

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; report.*

7 [H 61]

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. However, "*executive*
 30 *branch agency*" does not include the Virginia Passenger Rail Authority.

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

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

38 "*Microbusiness set-aside*" means the reserving of a procurement for businesses that are microbusinesses.

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

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

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

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

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

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

57 corporation, partnership, or limited liability company or other entity is owned by one or more minority
 58 individuals who are U.S. citizens or legal resident aliens, and both the management and daily business
 59 operations are controlled by one or more minority individuals, or any historically black college or university,
 60 regardless of the percentage ownership by minority individuals or, in the case of a corporation, partnership, or
 61 limited liability company or other entity, the equity ownership interest in the corporation, partnership, or
 62 limited liability company or other entity.

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

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

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

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

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

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

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

88 "SWaM" means small, women-owned, or minority-owned or related to a small, women-owned, or
 89 minority-owned business.

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

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

97 **§ 2.2-1605. Powers and duties of Department.**

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

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

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

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

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

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

116 6. *Implement the Small SWaM Business Procurement Enhancement Program established by Article 4*
 117 *(§ 2.2-1618 et seq.);*

118 ~~6-7.~~ Implement any remediation or enhancement measure for small, women-owned, or minority-owned

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

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

127 8. 9. Facilitate relationships between established businesses and start-up women-owned and
 128 minority-owned businesses by creating and administering a mentorship program under the provisions of
 129 § 2.2-1605.1; *and*

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

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

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

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

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

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

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

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

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

156 **§ 2.2-1610. Reports and recommendations; collection of data.**

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

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

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

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

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

181 evidence to quantify past discrimination. The study shall incorporate the findings of past disparity studies
 182 conducted by the Commonwealth and evaluate the Commonwealth's progress toward the recommendations of
 183 those studies. The Director shall include the findings of each study in his annual report to the Governor and
 184 General Assembly required by this section, beginning with the annual report required to be submitted by this
 185 section in the first year after the year in which a disparity study is conducted pursuant to this paragraph.

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

190 Article 4.
 191 Procurement Enhancement Programs.

192 **§ 2.2-1618. Division of Procurement Enhancement created.**

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

200 **§ 2.2-1619. Small SWaM Business Procurement Enhancement Program established; report.**

201 A. The Small SWaM Business Procurement Enhancement Program (the Program) is hereby established to
 202 facilitate the participation of small SWaM businesses in state procurement. The goal of the Program shall be
 203 the achievement of a 42 percent small SWaM business utilization rate, including a five percent utilization rate
 204 directed to microbusiness utilization. For purposes of this section, "utilization rate" means the percentage of
 205 discretionary spending directed to a particular subset of business in relation to all discretionary spending by
 206 executive branch agencies and covered institutions in procurement orders, prime contracts, and
 207 subcontracts. The 42-percent target shall be determined based on the aggregate level of such discretionary
 208 spending by executive branch agencies and covered institutions and shall not require each individual
 209 executive branch agency or covered institution to meet the 42-percent target. The Department shall be
 210 responsible for implementing the Program. Beginning on July 1, 2026, executive branch state agencies and
 211 covered institutions shall increase their utilization rates of small SWaM businesses by three percent each
 212 year until achievement of the 42-percent target. If an executive branch agency or covered institution is
 213 unable to increase its small SWaM business utilization rate by three percent per year, such agency or
 214 institution shall establish and implement achievable goals to increase its small SWaM business utilization
 215 rate and include such goals in its SWaM business procurement plan required by § 2.2-1621. In addition, for
 216 all new capital outlay construction solicitations that are issued, there shall be a target goal of 50 percent
 217 subcontracting to small SWaM businesses in instances where the prime contractor is not a small SWaM
 218 business.

219 B. The Program shall include a small SWaM business set-aside for the purchase of goods, services, and
 220 construction by executive branch agencies and covered institutions. Purchases between \$10,000 and
 221 \$200,000 shall be set aside for award to small SWaM businesses. Such set-aside may allow for small SWaM
 222 businesses to have a price preference over noncertified businesses competing for the same contract award on
 223 designated procurements, provided that the bid of the small SWaM business does not exceed the low bid by
 224 more than five percent.

