HB 1404 Small SWaM Business Procurement Enhancement Program; established, definitions, report.

Introduced by: **Jeion A. Ward | all patrons** ... **notes | add to my profiles**

SUMMARY AS ENACTED WITH GOVERNOR'S RECOMMENDATION: (all summaries)

Department of Small Business and Supplier Diversity; Small SWaM Business Procurement Enhancement Program established; disparity study report. Establishes the Small SWaM Business Procurement Enhancement Program with a statewide goal of 42 percent of certified small SWaM business utilization in all discretionary spending by executive branch agencies and covered institutions in procurement orders, prime contracts, and subcontracts, as well as a target goal of 50 percent subcontracting to small SWaM businesses in instances where the prime contractor is not a small SWaM business for all new capital outlay construction solicitations that are issued. The bill provides that executive branch agencies and covered institutions are required to increase their small SWaM business utilization rate by three percent per year until reaching the 42-percent target level or, if unable to do so, to implement achievable goals to increase their utilization rate. In addition, the bill provides for a small SWaM business set-aside for executive branch agency and covered institution purchases of goods, services, and construction, requiring that purchases up to $100,000 be set aside for award to certified small SWaM businesses.

The bill creates the Division of Procurement Enhancement within the Department of Small Business and Supplier Diversity for purposes of collaborating with the Department of General Services, the Virginia Information Technologies Agency, the Department of Transportation, and covered institutions to further the Commonwealth's efforts to meet the goals established under the Small SWaM Business Procurement Enhancement Program, as well as implementing initiatives to enhance the development of small businesses, microbusinesses, women-owned businesses, minority-owned businesses, and service disabled veteran-owned businesses in the Commonwealth.

Finally, the bill requires the Department of Small Business and Supplier Diversity to conduct a disparity study every five years, with the next disparity study due no later than January 1, 2026. The bill specifies that the study shall evaluate the need for enhancement and remedial measures to address the disparity between the availability and the utilization of women-owned and minority-owned businesses. This bill incorporates **HB 716.**

FULL TEXT

01/17/24 House: Presented and ordered printed 24105093D pdf

01/26/24 House: Committee substitute printed 24106396D-H1 pdf | impact statement

02/07/24 House: Committee substitute printed 24107050D-H2 pdf | impact statement

03/25/24 House: Bill text as passed House and Senate (HB1404ER) pdf | impact statement

04/17/24 House: Reenrolled bill text (HB1404ER2) pdf

04/17/24 Governor: Acts of Assembly Chapter text (CHAP0834) pdf

AMENDMENTS

House subcommittee amendments and substitutes offered

House subcommittee amendments and substitutes adopted

Governor's recommendation

HISTORY

01/17/24 House: Presented and ordered printed 24105093D

01/17/24 House: Referred to Committee on Rules

01/26/24 House: Reported from Rules with substitute (14-Y 3-N)

01/26/24 House: Committee substitute printed 24106396D-H1

01/26/24 House: Incorporates HB716 (Torian)

01/26/24 House: Referred to Committee on Appropriations

01/27/24 House: Assigned App. sub: Commerce Agriculture & Natural Resources

02/07/24 House: Subcommittee recommends reporting with substitute (6-Y 2-N)

02/07/24 House: Reported from Appropriations with substitute (15-Y 7-N)

02/07/24 House: Committee substitute printed 24107050D-H2

02/09/24 House: Read first time

02/12/24 House: Read second time

02/12/24 House: Committee on Rules substitute rejected 24106396D-H1

02/12/24 House: Committee on Appropriations substitute agreed to 24107050D-H2

02/12/24 House: Engrossed by House - committee substitute HB1404H2

02/13/24 House: Read third time and passed House (73-Y 26-N)

02/13/24 House: VOTE: Passage (73-Y 26-N)

02/14/24 Senate: Constitutional reading dispensed

02/14/24 Senate: Referred to Committee on Rules

03/01/24 Senate: Reported from Rules (9-Y 4-N)

03/04/24 Senate: Constitutional reading dispensed (40-Y 0-N)

03/05/24 Senate: Read third time

03/05/24 Senate: Passed Senate (20-Y 19-N)

03/25/24 House: Enrolled

03/25/24 House: Bill text as passed House and Senate (HB1404ER)

03/25/24 Senate: Signed by President

03/26/24 House: Signed by Speaker

03/27/24 House: Enrolled Bill communicated to Governor on March 27, 2024

03/27/24 Governor: Governor's Action Deadline 11:59 p.m., April 8, 2024

04/08/24 House: Governor's recommendation received by House

04/17/24 House: Passed by temporarily

04/17/24 House: House concurred in Governor's recommendation (64-Y 34-N 1-A)

04/17/24 House: VOTE: Adoption (64-Y 34-N 1-A)

04/17/24 Senate: Senate concurred in Governor's recommendation (40-Y 0-N)

04/17/24 Governor: Governor's recommendation adopted

04/17/24 House: Reenrolled

04/17/24 House: Reenrolled bill text (HB1404ER2)

04/17/24 House: Signed by Speaker as reenrolled

04/17/24 Senate: Signed by President as reenrolled

04/17/24 House: Enacted, Chapter 834 (effective - see bill)

04/17/24 Governor: Acts of Assembly Chapter text (CHAP0834)

VIRGINIA ACTS OF ASSEMBLY -- 2024 RECONVENED SESSION

CHAPTER 834

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 Code of Virginia and to amend the Code of Virginia by adding in Chapter 16.1 of Title 2.2 an article numbered 4, consisting of sections numbered 2.2-1618 through 2.2-1622, relating to the Department of Small Business and Supplier Diversity; Small SWaM Business Procurement Enhancement Program established; disparity study report.

[H 1404]

Approved April 17, 2024

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-1604, 2.2-1605, 2.2-1610, 2.2-4310, 2.2-4310.3, and 23.1-1017 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 16.1 of Title 2.2 an article numbered 4, consisting of sections numbered 2.2-1618 through 2.2-1622, as follows:

§ 2.2-1604. Definitions.

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

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

"Covered institution" means a public institution of higher education operating (i) subject to a management agreement set forth in Article 4 (§ 23.1-1004 et seq.) of Chapter 10 of Title 23.1, (ii) under a memorandum of understanding pursuant to § 23.1-1003, or (iii) under the pilot program authorized in the appropriation act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 2.2-1605. Powers and duties of Department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Director shall conduct, or contract with an independent entity to conduct, a disparity study every five years. The study shall evaluate the need for enhancement and remedial measures to address the disparity between the availability and the utilization of women-owned and minority-owned businesses. The study shall recommend measures that consist of narrowly tailored procurement policies to address documented statistical disparities between the availability and utilization of women-owned and minority-owned businesses. The measures shall be consistent with rulings of the U.S. Supreme Court regarding the available remedies that may be employed to address past discrimination and the need for evidence to quantify past discrimination. The study shall incorporate the findings of past disparity studies conducted by Virginia and evaluate Virginia's progress toward the recommendations of those *studies. The Director shall include the findings of each study in his annual report to the Governor and General Assembly required by this section, beginning with the annual report required to be submitted by this section in the first year after the year in which a disparity study is conducted pursuant to this paragraph.*

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

Article 4.

Procurement Enhancement Programs.

§ 2.2-1618. Division of Procurement Enhancement created.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 2.2-1622. Report.

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

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

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

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

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

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

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

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

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

F. As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. That the provisions of the first enactment of this act shall not become effective unless reenacted by the 2025 Session of the General Assembly.

3. That the Department of General Services (DGS) shall, in coordination with other interested agencies, including the Department of Small Business and Supplier Diversity, the Virginia Information Technologies Agency, the Department of Transportation, and covered institutions, convene a work group to review the issues presented by the first enactment of this act. In its review, DGS shall (i) invite and obtain input from public and private stakeholders, including members of the business community interested in state procurement and the small SWaM business program in particular; (ii) assess the provisions of this act and what steps are needed to best position Virginia for success with an enhanced small SWaM business program; and (iii) report to the Governor and the General Assembly its findings and any recommendations by December 1, 2024.

4. That the Department of Small Business and Supplier Diversity (DSBSD) shall contract with a qualified independent entity to conduct a disparity study. The procurement for a new disparity study shall be completed by January 1, 2025. The disparity study shall evaluate (i) the availability and utilization of small, micro, women-owned, and minority-owned businesses and differences between categories of state procurement, such as by the types of goods and services needed or procured by state agencies; (ii) the disparities that exist between such availability and utilization; and (iii) the need for and available remedies that may be employed consistent with current federal law to address such disparities and past discrimination. The study shall also take into account past disparity studies conducted by Virginia and related legislative reporting, such as the September 2020 JLARC Report 537, Operations and Performance of the Department of Small Business & Supplier Diversity, and evaluate Virginia's progress toward the recommendations of those studies. State agencies and covered institutions shall cooperate with and assist in DSBSD's efforts and the new disparity study as needed.

Department of Planning and Budget
2024 Session Fiscal Impact Statement

1. **Bill Number:** HB1404

House of Origin	☐	Introduced	☐	Substitute	☐	Engrossed
Second House	☐	In Committee	☐	Substitute	☒	Enrolled

2. **Patron:** Ward

3. **Committee:** Passed both Houses.

4. **Title:** Department of Small Business and Supplier Diversity; Small Business Procurement Enhancement.

5. **Summary:** Requires the Department of Small Business and Supplier Diversity (DSBSD) to conduct a disparity study every five years to evaluate the need for enhancement and remedial measures to address the disparity between availability and Commonwealth utilization of women-owned and minority-owned (SWaM) businesses. DSBSD is required to use the results of the study to update a statewide goal for SWaM business procurement for the purpose of closing any identified disparity.

   Establishes the Small SWaM Business Procurement Enhancement Program (the Program) with a statewide goal of 42 percent of small SWaM business utilization rate in discretionary spending by executive branch agencies and covered institutions in aggregate, with a five percent utilization rate for microbusiness utilization. Requires a 50 percent small SWaM goal for all new capital outlay in subcontracting in instances where the prime contractor is not a small SWaM business. The program includes small SWaM business set aside for certain purchases of goods, services, and construction by executive branch agencies and covered institutions. The bill also requires SWaM business subcontracting plans for certain proposals and bids. DSBSD, with assistance from the Department of General Services (DGS), the Department of Transportation (VDOT), the Virginia Information Technologies Agency (VITA), and covered institutions, is required to establish a methodology for evaluating plans, carrying out remedial reviews, and producing reliable program measures.

   The bill requires that executive branch agencies and covered institution submit to DSBSD a SWaM business procurement plan by September 30, 2024, and annually thereafter. DSBSD is required to review such plans and provide feedback. Executive agencies and covered institutions are also required to designate an existing employee as a SWaM business procurement enhancement liaison.

   DSBSD is further required to report to the Governor and the General Assembly on the implementation and effectiveness of the Program annually by November 30. The bill has a general delayed effective date of January 1, 2025, a delayed effective date for covered institutions, and does not apply to certain university hospitals and medical centers.

6. **Budget Amendment Necessary**: Yes. Items 70, 81, 111, 334 HB30/SB30 as introduced

7. **Fiscal Impact Estimates:** Final. See item 8.

