginia and evaluate Virginia's progress toward the recommendations of those studies. The*

181 Director shall include the findings of each study in his annual report to the Governor and General Assembly
 182 required by this section, beginning with the annual report required to be submitted by this section in the first
 183 year after the year in which a disparity study is conducted pursuant to this paragraph.

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

188 Article 4.

189 Procurement Enhancement Programs.

190 **§ 2.2-1618. Division of Procurement Enhancement created.**

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

197 **§ 2.2-1619. Small SWaM Business Procurement Enhancement Program established; report.**

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

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

226 **§ 2.2-1620. SWaM business subcontracting plan required for certain proposals or bids.**

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

235 B. Whenever the actual subcontractor participation does not meet the level included in the SWaM
 236 business subcontracting plan, the prime contractor shall provide a written explanation of the prime
 237 contractor's good faith efforts to comply with the SWaM business subcontracting plan, which shall be made a
 238 part of the contract file. The Department, with assistance from the Department of General Services, the
 239 Virginia Information Technologies Agency, the Department of Transportation, and covered institutions, shall
 240 (i) establish a uniform methodology for evaluating and monitoring SWaM business subcontracting plans, (ii)
 241 establish and conduct panels to review the failure of prime contractors to comply with their SWaM business
 242 subcontracting plans, and (iii) implement processes for producing reliable data on (a) the utilization of

243 SWaM business subcontractors by prime contractors and (b) the amounts paid by prime contractors to
 244 SWaM business subcontractors. Each executive branch agency and covered institution shall report such data
 245 on the Department of General Services' central electronic procurement website known as eVA unless
 246 otherwise directed by the Director of the Department and the Director of the Department of General
 247 Services. The record of a prime contractor's compliance with SWaM business subcontracting plan
 248 requirements, including reviews of the failure of such prime contractor to comply with its SWaM business
 249 subcontracting plan, shall be considered in the prospective award of a contract or renewal of an existing
 250 contract and may, if the prime contractor has been found to have not complied with its SWaM business
 251 subcontracting plan in good faith, result in the prime contractor being barred from being awarded a contract
 252 or renewal of an existing contract for a period of up to one year.

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

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

258 **§ 2.2-1621. Submission of SWaM business procurement plan; designation of SWaM business**
 259 **procurement enhancement liaison.**

260 A. Each executive branch agency and covered institution shall submit to the Department on or before
 261 September 30, 2025, its SWaM business procurement plan, consistent with the provisions of this article, to
 262 include promotion and utilization of certified small, any subcategory of small, small women-owned, small
 263 minority-owned, and small service disabled veteran-owned businesses, and employment services
 264 organizations. Each executive branch agency and covered institution shall certify to the Department by
 265 September 30 of each subsequent year that it has reviewed, and updated as necessary to meet the
 266 requirements of this article and any guidance developed by the Department, its SWaM business procurement
 267 plan. If the SWaM business procurement plan is updated, it shall be submitted to the Department along with
 268 the annual certification.

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

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

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

282 **§ 2.2-1622. Report.**

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

286 **§ 2.2-4310. Discrimination prohibited; participation of small, women-owned, minority-owned, and**
 287 **service disabled veteran-owned businesses and employment services organizations.**

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

294 B. All public bodies shall establish programs consistent with this chapter to facilitate the participation of
 295 small businesses, businesses owned by women, minorities, and service disabled veterans, and employment
 296 services organizations in procurement transactions. The programs established shall be in writing and shall
 297 comply with the provisions of any enhancement or remedial measures authorized by the Governor pursuant to
 298 subsection C or, where applicable, by the chief executive of a local governing body pursuant to § 15.2-965.1,
 299 and shall include specific plans to achieve any goals established therein. *Public bodies may rely on the*
 300 *recommendations of disparity studies conducted pursuant to § 2.2-1610 in establishing programs under this*
 301 *subsection.* State agencies shall submit annual progress reports on (i) small, women-owned, and
 302 minority-owned business procurement, (ii) service disabled veteran-owned business procurement, and (iii)
 303 employment services organization procurement to the Department of Small Business and Supplier Diversity
 304 in a form specified by the Department of Small Business and Supplier Diversity. All state agencies shall

305 cooperate with the Department of Small Business and Supplier Diversity's annual review of their programs
306 pursuant to § 2.2-1605 and shall update such programs to incorporate any feedback and suggestions for
307 improvement. Contracts and subcontracts awarded to employment services organizations and service disabled
308 veteran-owned businesses shall be credited toward the small business, women-owned *business*, and
309 minority-owned business contracting and subcontracting goals of state agencies and contractors. The
310 Department of Small Business and Supplier Diversity shall make information on service disabled
311 veteran-owned procurement available to the Department of Veterans Services upon request.

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

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

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

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

337 F. As used in this section:

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

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

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

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

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

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

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

365 "Service disabled veteran" means a veteran who (i) served on active duty in the United States military
366 ground, naval, or air service, (ii) was discharged or released under conditions other than dishonorable, and

367 (iii) has a service-connected disability rating fixed by the United States Department of Veterans Affairs.

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

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

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

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

387 **§ 2.2-4310.3. Fiscal data pertaining to certain enhancement or remedial measures.**

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

394 **§ 23.1-1017. Covered institutions; operational authority; procurement.**

395 A. Subject to the express provisions of the management agreement, each covered institution may be
 396 exempt from the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.), except for §§
 397 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
 398 compliance with the prequalification application procedures of subsection B of § 2.2-4317, provided,
 399 however, that (i) any deviations from the Virginia Public Procurement Act in the management agreement
 400 shall be uniform across all covered institutions and (ii) the governing board of the covered institution shall
 401 adopt, and the covered institution shall comply with, policies for the procurement of goods and services,
 402 including professional services, that shall (a) be based upon competitive principles; (b) in each instance seek
 403 competition to the maximum practical degree; (c) implement a system of competitive negotiation for
 404 professional services pursuant to §§ 2.2-4303.1 and 2.2-4302.2; (d) prohibit discrimination in the solicitation
 405 and award of contracts on the basis of the bidder's or offeror's race, religion, color, sex, sexual orientation,
 406 gender identity, national origin, age, or disability or on any other basis prohibited by state or federal law; (e)
 407 incorporate the prompt payment principles of §§ 2.2-4350 and 2.2-4354; (f) consider the impact on
 408 correctional enterprises under § 53.1-47; and (g) provide that whenever solicitations are made seeking
 409 competitive procurement of goods or services, it shall be a priority of the institution to provide for fair and
 410 reasonable consideration of small, women-owned, and minority-owned businesses and to promote and
 411 encourage a diversity of suppliers.

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

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

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

427 E. As part of any procurement provisions of the management agreement, the governing board of a covered
 428 institution shall identify the public, educational, and operational interests served by any procurement rule that

429 deviates from procurement rules in the Virginia Public Procurement Act (§ 2.2-4300 et seq.).

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

432 **2. That, with the exception of § 2.2-1610 of the Code of Virginia, as amended by this act, the provisions**
433 **of the first enactment of this act shall become effective on January 1, 2026.**

434 **3. That the provisions of this act shall not apply to covered institutions, as defined in § 2.2-1604 of the**
435 **Code of Virginia, as amended by this act, until July 1, 2026.**

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