225 C. The Program shall include a microbusiness set-aside for the purchase of goods, services, and
 226 construction by executive branch agencies and covered institutions. Purchases up to \$10,000 shall be set
 227 aside for award to microbusinesses. Such set-aside may allow for microbusinesses to have a price preference
 228 over noncertified businesses competing for the same contract award on designated procurements, provided
 229 that the bid of the microbusiness does not exceed the low bid by more than five percent.

230 **§ 2.2-1620. SWaM business subcontracting plan required for certain proposals or bids.**

231 A. For purchases over \$200,000, executive branch agencies shall require each bidder or offeror to
 232 include in each bid or proposal a SWaM business subcontracting plan detailing intended subcontractor
 233 participation of such businesses whenever the prime contractor will rely on subcontractors to meet the
 234 applicable goals established in § 2.2-1619. Nothing in this section shall prohibit a bidder or offeror from
 235 submitting a SWaM business subcontracting plan when SWaM business participation deviates from the
 236 applicable goals established in § 2.2-1619. The Department shall develop guidelines for considering any
 237 such SWaM business subcontracting plan. Each bidder or offeror awarded a contract shall comply with the
 238 SWaM business subcontracting plan that is included in its bid or proposal.

239 B. Whenever the actual subcontractor participation does not meet the level included in the SWaM
 240 business subcontracting plan, the prime contractor shall provide a written explanation of the prime
 241 contractor's good faith efforts to comply with the SWaM business subcontracting plan, which shall be made a
 242 part of the contract file. The Department, with assistance from the Department of General Services, the

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

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

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

261 A. Each executive branch agency and covered institution shall submit to the Department on or before
 262 September 30, 2026, its SWaM business procurement plan, consistent with the provisions of this article, to
 263 include promotion and utilization of certified small, any subcategory of small, small women-owned, small
 264 minority-owned, and small service disabled veteran-owned businesses, and employment services
 265 organizations. Each executive branch agency and covered institution shall certify to the Department by
 266 September 30 of each subsequent year that it has reviewed, and updated as necessary to meet the
 267 requirements of this article and any guidance developed by the Department, its SWaM business procurement
 268 plan. If the SWaM business procurement plan is updated, it shall be submitted to the Department along with
 269 the annual certification.

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

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

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

283 **§ 2.2-1622. Report.**

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

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

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

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

305 veteran-owned business procurement; (iii) military family-owned business procurement; and (iv)
306 employment services organization procurement to the Department of Small Business and Supplier Diversity
307 in a form specified by the Department of Small Business and Supplier Diversity. All state agencies shall
308 cooperate with the Department of Small Business and Supplier Diversity's annual review of their programs
309 pursuant to § 2.2-1605 and shall update such programs to incorporate any feedback and suggestions for
310 improvement. Contracts and subcontracts awarded to employment services organizations and service disabled
311 veteran-owned or military family-owned businesses shall be credited toward the small business,
312 women-owned business, and minority-owned business contracting and subcontracting goals of state agencies
313 and contractors. The Department of Small Business and Supplier Diversity shall make information on service
314 disabled veteran-owned or military family-owned procurement available to the Department of Veterans
315 Services upon request.

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

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

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

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

341 F. As used in this section:

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

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

351 "Military family-owned business" means a business that is at least 51 percent owned by one or more
352 persons within the definition of "military family" or, in the case of a corporation, partnership, or limited
353 liability company or other entity, in which at least 51 percent of the equity ownership interest in the
354 corporation, partnership, or limited liability company or other entity is owned by one or more individuals
355 who are persons within the definition of "military family" and both the management and daily business
356 operations are controlled by one or more individuals who are persons within the definition of "military
357 family".

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

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

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

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

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

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

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

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

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

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

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

404 **§ 2.2-4310.3. Fiscal data pertaining to certain enhancement or remedial measures.**

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

411 **§ 23.1-1017. Covered institutions; operational authority; procurement.**

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

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

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

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

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

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

449 **2. That for the purposes of the five-year deadline for a disparity study pursuant to § 2.2-1610 of the**
450 **Code of Virginia, as amended by this act, the 2025 Commonwealth of Virginia Disparity Study**
451 **published in 2026 shall be deemed the most recent disparity study, such that the next disparity study**
452 **shall be due on or before January 1, 2031.**