Expenditure Impact: Department of General Services (Item 70)

Fiscal Year	*Dollars*	*Positions*	*Fund*
2024	N/A	N/A	N/A
2025	$250,000	0	GF

Expenditure Impact: Virginia Information Technologies Agency (Item 81)

Fiscal Year	*Dollars*	*Positions*	*Fund*
2024	N/A	N/A	N/A
2025	N/A	N/A	N/A
2026	$100,000	1	NGF
2027	$100,000	1	NGF
2028	$100,000	1	NGF
2029	$100,000	1	NGF
2030	$100,000	1	NGF

Expenditure Impact: Department of Small Business and Supplier Diversity (Item 111)

Fiscal Year	*Dollars*	*Positions*	*Fund*
2024	N/A	N/A	N/A
2025	$799,202	5	GF
2026	$598,403	5	GF
2027	$598,403	5	GF
2028	$598,403	5	GF
2029	$598,403	5	GF
2030	$1,098,403	5	GF

Expenditure Impact: Department of Social Services (Item 334)

Fiscal Year	*Dollars*	*Positions*	*Fund*
2024	N/A	N/A	N/A
2025	$75,712	0.5	GF
	$75,712	0.5	NGF
2026	$73,131	0.5	GF
	$73,131	0.5	NGF
2027	$73,131	0.5	GF
	$73,131	0.5	NGF
2028	$73,131	0.5	GF
	$73,131	0.5	NGF
2029	$73,131	0.5	GF
	$73,131	0.5	NGF
2030	$73,131	0.5	GF
	$73,131	0.5	NGF

8. **Fiscal Implications:** The bill establishes a new Procurement Enhancement division within the Department of Small Business and Supplier Diversity (DSBSD). The new division is to administer the Small Business Procurement Enhancement Program, and the Women-owned and Minority-owned Business Procurement Enhancement Program. Under each program, the bill requires that DSBSD monitor and guide state agencies and covered institutions in achieving certain statewide procurement participation goals. DSBSD is to develop the framework for these new programs in consultation with the Department of General Services

(DGS), the Virginia Information Technologies Agency (VITA), as well as other state agencies and covered institutions. Impacted agencies and institutions are required to submit their procurement plans to DSBSD. DSBSD is required to produce a progress report annually by November 30.

DSBSD anticipates incurring an expenditure impact as a result of this bill, as it requires the creation of a new division within the agency, in addition to the completion of a disparity study every five years. The new division is to work with state agencies and covered institutions to achieve a statewide goal of 23.1 percent discretionary spending with SWaM businesses and at least 42 percent discretionary spending with certified small businesses. To establish the new division and implement the requirements of the bill, DSBSD estimates that five SWaM Contract Compliance Officer positions will be needed, at roughly $119,680 each, for a total of $598,403 annually.

Compliance officers will be responsible for assisting state agencies in meeting the established thresholds. These positions will review subcontract plans from prime contractors to ensure compliance with stated goals, and support SWaM subcontractors that have a grievance with a prime contractor and serve on a panel that would determine if a prime contractor should be enjoined from future contract participation for failure to perform against their subcontractor plans. Officers are also to use data collected by DGS's statewide electronic procurement system, known as eVA, to track and monitor performance. In FY2023, there were 646,763 purchase order transactions in eVA and over $10 billion in expenditures. The agency anticipates that significant coordination with DGS will be required to ensure accurate reporting and statewide goal achievement.

The bill also requires that DSBSD conduct a disparity study every five years. Based on known costs from a previous disparity study conducted in 2020, DSBSD anticipates incurring an expense of $500,000 every five years. General fund appropriation for the full amount of the first iteration of the disparity study is required in FY 2025

According to the Department of Accounts, changes to the definition of small business are expected to require minor reconfigurations in the Cardinal Financial System. However, such changes are expected to be able to be absorbed within existing funding and appropriation levels and do not require an amendment.

VITA anticipates that this bill could have a significant impact to contract management. According to VITA, the level of detail required (obtaining and maintaining written explanations, establishing a panel to review failures, additional reporting in eVA , etc.) will require additional funding, estimated at $100,000 annually, in Supply Chain Management to administer for the roughly 200 statewide contracts. Appropriation is required from VITA's Acquisition Services Special fund to cover this cost.

DGS anticipates that implementing the requirements of the bill may have an estimated one-time general fund impact of $250,000 for required updates to eVA. DSBSD would have to send DGS additional procurement data through the platform once the bill's provisions are implemented. The system will require an update to the data share algorithm by which eVA receives data from DSBSD, estimated at $125,000. New reporting functionality will have to be created for the eVA system, also estimated at $125,000. This reporting functionality would need to be added to the public eVA system and implemented internally within the platform.

The Department of Social Services' Procurement Unit currently has processes in place for these tasks; however, the increased focus on attaining the goal of 42 percent small business usage will require additional processes, documentation, training, and reporting functions. The processes would include a greater use of small businesses which may increase costs of goods and services for the agency. Additional tasks outlined in the legislation, such as tracking and accounting for sub-contract spend, more stringent requirements for vendors to sub-contract to small vendors, and additional validation and monitoring processes would require a senior procurement officer with a salary of $98,731 to meet these requirements. The annual cost of this position including salary and benefits is $151,424 ($75,712 each general fund/nongeneral funds) the first year and $146,262 ($73,131 each general fund/nongeneral funds) each year thereafter. First year costs include one-time on-boarding costs of $5,163.

Any fiscal impact to public institutions of higher education is indeterminate. The institutions have management agreements and memoranda of understanding that provide the institutions with procurement authority that is removed by this bill. It is anticipated that additional staff will be needed to carry out the requirements in this bill. Estimates range from one to four additional full-time staff.

Conference amendments include $250,000 the first year from the general fund for DGS to update the state's electronic procurement system; as well as $1.9 million from the general fund over the biennium, and five positions for DSBSD to carry out the tasks in this bill.

9. **Specific Agency or Political Subdivisions Affected:** Departments of Small Business and Supplier Diversity, General Services, Accounts, and Social Services; Virginia Information Technologies Agency; all state agencies and covered institutions.

10. **Technical Amendment Necessary:** No.

11. **Other Comments:** None.

COMMONWEALTH OF VIRGINIA

OFFICE OF THE GOVERNOR

Executive Order 29 (2002)

EQUAL OPPORTUNITY IN STATE PROCUREMENT

Meeting the challenges of the 21st century and the New Economy demands that the Commonwealth of Virginia maximize the participation of its citizens and enterprises in the commercial life of the Commonwealth. Thus, it is the policy of the Commonwealth to make sure that small businesses and businesses owned by women and minorities receive every opportunity to compete for the Commonwealth's expenditures for goods and services. Ensuring the inclusion of these businesses in state procurement processes constitutes not only good public policy but also good business and enlightened self-interest.

Just as equal employment opportunity must be an integral part of normal personnel policy, procedures, and practices, so the use of small businesses and businesses owned by women and minorities must be an important feature of the Commonwealth's normal purchasing policy, procedures, and practices. No potential supplier should be precluded from consideration on the basis of race, color, religion, gender, age, or national origin. Every attempt must be made to fully utilize all of the Commonwealth's resources, human as well as material, in an effort to obtain high quality goods and services at reasonable costs.

Every employee who is delegated the responsibility either directly or indirectly to commit the expenditure of funds for the purchase of goods and services on behalf of the Commonwealth is charged with making the objective of supplier diversity a reality. Success depends upon the full, unqualified participation and commitment of all such employees. Employees must conduct all procurement procedures and practices in a fair and impartial manner, avoiding any impropriety or appearance thereof.

The Virginia Public Procurement Act (VPPA), in Section 2.2-4310(A) of the *Code of Virginia,* prohibits all public bodies from discriminating against anyone seeking a contract from the state on the basis of that person's race, religion, color, sex, or national origin. Additionally, whenever a public body engages in a solicitation, it is required to "include enterprises selected from a list made available by the Department of Minority Business Enterprise." The Department of General Services' Procurement and Surplus Property Manual defines solicitation to include Invitations for Bids (IFB), Requests for Proposals (RFP), telephone calls, or any other document issued by the state to obtain bids or proposals for the purpose of entering into a contract.

Under Section 2.2-4310(B) of the VPPA, each public body is required to develop a written program "to facilitate the participation of small enterprises and enterprises owned by women and minorities in procurement" that includes cooperation with the Department of Minority Business Enterprise, the United States Small Business Administration, and other public or private agencies. These programs must include provisions to ensure that the public body does not discriminate in the soliciting or awarding of contracts and that, when all solicitations are made, there are enterprises included in the solicitation selected from a list made available by the Department of Minority Business Enterprise.

By virtue of the authority vested in me under Article V, Section 1 of the Constitution of Virginia and Sections 2.2-103, 2.2-104, 2.2-106, and 2.2-1400 of the *Code of Virginia*, I hereby direct the Cabinet and all heads of all state agencies and public bodies to take the following action to implement the equal opportunity and nondiscrimination requirements set forth in the VPPA:

Each Cabinet Officer must submit to the Chief of Staff no later than August 15 of each fiscal year a written program from each agency or public body within his or her secretariat that aims to facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions with the agency or public body that fiscal year. The first such report is due by August 15, 2002.

Such programs must include provisions to ensure that the agency or public body does not discriminate in the soliciting or awarding of contracts in violation of Section 2.2-4310 of the *Code of Virginia* and that, when solicitations are made, businesses are included in the solicitation that are selected from a list made available by the Department of Minority Business Enterprise. Each written program must address minority prime contracting and subcontracting and include strategies for continuous improvement in both areas.

Each agency's or public body's written program must be reviewed and approved by the applicable Secretary with the advice and assistance of the Secretary of

Administration, the Director of the Department of Minority Business Enterprise, and the Director of the Department of General Services.

To assist agencies in the development of required written programs, the Chief of Staff is authorized to develop a model written program, in consultation with the Secretary of Administration, the Department of Minority Business Enterprise, the Department of General Services, and the Office of the Attorney General.

This Executive Order shall be effective upon its signing and shall remain in full force and effect until June 30, 2006, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 2nd day of July 2002.

Mark R. Warner, Governor

Attest:

Secretary of the Commonwealth

COMMONWEALTH OF VIRGINIA

OFFICE OF THE GOVERNOR

Executive Order 103 (2005)

PROMOTING DIVERSITY AND EQUAL OPPORTUNITY FOR SMALL, WOMAN-, AND MINORITY-OWNED BUSINESS ENTERPRISES IN STATE PROCUREMENT

Background

Securing the economic health and vitality of all of the Commonwealth's businesses is critical to the future of Virginia and to the quality of life of all Virginians. Promoting and helping to grow the Commonwealth's enterprises is an integral part of Virginia's overall economic development mission, supporting its efforts toward job creation, community empowerment and economic revitalization.

An important element of expanding economic opportunities to all Virginians lies in providing opportunities for small businesses, including businesses owned by women and minorities, to participate in the purchasing programs of the state.

The Commonwealth acknowledges that historically, businesses owned by women and minorities have not sufficiently benefited from such commercial opportunities. Despite this history, Virginia is fully committed to the principals of equal opportunity.

The Commonwealth's commitment has been evidenced, in part, by Executive Order 29 (EO 29) and the accompanying guidelines to all state agencies and public bodies. EO 29 enhances the equal opportunity and nondiscrimination requirements set forth in the Virginia Public Procurement Act (VPPA). The Commonwealth's commitment has also been evidenced by our Small, Woman, and Minority Business (SWAM) Procurement initiative, designed to improve the participation of these businesses in the purchasing programs of the state. This effort has yielded improved results over the last year: both minority and woman-owned business participation levels have grown from the combined 1.27 percent level documented by the *Commonwealth's Procurement Disparity Study* to an approximate level of 2 percent for minorities and 2.4 percent for women. Prior to EO 29, erroneously reported totals for minority business participation typically averaged 5-7 percent. Though improved, both levels remain substantially below our targets for minority-owned businesses and for businesses owned by women.

In addition, small business participation in state contracting, formerly held to be approximately 20 percent, has been, in fact, a mere 8-10 percent. Combined SWAM business participation, despite our progress, hovers below 15 percent, significantly less than the established statewide goal of 40 percent.

SWAM purchasing reports have shown that small businesses, including businesses owned by women and minorities, continue to lag behind in their participation in the state's purchasing initiatives. These businesses, representing nearly 99 percent of all Virginia businesses, are the backbone of the state's economy and they represent the Commonwealth's best hope for a prosperous future. Consequently, the policy of promoting small businesses, including businesses owned by women and minorities, will benefit all members of the Virginia family.

Diversifying the state's contracting is a challenging effort that takes more than four years. This objective transcends gubernatorial administrations, and thereby requires a long-term institutional commitment.

Initial Efforts

During my Administration, we have undertaken a number of efforts that have begun to change course. These actions include:

1. Summer 2002: We issued Executive Order Number 29 (2002) directing all Cabinet members and heads of all state agencies and public bodies to implement the equal opportunity and nondiscrimination requirements set forth in the Virginia Public Procurement Act ("VPPA"), § 2.2-4310(A), Code of Virginia (2005), which prohibits all public bodies from discriminating in government contracts on the basis of race, religion, color, sex, or national origin, and requires them to include in solicitations companies included in a list assembled by the Department of Minority Business Enterprise (DMBE).

2. Fall 2002: We discovered and rectified significant errors in the database causing the historical over-reporting of expenditures with small, woman and minority firms.

3. Winter/Spring 2003: We championed the need for a study of disparities in the state's procurement programs and won unanimous legislative passage of S.J. 359.

4. January 2004: We released the *Procurement Disparity Study of the Commonwealth of Virginia* (the "Study") after an accelerated and detailed investigation. The Study found that total Commonwealth spending with woman- and minority-owned business enterprises in fiscal years 1998-2002 (study period) was very low at a combined level of 1.27 percent of total spending.

5. Winter/Spring 2004: We collaborated with the General Assembly to unanimously pass HB 1145 amending the VPPA to authorize and encourage the Governor and localities to implement remedial programs when a rational basis for small business enhancement exists or analysis documents statistically significant disparity between the availability and utilization of woman- and minority-owned businesses. The legislation took effect July 2004.

6. July 2004: We developed and implemented the Commonwealth's Remediation Plan for all executive branch agencies and institutions. The Plan established the overall aspirational objective of 40 percent for small business participation, directed all state agencies and institutions to develop purchasing programs by September 1, 2004, and established within DMBE a certification program for all Small Business Enterprises, Minority Business Enterprises, and Woman Business Enterprises participating in the remediation program.

7. Fall 2004: We allowed agencies and institutions to set aside up to 30 percent of their discretionary funds for contracts with small businesses in accordance with their respective SWAM Plans.

8. Spring 2005: We unveiled an On-Line Certification Service at DMBE to provide an easy and convenient method for SWAM and DBE certifications.

9. Summer 2005: We began weekly reporting by secretariat, with the Director of the Department of Minority Business Enterprise attending and presenting at every cabinet meeting.

10. Fall 2005: Quarterly results were the best measured to date.

On the strength of these efforts, the participation levels of SWAM businesses in state contracting awards have improved significantly. However, the actual awards are still disappointing compared to the representation of these businesses in Virginia's economy.

Continuing Efforts

It is clear that the Commonwealth must continue on its course toward affording small businesses the opportunity to compete equitably for the Commonwealth's business. The following directives currently in place are therefore hereby continued:

1. The statewide aspirational goal of 40 percent of the Commonwealth's discretionary spending in combined prime and sub contracts for small businesses including businesses owned by women and minorities.

2. The annual written action plan required of agencies and institutions to facilitate the participation of small businesses, including businesses owned by women and minorities. The plans shall be developed and submitted to DMBE and the appropriate Cabinet Secretary on September 1 of each Fiscal Year.

3. The requirement that each agency and institution designate, yearly, a Procurement Champion to ensure nondiscrimination in the solicitation and awarding of contracts.

4. The requirement for DMBE certification of small businesses and of woman-owned and minority-owned businesses to ensure reliable and consistent reporting of their participation in the Commonwealth's purchasing programs.

5. The definitions established and incorporated in the certification procedures of DMBE for small business enterprise (SBE), women's business enterprise (WBE), and minority business enterprise (MBE). Also continued is the definition established for a disadvantaged business enterprise (DBE).

6. The requirement that the Department of General Services (DGS) and the Virginia Information Technology Agency promulgate guidance on SWAM purchasing in all relevant purchasing manuals and make available to all purchasing officials.

7. The implementation of small business enhancement tools, including, but not limited to, the small business set-aside, unbundling of selected State contracts, small procurements under $5,000, and early posting of potential contract awards.

8. The requirement that each prime contractor whose procurement bid included a SWAM participation component submit evidence and certification of compliance with the SWAM Procurement Plan on or before the request for final payment. Final payment, under the contract, may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payments.

9. The requirement that each contracting or certifying agency or institution, in cooperation with DMBE and DGS, contractually provide for appropriate auditing of vendors and contracts in order to assure compliance with certification requirements, SWAM subcontracting plans, and other required provisions. Such audits shall include the right to make on-site audits and review documents at any time during the term of the applicable contract or certification.

10. The inclusion of progress toward achievement of SWAM objectives as an evaluation criteria for the chief executive officer for each agency and institution. Also continued

is the use of said criteria in the evaluation of senior management and procurement personnel by the agency head or chief executive officer.

11. The requirement that state agencies and institutions work together with DMBE and the Department of Business Assistance to seek to increase the number of qualified minority and woman-owned businesses who are available to do business with the Commonwealth.

12. The updating by DMBE of statistics of SWAM participation, by gender and ethnicity, in relevant purchasing categories according to the findings identified in periodic statistical analyses of the availability and utilization of SWAM businesses in the purchasing programs of the Commonwealth, and submission of recommendations to the Governor. DMBE shall be responsible for making information on trends in SWAM participation available to the Cabinet and to the agencies, in order that current information on the state's progress toward remediating the disparity identified with woman-owned and minority-owned businesses is made available to decision-makers.

New Directives

I hereby direct the following:

1. Include all certified woman-owned and minority-owned firms in the definition of certified small business when said definition is utilized for procurement actions;

2. Require a Small Business Subcontracting Plan in all contracts over $100,000;

3. Direct purchasing officers to modify evaluation criteria that prevent qualified companies from being excluded from state business based on narrow definitions of prior experience;

4. Require all applicable purchasing manuals to fully incorporate the new SWAM procedures, including all agencies, institutions, colleges and universities and political subdivisions subject to the VPPA;

5. Require all agencies, institutions, colleges, and universities to post future procurement opportunities on a new section of the eVA web site for the public to see at anytime and encourage all public bodies to post on this web site;

6. Require certified small business participation in every RFP for professional and non-professional services (with allowance for good faith efforts which shall be prescribed by DMBE in cooperation with the Department of General Services and the Virginia Information Technology Agency and incorporated in the relevant purchasing manuals);

7. Allow small business participation plan(s) to be used as weighted criteria to evaluate proposals;

8. Allow award to a qualified, reasonably priced, certified small business even if it is other than the lowest bidder or most successful offeror for all procurements, including construction; and

9. Include SWAM payment data and eVA commitments in VITA's new statewide management system.

These SWAM directives are designed to increase the overall pool of qualified vendors and thereby expand competitive access. They allow agencies and institutions to continue to seek quality products and services at competitive prices while at the same time advancing the Commonwealth's objectives of promoting small businesses and providing equal opportunity in state purchasing.

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and the laws of the Commonwealth, including but not limited to Title 2.2 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, Executive Order Number 29 (2002) is hereby rescinded. I direct the Cabinet and the heads of all executive branch agencies and public bodies to implement and advance this Executive Order to promote diversity and equal opportunity in state procurement activities for Virginia's small businesses, including businesses owned by women and minorities.

This Executive Order shall be effective upon its signing and shall remain in full force and effect until June 30, 2006, unless amended or rescinded by further executive order. Given under my hand and under the Seal of the Commonwealth of Virginia this 13th day of December 2005.

Mark R. Warner

Attest:

Secretary of the Commonwealth

COMMONWEALTH OF VIRGINIA

OFFICE OF THE GOVERNOR

Executive Order 33 (2006)

ENHANCING OPPORTUNITIES FOR SMALL, WOMEN AND MINORITY OWNED BUSINESSES

Importance of the Issue

It is imperative that the Commonwealth of Virginia maximize the participation of its citizens in the vast array of commercial opportunities in state procurement. The Commonwealth's historical record in buying goods and services from small, women-owned and minority-owned (SWaM) businesses must be improved. This record as documented in "A Procurement Disparity Study of the Commonwealth of Virginia" January 12, 2004 final report, requires that Virginia develop new approaches in creating a system of fair contracting. The firm MGT of America, Inc., which conducted the disparity study, found that the Commonwealth's spending with minority business enterprises as a percentage of total spending was the lowest recorded in over 100 of their studies. For Virginia to remain competitive, we must assure that all businesses and owners have an equal opportunity to share in state procurement.

Initiatives

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and the *Code of Virginia*, I hereby direct my cabinet secretaries and all executive branch entities to implement and advance the following:

1. It shall be the goal of the Commonwealth that 40% of its purchases be made from small businesses. This includes discretionary spending in prime contracts and subcontracts. The Department of Minority Business Enterprise ("DMBE"), in consultation with executive branch entities and institutions with procurement policy responsibilities, shall develop a race- and gender-neutral Goal Setting Program. The Program shall require small business goals in every agency's procurement plan.

For the purpose of this goal a "small business" is one of 250 or fewer employees, or gross receipts of $10 million or less averaged over the previous three years. This shall include, but not be limited to, certified minority-owned and women-owned businesses that meet the small business definition.

2. DMBE, in consultation with executive branch entities and institutions with procurement authority shall develop a uniform, state-wide method for evaluating and monitoring SWaM participation plans in all state procurements. Each prime contractor shall include in its proposal(s)/bid(s) a SWaM participation component. Before final payment is made, the contractor must certify evidence satisfactory to the Commonwealth of compliance with the contract's SWaM Procurement Plan.
3. Executive branch entities and institutions with procurement responsibilities shall implement processes for producing SWaM subcontracting data as established by DMBE in consultation with the Department of General Services and the Virginia Information Technologies Agency. This subcontracting data must also include information on non-SWaM subcontractors performing on contracts over $200,000.
4. DMBE, in consultation with executive branch entities and institutions with procurement policy responsibilities, shall formulate policies and procedures for the Commonwealth's small business set aside program and implement small business enhancement tools, including but not limited to, the unbundling of selected State contracts, increasing SWaM participation on small procurements under $5,000, and the early posting of potential contract opportunities.
5. Agency heads, senior managers with procurement responsibility, procurement personnel, and end users with procurement P-Cards shall be evaluated on the attainment of SWaM goals as part of their annual and interim employee evaluations.
6. Executive branch entities and institutions with procurement responsibilities shall review practices, procedures and proposal evaluation criteria to identify and remove barriers or limitations to SWaM participation. A section on "barriers or limitations" shall be included in annual SWaM plans. SWaM plans shall be developed and submitted to DMBE and the appropriate cabinet secretary on September 1 of each fiscal year and shall include:
   - The designation of a SWaM champion to ensure nondiscrimination in the solicitation and awarding of contracts;
   - Agency SWaM goals, and
   - A statewide public information campaign to promote procurement opportunities and SWaM participation.
7. The Department of General Services, the Virginia Information Technologies Agency and executive branch entities and institutions shall actively recruit

SWaM businesses to bid on statewide cooperative procurement agreements and/or contracts that are open for competition. DGS and VITA shall develop guidelines that promote greater representation of SWaM businesses on such contracts.

8. The Virginia Information Technologies Agency, Virginia Department of General Services, Virginia Department of Transportation and universities operating under management agreements shall develop pilot programs in conjunction with DMBE to increase opportunities for SWaM vendors to perform as prime contractors on Commonwealth projects.
9. The Department of Business Assistance, in conjunction with the Department of Minority Business Enterprise, Department of Planning and Budget, Virginia Department of Transportation and other executive branch entities as necessary, shall establish a Small Business Development Program and initiatives to enhance the development and to increase the number of small businesses in Virginia. Such efforts shall include, but not be limited to:
    - Access to capital, including contract financing and bonding support;
    - Management and technical assistance programs; and
    - Statewide mentor/protégé and/or joint venture programs.
10. VDOT and DGS shall develop guidelines for vertical and horizontal construction to be used by executive branch entities and institutions in making construction mobilization payments to businesses when reasonable and necessary to facilitate contract initiation.
11. The Interagency Advisory Council on Administrative Dispute Resolution in conjunction with DMBE, and the Virginia Department of General Services shall establish a SWaM contract mediation program. The mediation program shall offer dispute resolution alternatives for conflicts between executive branch entites or institutions and a small business in a contract situation.
12. The purchasing manuals, regulations and guidelines of all executive branch entities and institutions subject to the Virginia Public Procurement Act shall include SWaM purchasing regulations and/or guidelines.

These directives are not intended in any way to limit the application of additional creativity at the agency level. They are designed to promote economic justice and eliminate impediments to a more equitable procurement process. Each cabinet secretary shall evaluate the performance of their agencies in implementing these directives. Accordingly, DMBE, in cooperation with each cabinet secretary, shall provide quarterly reports to me regarding the Commonwealth's progress in enhancing opportunities for Small, Women and Minority-owned businesses. The reports shall delineate the Commonwealth's spending in detail by ethnicity, SWaM category, and agency.

Effective Date of the Order

This Executive Order rescinds the relevant provisions of Executive Order 28 (2006) issued by Governor Timothy M. Kaine, which continued Executive Order 103 (2005), issued by Governor Mark R. Warner. This Executive Order shall be effective upon its signing and shall remain in full force unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 10th day of August 2006.

Timothy M. Kaine, Governor

Attest:

Secretary of the Commonwealth

Commonwealth of Virginia
Office of the Governor

Executive Order

NUMBER TWENTY (2014)

ADVANCING EQUITY FOR SMALL, WOMEN, AND MINORITY OWNED BUSINESSES

Importance of the Issue

It is imperative for the Commonwealth of Virginia to maximize the participation of small businesses in state contractual work. For Virginia to remain competitive and continue to advance its small business goals, significant work still must be done for a more transparent, equitable, and inclusive process. Therefore, I am establishing a micro business designation within the small business certification and vital new state procurement initiatives.

For purposes of this Executive Order: 1) "executive branch agency" shall include all entities in the executive branch, including agencies, authorities, commissions, departments, and all institutions of higher education; 2) "small businesses" shall include, but not be limited to, small, women-owned or minority-owned businesses; and, 3) "micro businesses" shall be defined as those certified small businesses that have no more than twenty-five (25) employees and no more than $3 million in average annual revenue over the three-year period prior to their certification.

I am directing the following executive branch agencies that have statutory authority for procurement, in conjunction with the Department of Small Business and Supplier Diversity (DSBSD) as provided in *Code of Virginia* § 2.2-1605(A)(6), to implement the requirements herein within their respective areas of procurement authority: Department of General Services (DGS), Virginia Information Technologies Agency (VITA), Virginia Department of Transportation (VDOT), those institutions of higher education that have autonomy in procurement granted under the Restructured Higher Education Financial and Administrative Operations Act (*Code of Virginia* § 23-38.88, *et seq.*), and other executive branch agencies that have statutory authority for procurement.

Initiatives

With a continuing rational basis for small business enhancement, and pursuant to the authority vested in me as Governor under Article V of the Constitution of Virginia, the *Code of*

Virginia, including *Code of Virginia* § 2.2-4310(C), and applicable Memoranda of Understanding and Management Agreements entered into pursuant to *Code of Virginia* § 23-38.88, *et seq.*, I hereby direct my Cabinet Secretaries and all executive branch agencies to continue and advance the following on a race-neutral and gender-neutral basis:

1. Exceed a target goal of 42%, which is the highest percentage of expenditures spent since FY 2004 for executive branch agencies with small businesses certified by DSBSD. This percentage applies to discretionary spending in categories from which the Commonwealth derives procurement orders, prime contracts, and subcontracts. DSBSD, in consultation with executive branch entities and institutions with procurement responsibilities, shall advance race-neutral and gender-neutral goals via annual agency Small, Women-owned, and Minority-owned (SWaM) procurement plans. Each executive branch agency shall review and update its benchmarks, policies, and procedures to conform with this Executive Order and the implementing regulations adopted pursuant to *Code of Virginia* § 2.2-1605(A)(6) and thereby ensure that a greater percentage of purchases is made from certified small businesses, in goods and services categories from which the Commonwealth makes its purchases.

2. Create the micro business designation, which shall include those certified small businesses that have no more than twenty-five (25) employees and no more than $3 million in average annual revenue over the three-year period prior to their certification. DSBSD shall develop a best practices method for identifying those small businesses that are eligible for the micro business designation. DSBSD shall also evaluate and offer recommendations for the implementation of the micro business designation by October 1, 2014.

3. Expand the set-aside for competition among all certified small businesses to include purchases up to $100,000 for goods and nonprofessional services and up to $50,000 for professional services when the price quoted is fair and reasonable. In the procurement selection process for these set-asides, at least one of the proposals/bids shall be obtained from a micro business unless upon due diligence no micro business in a particular category exists or was willing to submit a proposal/bid. Purchases under $10,000, however, shall be set aside for micro businesses when the price quoted is fair and reasonable. Executive branch agencies that have statutory authority for procurement shall include these set-asides in their purchasing regulations, policies, and processes by no later than September 1, 2014. Current contracts will continue in accordance with their terms. The DSBSD will prepare a progress report describing executive branch agencies' compliance with this requirement and deliver its report to the Governor's Chief of Staff no later than October 1, 2014.

4. Provide support to DSBSD in developing a uniform, statewide method for evaluating and monitoring small business (SWaM) procurement plans. Executive branch agencies shall require each prime contractor to include in its proposal(s)/bid(s) a SWaM procurement plan. Before final payment is made, the purchasing agency shall confirm that the contractor has certified compliance with the contract's SWaM procurement plan. If there are any variances between the contractor's required SWaM procurement plan and the actual participation, the contractor shall provide a written explanation. The written explanation shall be kept with the contract file and made available upon request.

   Contracts and renewals may include a provision allowing final payment to be withheld until the contractor is in compliance with its SWaM procurement plan. Prior to entering into a new contract or renewing a contract with a contractor, an agency shall review a contractor's record of compliance with SWaM procurement plan requirements. A contractor's failure to satisfactorily meet designated SWaM procurement plan requirements shall be considered in the prospective award or renewal of any future contracts with the contractor.

5. Implement processes for producing SWaM subcontracting data as established by DSBSD in consultation with DGS and VITA. This subcontracting data must also include information on non-SWaM subcontractors performing on contracts over $200,000.

These initiatives will spur creativity, promote economic justice and development, and encourage procurement participation by small businesses. In support of the initiatives set out above, I further direct the following actions to be taken by Cabinet Secretaries and executive branch agencies:

1. DSBSD, in conjunction with DGS, VITA, VDOT, and higher education institutions with procurement autonomy, shall implement initiatives to enhance the development of small businesses in Virginia. Such initiatives shall include, but not be limited to:

    - Information on access to capital, including contract financing and bonding support and other opportunities for economic development;
    - Management and technical assistance programs;
    - Partnerships and outreach with local business groups, chambers of commerce, and other organizations to develop a diverse vendor base; and,
    - Statewide mentor/protégé and/or joint venture programs.

2. DSBSD, with assistance from DGS, shall conduct a vendor outreach training program for each congressional district in the Commonwealth. Training shall include instructions on how to obtain certification, register with and research through the Commonwealth's e-procurement system (eVA), respond to business opportunities with the Commonwealth, encourage SWaM participation, and overcome identified barriers.

3. Executive branch agencies shall review the efficacy of implementing other small business enhancement tools and processes, such as:

    - Unbundling contracts;
    - Relaxing the requirement for mandatory attendance at pre-bid meetings;
    - Expanding time to respond to small purchase solicitations;
    - Alerting businesses to current and future procurement as well as subcontracting opportunities; and,
    - Streamlining the paperwork required of small businesses.

4. The purchasing manuals, regulations and guidelines of all executive branch entities and institutions shall include updated SWaM purchasing regulations and/or guidelines to reflect the changes made in this Executive Order.

5. Executive branch agencies shall actively recruit small businesses to seek certification from DSBSD, to register on eVA, and to compete for state procurement contracts. DGS and

VITA shall develop guidelines that promote greater representation of SWaM businesses on such contracts.

6. VDOT, for road and bridge construction, and DGS, for construction, shall develop guidelines to be used by executive branch agencies in making construction mobilization payments to businesses when reasonable and necessary to facilitate contract initiation.

7. The Virginia Economic Development Partnership (VEDP) shall send DSBSD its regular report to the Secretary of Commerce and Trade on new economic development announcements of business activity in the Commonwealth, inclusive of those announcements in which a VEDP administered economic incentive is provided. Such report will enable DSBSD to ascertain in a timely manner what opportunities the activity may bring for Virginia's small businesses.

8. Every executive branch agency shall utilize the Commonwealth's central electronic procurement system ("eVA") as its purchasing and/or posting system beginning at the point of requisitioning for all procurement actions, including but not limited to technology, transportation, and construction, for the purpose of identifying available small businesses, and for tracking purchase requisition details from those businesses. DGS, in consultation with VDOT, shall develop guidelines pertaining to the content of requisitions, in order for data to be captured in a timely, accurate, and consistent manner.

9. Each executive branch agency shall designate a SWaM equity champion to ensure equity in the solicitation of procurement proposals/bids and awarding of contracts.

10. Agency heads, senior managers with procurement responsibility, procurement personnel, and end users with purchasing charge cards shall be evaluated on small business purchasing goals as part of their employee evaluations.

11. DSBSD shall coordinate with the Virginia Association of Counties, the Virginia Municipal League, and the Virginia Association of Governmental Purchasing to identify opportunities for state and local government entities to collaborate in order to maximize procurement equity for small businesses.

Reporting Requirements

1. The Secretary of Commerce and Trade shall study the potential advantages of providing start-up incentives, including federally-funded grants, to certified small businesses. This shall include a review of the economic impact of providing the incentives and whether such incentives would promote the profitability and sustainability of such businesses. The Secretary of Commerce and Trade shall provide a report to the Governor's Chief of Staff by no later than December 1, 2014.

2. Cabinet Secretaries shall monitor their agencies' spending with all certified small businesses, and report on the results quarterly. DSBSD shall develop a standard reporting format for such purposes. The report shall include information on purchases made from all certified small businesses. In addition, the Secretary of Commerce and Trade will assess overall state performance, and report quarterly to the Governor.

Each Cabinet Secretary shall evaluate the performance of their agencies in implementing these directives. DSBSD, in cooperation with each Cabinet Secretary, shall provide quarterly reports to the Secretary of Commerce and Trade regarding the Commonwealth's progress in enhancing opportunities for SWaM businesses. The reports shall delineate the Commonwealth's spending in detail by SWaM category and agency.

3. The Secretary of Commerce and Trade shall conduct a study on a new small business designation, with prospective set-aside opportunities, that would be between twenty-five (25) and one hundred (100) employees and between \$3 and \$10 million. The study shall be delivered to the Governor's Chief of Staff no later than December 1, 2014.

4. Executive branch entities and institutions with procurement responsibilities shall review practices, procedures, and proposal evaluations criteria to identify and remove barriers or limitations to SWaM participation. A section on "barriers or limitations" shall be included in annual agency SWaM plans. SWaM plans shall be developed and submitted to the Secretary of Commerce and Trade on September 1 of each fiscal year.

5. The Secretary of Commerce and Trade will prepare and deliver a report to the Governor no later than October 1, 2015, detailing compliance with this Executive Order and providing spend performance metrics from the prior fiscal year.

Effective Date of this Order

This Executive Order replaces Executive Order 33 (2006), issued by Governor Timothy M. Kaine, and shall be effective upon its signing and shall remain in full force and effect unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 22nd day of July, 2014.

Terence R. McAuliffe, Governor

Attest:

Levar M. Stoney, Secretary of the Commonwealth

Commonwealth of Virginia
Office of the Governor

Executive Order

NUMBER THIRTY-FIVE (2019)

ADVANCING EQUITY FOR SMALL-, WOMEN-, MINORITY-, AND SERVICE DISABLED VETERAN-OWNED BUSINESSES IN STATE CONTRACTING

Importance of the Issue

State contracting provides the catalyst for economic opportunity and expands access for many businesses. As part of this process, it is imperative for Virginia to maximize the participation of small businesses, including those owned by women, minorities, and service disabled veterans, in state contractual work. For Virginia to remain competitive and continue to advance its small business goals, significant work must be done for a more transparent, equitable, and inclusive process.

Furthermore, Virginia must work to maximize participation of a diverse group of vendors in state contractual work. Virginia has a long history of racial inequality and disenfranchisement of minority communities. We have made some progress in the last six decades since the civil rights movement began, but not enough. Additionally, in June we celebrate the centennial anniversary of Congress passing the women's right to vote. One hundred years later, however, women are more likely to live in poverty, economic gender inequality continues, and women are underrepresented in elected office, business, and the workforce.

The Commonwealth conducted procurement disparity studies in 2002 and 2009. The 2002 study resulted in a 2004 report, which found that from 1998 to 2002, only 1.27 percent of total state contracts were awarded to women-owned and minority-owned businesses. The 2009 study which was published in a 2011 report found that for 2007, 2.82 percent of total state contracts were awarded to women-owned and minority-owned businesses. While this showed movement, the update found continued disparity between the availability and utilization of women-owned and minority-owned businesses in all business categories of prime contractors including (i) construction, (ii) architecture and engineering, (iii) professional services, (iv) nonprofessional services, and (v) goods and supplies. As part of the effort under this Executive Order, a new disparity study must be conducted.

Directive

To provide for a more equitable and inclusive process, I am directing the following executive branch agencies and institutions of higher education that have statutory authority over procurement, in conjunction with the Department of Small Business and Supplier Diversity (DSBSD), as provided in § 2.2-1605(A)(6) of the *Code of Virginia*, to implement the requirements herein within their respective areas of procurement authority: Department of General Services (DGS), Virginia Information Technologies Agency (VITA), Virginia Department of Transportation (VDOT), those institutions of higher education that have autonomy in procurement granted under the Restructured Higher Education Financial and Administrative Operations Act (Code of Virginia § 23.1-1000, *et seq*.), and all other executive branch agencies that have statutory authority for procurement.

For purposes of this Executive Order: 1) "Executive Branch Agency" shall mean all entities in the executive branch, including agencies, authorities, commissions, departments, and all institutions of higher education; 2) "small businesses" shall include, but not be limited to, small, any subcategory of small, small women-owned, small minority-owned, or small service disabled veteran-owned businesses (SWaM).

Initiatives

With a continuing rational basis for small business enhancement, and pursuant to the authority vested in me as Governor under Article V of the Constitution of Virginia, § 2.2-4310(C) of the *Code of Virginia*, and applicable Memoranda of Understanding and Management Agreements entered into pursuant to Code of Virginia § 23.1-1000*, et seq*., I hereby direct my Cabinet Secretaries and all Executive Branch Agencies as follows:

1. That the Commonwealth exceed a target goal of 42 percent of discretionary spending for Executive Branch Agencies with small businesses certified by DSBSD, which would be the highest percentage of expenditures since FY 2004. This percentage applies to discretionary spending in categories from which the Commonwealth derives procurement orders, prime contracts, and subcontracts. DSBSD, in consultation with Executive Branch Agencies with procurement responsibilities, shall advance this procurement goal. Further, for all new capital outlay construction solicitations issued, Executive Branch Agencies shall include a requirement for a target goal of 50 percent subcontracting to small businesses.

   Each Executive Branch Agency shall submit annual agency SWaM plans to DSBSD on September 1, to include promotion and utilization of: small, any subcategory of small, small women-owned, small minority-owned, small service disabled veteran-owned, and employment service organizations. Executive Branch Agencies shall review and update their goals, policies, and procedures to conform with this Executive Order and the implementing regulations adopted pursuant to § 2.2-1605(A)(6) of the *Code of Virginia* and thereby ensure that a greater percentage of purchases is made from certified small businesses in goods, services, and construction categories from which the Commonwealth makes its purchases.

2. Continue the subcategory of small businesses eligible for micro business designation, which includes those certified small businesses that have no more than 25 employees and no more than $3 million in average annual revenue over the three-year period prior to certification.

3. Conduct an updated disparity study on women- and minority-owned business participation in the Commonwealth's procurement transactions. The 2004 and 2011 disparity study reports provided an analysis that documented a statistically significant disparity between the availability and utilization of women-owned and minority-owned businesses, indicating a need for a narrowly-tailored race and gender conscious program. However, these studies need to be updated to ensure that any policy derived there from will withstand legal scrutiny. As required in § 2.2-4310 of the *Code of Virginia*, I hereby direct the DSBSD to contract with a qualified, independent third party to conduct a disparity assessment on the status of women-owned and minority-owned business participation in the Commonwealth's procurement transactions. This study shall: (i) determine if disparity exists and (ii) if so, determine why the disparity exists and what solutions or remedies could be implemented, specifically evaluating narrowly-tailored race and gender conscious programs. I further direct all Executive Branch Agencies to support and provide requested data to DSBSD to facilitate this comprehensive study.

4. Executive Branch Agencies shall formulate policies and procedures for a set-aside program, which shall, at a minimum, require that purchases up to $100,000 for goods, nonprofessional services, and construction, and up to $80,000 for professional services, be set aside for award to DSBSD-certified small businesses when the price quoted is fair and reasonable and does not exceed 5 percent of the lowest responsive and responsible noncertified bidder. Purchases up to $10,000 shall be set aside for award to micro businesses when the price quoted is fair and reasonable and does not exceed 5 percent of the lowest responsive and responsible noncertified bidder.

5. Executive branch agencies shall formulate policies and procedures to require a small business subcontracting plan in all procurements over $100,000. Each bidder/offeror shall be required to submit their bid/proposal and their small business sub-contracting plan using DGS's central electronic procurement system, except for VDOT contracts for highway construction and design projects. Such plans shall identify all planned utilization of (i) small businesses, (ii) subcategory of small businesses, (iii) small women-owned businesses, (iv) small minority-owned businesses, and (v) small service disabled veteran-owned businesses.

6. Each prime contractor shall be required to report compliance with its small sub-contracting plans using DGS's central electronic procurement system, except for VDOT contracts for highway construction and design projects. Before final payment is made, the purchasing agency shall confirm that the prime contractor certified compliance with the contract's small business subcontracting plan. If there are any variances between the prime contractor's required small business subcontracting plan and the actual participation, the prime contractor shall provide a written explanation to the purchasing

agency. The written explanation shall be kept with the contract file and made available upon request.

Contracts and renewals shall include a provision allowing final payment to be withheld until the prime contractor complies with its small business subcontracting plan. Prior to entering into a new contract or renewing a contract with a prime contractor, a purchasing agency shall review a contractor's record of compliance with small business subcontracting plan requirements. A prime contractor's failure to meet satisfactorily designated small business subcontracting procurement plan requirements shall be considered in the prospective award or renewal of any future contracts with the prime contractor.

7. To ensure that all SWaM businesses have one central site to provide transparency to all Virginia opportunities and contracts, Executive Branch Agencies shall utilize DGS's central electronic procurement system to post current and future procurement and subcontracting opportunities. Executive Branch Agencies shall use DGS's central electronic procurement system beginning at the point of requisitioning for all procurement actions, including but not limited to technology, transportation, professional services, and construction. This data will also be instrumental in the facilitation of the disparity study.

8. Notwithstanding paragraphs 5, 6, and 7, institutions of higher education with statutory authority for procurement shall provide such data or plans as required using DGS's central electronic procurement system or by integration or interface with the DGS system.

9. Institutions of higher education shall work with the Secretary of Administration, Secretary of Commerce and Trade, and the Secretary of Education to define best practices and assist the Commonwealth in its work to advance equity for small-, women-, minority-, and service disabled veteran-owned businesses in state contracting.

Collaborative Agency Efforts

The above initiatives will spur creativity, promote economic development, and encourage procurement participation by small businesses, including those owned by women, minorities, and service disabled veterans. In support of the initiatives set out above, I further direct the following actions to be taken by Cabinet Secretaries and Executive Branch Agencies:

1. DSBSD, in conjunction with DGS, VITA, VDOT, and institutions of higher education with procurement autonomy, shall implement initiatives to enhance the development of small businesses in Virginia. Such initiatives shall include, but not be limited to:

    - Information on access to capital, including contract financing, bonding support, and other opportunities for economic development as well as management and technical assistance programs;

- Partnerships and outreach with local business groups, chambers of commerce, and other organizations to develop a diverse vendor base; and

- Statewide mentor protégé programs.

2. DSBSD, in collaboration with DGS and institutions of higher education with procurement autonomy, shall conduct a vendor outreach training program throughout the Commonwealth. Such training shall include instructions on how to obtain certification from DSBSD as well as registration with and research through the DGS's central electronic procurement system. The training should encourage SWaM participation and help businesses overcome identified barriers.

3. Executive Branch Agencies shall review the efficacy of implementing other small business enhancement tools and processes, such as:

   - Unbundling contracts;

   - Relaxing the requirement for mandatory attendance at pre-bid meetings;

   - Expanding time to respond to small purchase solicitations; and

   - Streamlining the paperwork required of small businesses.

4. All Executive Branch Agencies shall include updated SWaM regulations and/or guidelines to reflect the requirements of this Executive Order in purchasing manuals, regulations, and guidelines.

5. Executive Branch Agencies shall actively recruit small businesses to seek certification from DSBSD, to register on DGS's central procurement system, and to compete for state procurement opportunities.

6. VDOT, for road and bridge construction, and DGS, for construction, shall develop guidelines to be used by Executive Branch Agencies in making construction mobilization payments to businesses when reasonable and necessary to facilitate contract initiation.

7. The Virginia Economic Development Partnership (VEDP) shall send DSBSD its regular report to the Secretary of Commerce and Trade on new economic development announcements of business activity in the Commonwealth, including those announcements in which VEDP provided an administered economic incentive. Such report will enable DSBSD to ascertain in a timely manner what opportunities the activity may bring for Virginia's SWaM businesses.

8. Each Executive Branch Agencies shall designate a SWaM equity champion to ensure equity in the solicitation of procurement proposals/bids and awarding of contracts.

9. DSBSD, in collaboration from DGS, VITA, and institutions of higher education with procurement autonomy, shall develop equity in procurement trainings for agency heads,

presidents of institutions of higher education, and senior managers with procurement oversight. Such training shall be completed annually.

10. DSBSD and DGS may coordinate with the Virginia Association of Counties, the Virginia Municipal League, and the Virginia Association of Governmental Purchasing to identify opportunities for state and local government entities to collaborate in order to maximize procurement equity for small businesses.

Reporting Requirements

1. Cabinet Secretaries shall monitor their agencies' and higher education institutions's spending with all certified small businesses and meet with the Governor, or his designee, quarterly to discuss the agencies' performance. DSBSD shall develop a standard reporting format for such purposes. The report shall include information on purchases made from all certified small businesses. In addition, the Secretary of Commerce and Trade will assess overall state performance and report quarterly to the Governor.

   Each Cabinet Secretary shall evaluate the performance of their agencies and institutions of higher education in implementing these directives. DSBSD, in cooperation with each Cabinet Secretary, shall provide quarterly reports to the Secretary of Commerce and Trade regarding the Commonwealth's progress in enhancing opportunities for SWaM businesses. The reports shall delineate the Commonwealth's spending in detail by SWaM category and agency.

2. Executive Branch Agencies with procurement responsibilities shall review practices, procedures, and proposal evaluation criteria to identify and remove barriers or limitations to SWaM participation. A section on "barriers or limitations" shall be included in annual Executive Branch Agency SWaM plans. SWaM plans shall be developed and submitted to DSBSD by September 1. DSBSD shall submit the annual SWaM Plan Compliance Report to the Secretary of Commerce and Trade on October 1 of each fiscal year.

Effective Date of this Order

This Executive Order rescinds and replaces Executive Order 20 (2014), issued by Governor Terence R. McAuliffe and shall be effective upon its signing and shall remain in full force and effect unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 3rd day of July 2019.

Ralph S. Northam, Governor

Attest:

Kelly Thomasson, Secretary of the Commonwealth

Virginia Minority Business Commission

2021 Annual Report

http://dls.virginia.gov/commissions/mbe.htm

Virginia Minority Business Commission

The Virginia Minority Business Commission (the Commission) was created by Item 27.10 of Chapter 1289 of the Acts of Assembly of 2020. The Commission was made up of seven legislative members and six nonlegislative citizen members, all appointed by the Speaker of the House of Delegates and the Senate Committee on Rules. The membership of the Commission was as follows:

Legislative Members

- Delegate Luke E. Torian (Chair)
- Senator Jennifer A. Kiggans (Vice-Chair)
- Delegate Suhas Subramanyam (Chair of Subcommittee #1)
- Senator Lionell Spruill, Sr. (Chair of Subcommittee #2)
- Senator J. Chapman Petersen
- Delegate Kelly K. Convirs-Fowler
- Delegate Jason S. Miyares

Citizen Members

- Tiffany Boyle
- Candice Carter
- Dr. Trina Coleman
- Tom Gibson
- Joe Miller
- Kelvin Perry

Staff support for the Commission was provided by Committee Operations for the House of Delegates and the Virginia Division of Legislative Services (DLS), which included the following personnel:

House of Delegates, Committee Operations

- Cheryl Wilson, Deputy Clerk
- Noah Brooks, Operations Clerk

Virginia Division of Legislative Services

- Jessica Budd, Senior Attorney
- Connor Garstka, Senior Attorney

The Commission held seven meetings, including subcommittee meetings, during 2021. *The Commission's website* provides access to meeting summaries and all presentations delivered to the members. The Commission met on the following dates:

- January 7, 2021
- April 19, 2021
- June 7, 2021 (Subcommittee #1)
- June 10, 2021 (Subcommittee #2)

- July 29, 2021 (Subcommittee #1)
- September 27, 2021 (Subcommittee #2)
- October 12, 2021

Executive Summary

At its first meeting, the Commission elected Delegate Luke E. Torian as chair and Senator Jennifer A. Kiggans as vice-chair. DLS staff outlined the objectives for the Commission as identified in its enabling legislation:

(i) evaluating the impact of existing statutes and proposed legislation on minority businesses;
(ii) assessing the Commonwealth's minority business assistance programs and examining ways to enhance their effectiveness;
(iii) providing minority business owners and advocates with a forum to address their concerns;
(iv) developing strategies and recommendations to promote the growth and competitiveness of Virginia minority-owned businesses; and
(v) collaborating with the Department of Small Business and Supplier Diversity (SBSD) and other appropriate entities to facilitate the Commission's work and mission.

The Commission discussed these goals and how best to accomplish them. After considering the members' input, Delegate Torian stated he would work with DLS staff to put together a work plan. At its next meeting, Delegate Torian divided the Commission members into two subcommittees. Each subcommittee was assigned more detailed tasks, with the purpose of accomplishing the objectives in the enabling legislation. Subcommittee #1, chaired by Delegate Suhas Subramanyam, focused on business program and data collection review and had the following assignments:

(i) reviewing and recommending revisions to HB 5002 for possible endorsement by the Commission for the 2022 legislative session;
(ii) cataloging existing women-owned and minority-owned business support programs and services at the state and local levels;
(iii) reviewing current methods used to collect and review data for these programs and exploring whether the data can be used to determine if the program is successful; and
(iv) recommending changes to existing programs and services and for the collection and use of data.

Subcommittee #2, chaired by Senator Lionell Spruill, Sr., focused on business support and outreach enhancement. It had the following tasks:

(i) reviewing obstacles to women-owned and minority-owned businesses (WaMs) obtaining government contracts while holding forums to allow public comment from WaMs regarding the obstacles they face;
(ii) exploring the adequacy of outreach and engagement efforts of state, regional, and local government entities, in particular with Hispanic and other minority communities and new WaMs;
(iii) exploring the use of mentorship programs and the feasibility of establishing a

comprehensive business mentorship program in the state; and
(iv) generally reviewing methods for increasing WaM participation.

Each subcommittee met twice. Subcommittee #1's first assignment was to review HB 5002. It received a comprehensive review of HB 5002, as well as SBSD's 2020 disparity study, which provided the legal foundation for the legislation, from Secretary of Commerce and Trade Brian Ball. Subcommittee #1's next task was to catalog WaM support programs. The subcommittee received presentations from the Joint Legislative Audit and Review Commission (JLARC) and SBSD on state government programs. DLS staff, working with Commission members, compiled a comprehensive catalog of state, local, and private support programs for WaMs. Third, Subcommittee #1 was directed to review current methods for collecting data on the performance of WaM support programs. Jill Kaneff of the Northern Virginia Regional Commission and Elizabeth Hughes of the Community Foundation for Northern Virginia presented to the subcommittee on their 2021 report, *Supporting Virginia's Minority-Owned Businesses*. They remarked that, although they collected data while compiling their report, they believe there is a need for centralized data collection, and they submitted a letter to the subcommittee with ideas to improve data collection. DLS staff corroborated the lack of a centralized data collection program. The Subcommittee's last task was to recommend changes to existing data collection programs. Because of the lack of data collection programs, the common recommendation on this point was to increase data collection efforts.

Subcommittee #2 was directed to review the difficulties WaMs face in public procurement. The subcommittee received testimony from community members and subcommittee members on obstacles they experienced and ideas for removing them. Next, the subcommittee was charged with evaluating the adequacy of existing outreach efforts. Howard Pisons, executive director of the Small Business Financing Authority (SBFA), presented to the subcommittee on the agency's outreach efforts to businesses seeking financial assistance. The subcommittee's third objective was exploring the use of mentorship programs. The subcommittee received testimony about the effectiveness of mentor-protégé programs in helping to develop startup WaMs. Lastly, the subcommittee was directed to generally review methods for increasing WaM participation. JLARC presented on the effectiveness of SBFA's lending policies in encouraging the growth of WaMs.

After the subcommittees completed their work, the full Commission met in October to discuss its progress. Delegate Subramanyam and Senator Spruill delivered reports to the Commission that reviewed their tasks, as assigned by the work plan, and explained how each subcommittee accomplished them.

Delegate Torian informed Commission members that the enabling legislation required the Commission to submit an annual report by November 1 but also authorized it to continue its work after the report deadline. He directed staff to prepare and submit the report and then invited members to submit specific legislative proposals for the Commission to consider at its next meeting. He requested that the members identify the appropriate state agencies to implement solutions suggested by Commission members.

For more information, see the *Subcommittee's website* or contact the Division of Legislative Services staff:

Connor Garstka, Senior Attorney, DLS
cgarstka@dls.virginia.gov
804-698-1869

Minority Business Commission

Possible Policy Proposals

• **Enhance financing tools for new businesses.** Increase funding for Virginia's Small Business Investment Program, which guarantees a ROI for friend and family investments in a new business. Or, create a new program within the Virginia Small Business Financing Authority to invest or lend to companies that are less than 2 years old through a loan or a line of credit.

• **Use grant programs to increase women and minority (WaM) business certification.** Require any state agency and any locality that distributes grant funds to businesses to ask whether the recipient is a WaM, and if so, require the WaM to apply for certification as a condition of receiving grant funds.

• **Direct SBSD to create a mentorship pilot program.** The program could be business-to-business, subject-matter-expert-to-business, or both. The pilot program could include any of the following elements:

- Require participants in SBSD's existing Scaling4Growth program to act as business-to-business mentors for new pilot (*Scaling4Growth is an application-based program in which SBSD educates WaMs about how to reach the next business development stage*)
- Examine providing a procurement preference to businesses that agree to be mentors
- Pilot the program in a GO VA region with an active small business development project with seed funding to match businesses with mentors
- Other state mentorship programs rely on volunteers and a computer program interface for businesses to connect with volunteer mentors

• **Expand SBSD reach through community and state agency partnerships.** Direct SBSD to partner with community organizations (like faith based centers) to promote their programs and services to individuals, especially immigrant populations, and direct all agencies to cross promote SBSD's services where appropriate. A liaison position at SBSD could help to support this work.

• **Direct DGS and SBSD to develop guidelines to encourage unbundling for contracts of $3 million or more.** This policy is already encouraged by Executive Order 35.

• **Require prime contractors' bids to identify subcontractors and the amount of compensation to be paid to them.** Explore the potential of requiring prime contractors to pay subcontractors at least the amount stated in the bid, which may help ensure that subcontractors don't absorb the effects if the prime contractor tries to cut costs to win the bid.

• **Require prime contractors to pay subcontractors before Virginia pays the prime contractors.** WaMs, which are earlier in the process of business development, frequently have liquidity problems. Requiring prime contractors to pay subcontractors quickly could help WaMs with cash flow.

• **Use procurement to increase WaM business certification.** Amend the Public Procurement Act to require any bidder to identify all WaM subcontractors that would be included in the bid, and to provide WaM application materials to subcontractors. Alternatively, could require the contractor to get the subcontractor to apply. The government entity that receives this information would then be required to forward the information to SBSD, which could make efforts to recruit uncertified businesses and help them complete their certification applications.

• **SWaM Plans.** (*JLARC Recommendation*) Require SBSD to provide meaningful feedback to agency SWaM plans, and amend the Code to require agencies certify their SWaM plans every year.

• **Require localities to use BPOL as a data collection tool and to submit data to SBSD, and require SBSD to aggregate and report this data.** Could be initiated as a pilot program. For those localities that impose a BPOL tax, direct them to require businesses to report WaM status, whether they're WaM-certified, their industry, and year-over-year revenue changes. Localities would submit this information to SBSD, which would aggregate and anonymize it, then compile it in an annual report.

• **Require a disparity study every 5 years.** Amend the Code to require Virginia complete a disparity study every 5 years. Currently, Virginia's approach is ad hoc.

• **Create clear SWaM goals for the state.** (*JLARC Recommendation*) Make procurement goals for SWaM businesses clearer for state agencies.

• **Measure business growth of WaM businesses involved in procurement**. Require SBSD to develop a plan to collect annual revenue and sales data from WaM certified businesses and assess the growth of businesses involved in state contracting versus those are not.

• **Allow contractors to submit bids digitally.** (*Submitted by Delegate Subramanyam.*) For some contracts, bids must be prepared and delivered in hard copy to the relevant public body. This antiquated methodology means that businesses have to devote time to physically preparing bid packages, rather than perfecting their bids. This can be especially difficult for small businesses, who lack separate staff to fulfill these administrative tasks. The Commonwealth should work to amend eVA to allow public bodies to conduct in-take for their procurement requests and provide updates to the bidders about the evaluation of their bids. Given the need to adapt policies to limit in-person contact during the pandemic, agencies may be more receptive to this change now than they may have been in the past. DGS would implement this policy.

• **Restrict set-aside contracts to only small business bidders.** *(Submitted by Delegate Subramanyam.)* Governor Northam's Executive Order 35 requires agencies to formulate policies and procedures for a set aside program for small businesses, requiring purchases up to $100,000 for goods, nonprofessional services, and construction, and $80,000 for professional services to be set aside for award to SBSD-certified small businesses when the price quoted is fair and reasonable. Furthermore, purchases up to $10,000 are set aside for micro-businesses. However, if a larger business submits a bid that is more than five percent less than the lowest bid submitted by a small business, then the Commonwealth can award the contract to the larger business. The General Assembly should act to ensure that contracts set aside for small and micro-businesses are restricted to those bidders. This idea would be implemented by DGS.

• **Require prime contractors to publish their subcontracting opportunities on eVA.** *(Submitted by Delegate Subramanyam.)* As ideally presented in the Virginia Public Procurement Act (the VPPA), Virginia works with well-known, qualified vendors and contractors for business solicitation to ostensibly reduce prices. The problem is that building this network of historically favored big contractors comes at the cost of smaller, minority-owned and women-owned firms, putting them at a disadvantage before they even bid on projects. Virginia requires that contractors on projects greater than $200,000 make a good-faith effort to reach out to SWaM businesses, but those requirements are oftentimes vague. This proposal suggests amending the VPPA to require prime contractors post their subcontracting opportunities on eVA. Contractors under this framework would be required to post subcontracting opportunities on eVA to attract SWaM businesses. Second, the state can update the SWaM and DBE registry to include information on previously completed contracts and work experience to fill service gaps and serve as a pipeline for SWaM businesses to become prime contractors. DGS would implement this policy proposal.

• **Penalize firms that fail to meet SWaM subcontracting requirements.** *(Submitted by Delegate Subramanyam.)* Currently the Department of Small Business and Supplier Diversity assigns points for RFP bids for categories including: Qualifications and Relevant

Experience; Capabilities, Skills and Capacity; Approach and Methodology; Financial Proposal and lastly; Participation of Small Businesses and Businesses Owned by Women. Improving prime contractor qualification should either increase the points awarded for SWaM participation under the subcontract or assign negative points for poor past performance. This way, bid solicitation reflects not only the work provided by the contractor, but also a continual evaluation of state standards. DGS would implement this idea.

• **Direct SBSD to work with community groups and universities to improve the reach of the agency.** *(Submitted by Delegate Subramanyam.)* In addition to county economic development authorities and local chambers of commerce, there are numerous organizations formed to support WaM businesses, including the Northern Virginia Black Chamber of Commerce, Virginia Asian Chamber of Commerce, and the Virginia Hispanic Chamber of Commerce. Virginia also has many colleges and universities that could be tapped to provide services to entrepreneurs in their communities. Some university-run programs, like George Mason University's Mason Enterprise Center, already exist. The Mason Enterprise Center provides counseling and training to entrepreneurs in their region to aid them in running and growing successful businesses. By working with these organizations, SBSD could expand the reach of existing programming and have a source of continual feedback about the needs and challenges of SWaM businesses in Virginia. SBSD would implement this policy.

• **Work with organizations such as the Community Foundation for Northern Virginia to gather more data on minority owned businesses across the Commonwealth.** *(Submitted by Tiffany Boyle.)* This idea could be implemented by the Minority Business Commission or SBSD.

• **Construct a program to allow citizen business owners on the MBC access membership to the Virginia Chamber of Commerce and other relevant statewide entities.** *(Submitted by Dr. Trina Coleman.)* Additionally, the MBC could partner with the regional Chambers of Commerce to allow minority businesses membership at reduced rates.

• **Create a spin-off of the Scaling4Growth program for minority businesses that have not reached the revenue requirements for the existing program.** *(Submitted by Dr. Trina Coleman.)* SBSD would implement this policy proposal.

Virginia Minority Business Commission

Subcommittee #1 Business Program and Data Collection Review

http://dls.virginia.gov/commissions/mbe.htm

Catalogue of State and Local Women-Owned and
Minority-Owned (WaM) Business Support Programs and Services

State Government Programs

Program: Department of General Services; Public Body Procurement Workgroup
Location: Statewide
Website: https://dgs.virginia.gov/dgs/directors-office/procurement-workgroup/
Description: Brings together several agencies (including SBSD, VITA, VDOT, and several others) to jointly review proposed procurement legislation. One of its areas of focus is how to achieve Virginia's discretionary spend goals for SWaMs.

Program: Department of Housing and Community Development, Community Development Block Grant, COVID-19 Small Business Recovery Assistance
Location: Statewide
Website: https://www.dhcd.virginia.gov/sites/default/files/Docx/cdbg/cdbg-small-business-recovery-assistance.pdf
Description: Funded by the CARES Act, this program issues grants to local governments, which then provide financial assistance to small businesses impacted by COVID. Each locality may receive up to $500,000 to distribute, but if its program will serve at least 30% WaMs, it may receive a higher grant of up to $800,000.

Program: Housing Development Authority
Location: Statewide
Website: https://www.vhda.com/about/Planning-Policy/Pages/LIHTC-QAP.aspx
Description: One of the programs Virginia Housing administers is the federal Low-Income Housing Tax Credit program (under by §42 of the Internal Revenue Code). Virginia Housing's Qualified Allocation Program (QAP) governs how the program operates. The Board has proposed changes, not yet finalized, that would award additional points to a tax credit applicant if it uses minority contractors. The agency also has a Minority Business Advisory Council to advise Virginia Housing on how to integrate minority partners.

Program: Department of Small Business and Supplier Diversity, Business Development and Outreach Services
Location: Statewide
Website: https://www.sbsd.virginia.gov/business-development-and-outreach/
Description: SBSD's BDOS division carries out the agency's function of outreach to the business community. The division is subdivided into five regional programs (Southwest, Central-West, Hampton Roads and the Eastern Shore, Central-South, and Northern Virginia). It

serves as a central network that connects WaMs with potential buyers, chambers of commerce, and other businesses. It helps form relationships between WaM entrepreneurs, who are in the early stages of business development, and established WaM businesses, which can serve as mentors. The division provides consultations (over 700 per year) with individual WaMs and helps them complete SWaM certification applications. In partnership with private and local government organizations, the division conducts seminars on steps in the procurement process, like registering in eVA (the state's procurement marketplace), obtaining SWaM certification, and identifying potential clients.

Program: Department of Small Business and Supplier Diversity, Rebuild Virginia
Location: Statewide
Website: https://www.governor.virginia.gov/rebuildva/
Description: Funded by the CARES Act and ARPA, this program issues grants to small businesses impacted by COVID. SBSD reports that about one-third of grants have gone to WaMs.

Program: Department of Small Business and Supplier Diversity, Scaling4Growth
Location: Statewide
Website: https://www.sbsd.virginia.gov/s4g/
Description: Provides a six-month educational program designed to help SWaMs grow their business. The program helps businesses evaluate their business model, and develop in such areas as procurement, social media, and human resources.

Program: Department of Small Business and Supplier Diversity, Small Business Financing Authority
Location: Statewide
Website: https://www.sbsd.virginia.gov/virginia-small-business-financing-authority/
Description: The SBFA offers loans to businesses, nonprofits, and local economic development authorities and provides credit enhancements to banks that lend to them. Further, the SBFA helps businesses attract equity through its equity incentive grant program. While the SBFA is aimed at small businesses generally, like many of SBSD's programs, it provides assistance to small WaMs.

Local Government Programs

Program: Minority Business Program
Location: Charlottesville
Website: https://cvilleminoritybusinessprogram.org/
Description: Registers WaMs with the city for the purpose of increasing their access to procurement spending. Provides one-on-one consultations to persons interested in starting a new business or growing an existing business. Helps administer the Business Equity Fund, which is a loan program for existing City businesses that are owned by individuals who are considered socially disadvantaged. Hosts an annual Minority and Women Business Expo, which provides an opportunity for minorities and women owned businesses to share their products and/or services with the City.

Program: City of Charlottesville Minority Business Commission
Location: Charlottesville
Website: https://www.charlottesville.gov/982/Minority-Business-Commission
Description: Composed of 8 members (five citizens appointed by the City Council, the City's Minority Business Development Coordinator, the City's Minority Procurement Coordinator, and one City Councilor) and serves in an advisory capacity to the City Council regarding (i) the City's efforts in promoting the startup of minority-owned businesses in the City and the growth and expansion of existing City minority-owned business and (ii) the City's continuing efforts to encourage the participation of businesses, and in particular those certified by the SBSD, in City contracts, among other topics.

Program: Minority Business Office
Location: Hampton
Website: https://hampton.gov/1653/Minority-Business-Office
Description: Performed a disparity study of the city's procurement. The program registers local businesses to enhance procurement from WaMs.

Program: Northern Virginia Regional Commission; Minority-Owned Business Working Group
Location: Northern Virginia (including Arlington, Alexandria, Dumfries, Fairfax, Herndon, Loudoun, Falls Church, Leesburg, Prince William, Manassas, Manassas Park, and Vienna)
Website: https://www.novaregiondashboard.com/covid19-economic
Description: The working group studied the impact of COVID on small businesses in Northern Virginia. It focused on the acute risk to minority-owned businesses, and recommended how local governments can respond and help businesses recover.

Program: Office of Minority Business Development
Location: Richmond
Website: http://www.richmondgov.com/MinorityBusinessDevelopment/index.aspx
Description: Provides financial assistance, mentorship programs, and education on business development.

Program: Shenandoah Community Capital Fund (SCCF); Business Bootcamp
Location: Staunton
Website: https://stauntonfund.org/business-support/
Description: Funded by AT&T, this program provides grants to WaMs. It also runs an 8-week course that focuses on the skills of business modelling, understanding pricing, and projecting cash flow.

Program: Minority Business Council
Location: Virginia Beach
Website: https://www.vbgov.com/government/departments/finance/mbc/Pages/default.aspx
Description: Provides training and workshops for WaMs, and conducts initiatives to increase procurement from WaMs.

Private, Nongovernmental Programs

Program: Open for Business Loan Fund
Location: Richmond region (Richmond, Henrico, Hanover, Chesterfield, Powhatan, Goochland, Ashland, Petersburg, Hopewell, Colonial Heights, and New Kent)
Website: https://www.vacommunitycapital.org/our-impact/open-for-business-loan-fund
Description: Funded by Wells Fargo, the Open for Business program provides an aggregate of $1 million in low-interest loans to WaMs. Generally, loans range from $50,000 to $250,000 with an interest rate of 3%. The program also provides technical assistance and consulting.

Program: Black BRAND (Business Research Analytics Networking and Development)
Location: Hampton Roads
Website: https://blackbrand.biz/
Description: Serves as Hampton Roads' regional Black Chamber of Commerce. Mission is to promote group economics through professional development and community empowerment. Has a mentorship program. Hosts, in conjunction with Norfolk State University Innovation Center, the Incubation Network, and Portsmouth Partnership/Bloom Coworking, the 12-week B-Force Accelerator Program focused on growing Black-owned businesses.

Program: Old Dominion University, Institute for Innovation & Entrepreneurship, Women's Business Center
Location: Norfolk
Website: https://www.odu.edu/iie/wbc
Description: Offers education, counseling, networking resources and entrepreneurial training to women across Hampton Roads.

Program: National Association of Women Business Owners - Richmond Chapter
Location: Richmond
Website: http://nawborichmond.org/
Description: The NAWBO Richmond Chapter is a due-based organization that hosts various programs that are designed to create business opportunities within the community, build strategic alliances through partnerships and networking, educate the public about women-owned businesses, influence public policy, and promote leadership within the civic and business communities. The NAWBO Richmond Chapter holds monthly meetings and hosts events such as the Women of Excellence Awards.

Program: Women in Defense - Greater Hampton Roads Chapter
Location: Hampton Roads
Website: https://www.widghr.org/
Description: Provides events and programming, including strategic networking, education, and career development, to help women establish and achieve professional goals in national defense and security contracting.

Program: Hispanic Chamber of Commerce of Coastal Virginia
Location: Hampton Roads
Website: https://www.hcccova.org/

Description: Serves to strengthen the Hispanic community throughout Coastal Virginia through economic, cultural, and social empowerment. Serves as the principal resource and advocate for the joint promotion of Hispanic businesses, consumers and organizations.

Program: Charlottesville Regional Chamber of Commerce - Business Women's Round Table
Location: Charlottesville
Website: https://www.cvillechamber.com/bwrt/
Description: Holds monthly meetings for Chamber members and non-members featuring networking opportunities and leadership seminars.

Program: Charlottesville Regional Chamber of Commerce - Minority Business Alliance
Location: Charlottesville
Website: https://www.cvillechamber.com/mba/
Description: Holds monthly meetings for Chamber members featuring networking opportunities and leadership seminars.

Program: Virginia Asian Chamber of Commerce
Location: Statewide
Website: http://aabac.org/
Description: VACC is a certified IRS 501(c)(6) nonprofit business organization. Provides members with access to career and business development opportunities, industry luncheons, procurement networking events, mentoring programs, legislative advocacy, and small business development growth guidance and technical assistance.

Program: Carolinas-Virginia Minority Supplier Development Council
Location: Virginia, North Carolina, South Carolina
Website: https://cvmsdc.org/
Description: Non-profit membership organization that brings together Minority Business Enterprises and major corporations, financial institutions, government agencies, and universities to enhance minority business development.

Commonwealth of Virginia
September 14, 2020

Report to the Governor and the General Assembly of Virginia

Operations and Performance of the Department of Small Business & Supplier Diversity

2020

COMMISSION DRAFT

JLARC
JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION

JLARC Report 537

jlarc.virginia.gov

Contents

Summary: Operations and Performance of the Department of Small Business & Supplier Diversity

WHAT WE FOUND

SBSD has addressed many of its administrative and staffing problems

SBSD has made substantial improvements since it was created in 2014 (by combining two separate agencies and adding the Virginia Small Business Financing Authority). Creating a new organizational structure and new processes takes time, and SBSD has made good progress. Over the last few years, SBSD has addressed financial problems identified in previous audits by the Auditor of Public Accounts and worked to improve its information technology systems. SBSD has also filled vacant staff positions, and its staff turnover is now similar to other state agencies. Staff in most divisions reported to JLARC they are satisfied with key aspects of their job and SBSD's leadership and organizational culture.

WHY WE DID THIS STUDY

In 2018, JLARC approved a study resolution directing JLARC staff to review the operations and performance of the Virginia Department of Small Business and Supplier Diversity (SBSD).

ABOUT THE DEPARTMENT OF SMALL BUSINESS AND SUPPLIER DIVERSITY

SBSD was created in 2014 to promote the growth and development of small, minority-owned, and women-owned businesses (SWaM). SBSD facilitates the state's SWaM initiatives, which includes certifying businesses, and collecting annual SWaM plans and spending data from agencies to monitor their expenditures with SWaM businesses. SBSD also provides loans and other financing through the Virginia Small Business Financing Authority and offers business assistance programs.

SBSD is certifying businesses faster, but processes can still be improved

Processing times have improved for all types of SBSD certifications, in part because of its new online application system. For example, small business certifications were processed 49 percent faster in 2019 than in 2017. All small, micro, women-owned, or minority-owned certifications were processed faster than the 60-day goal, a substantial improvement from 2017.

However, businesses could benefit from having more information about the application and appeals processes. SBSD made almost 17,000 follow-up requests for 10,000 applications in 2019. Follow-up requests are often necessary because some businesses are unclear about the information they need to submit and the reasons for submitting it. In addition, many businesses are confused about the reasons why they can appeal if SBSD has denied their application.

SBSD's certification processes are generally fair and have led to mostly accurate determinations, but the appeals process is unnecessarily limited. The appeals process is available only to businesses seeking recertification. Businesses seeking a new certification for the first time cannot appeal SBSD's decision. This limitation appears to lack any policy basis and was put in place to limit the SWaM certification division's workload.

VSBFA's shortcomings prevent it from fully achieving its mission

VSBFA is now responsible for two new COVID relief programs that will award more than $80 million to businesses. Most funding for these programs is through the federal CARES act.

The **Rebuild VA grant program** will provide nearly $71M to businesses in non-essential industries.

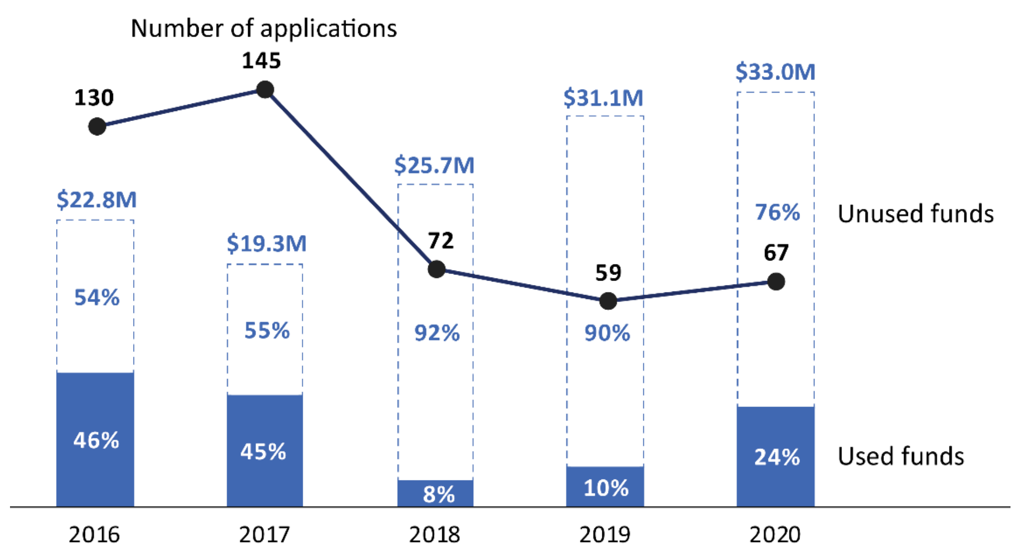
VSBFA also received $10M for a COVID **loan program**.

VSBFA can play a key role in helping small businesses obtain financing, which is now critical given the COVID-19 pandemic's impact on small business sales and operations. However, VSBFA has not been meeting most key criteria for effectiveness (table). For example, VSBFA is not loaning an adequate proportion of available funds to businesses. In the last three years, the vast majority (92 percent to 76 percent) of available loan funds were not used across VSBFA's six loan programs (figure). Loan applications also declined, dropping by half from 2017 to 2018 and continuing to decrease in 2019. VSBFA's fund utilization and loan applications have increased slightly in 2020.

VSBFA is not meeting most criteria for effective program administration

Criteria	VSBFA fulfillment
Adequate proportion of available funds loaned to businesses	○
Goals for and tracking of loan and grant program utilization	○
Regular targeted outreach to businesses and banks	◒
Written policies that establish appropriate risk standards for loans	○
Standardized tool to consistently assess applicant risk	○
Regular monitoring of processing times, loan decisions, and outstanding loan health	○
Adequate board expertise to evaluate all loan applications	◒

VSBFA's loan fund utilization and applications declined in 2018 and 2019



SOURCE: JLARC analysis of VSBFA loan disbursement data, annual financial balance sheets, and applications data.
NOTE: Years shown are state fiscal years.

VSBFA also lacks written policies on risk standards for loans and a standardized tool for staff to assess applicants' repayment risk. Without policies and a tool to govern loan decisions, VSBFA has tended toward caution and generally been too conservative when making loan decisions. This is inconsistent with the authority's mission to provide gap financing to businesses who may not be eligible for private bank loans. VSBFA's loan default rate is much closer to private banks than federal financing programs. Four of five banks interviewed described VSBFA as too risk averse. One bank noted that "after several unsuccessful attempts to partner, I just gave up on having the VSBFA as an option."

The lack of consistent leadership likely contributed to VSBFA's operational shortcomings, but a new director is now in place. VSBFA had five permanent or acting executive directors in three years. Several staff emphasized the adverse impact of inconsistent leadership, with one noting "this revolving door of leadership has caused the team to continually reset priorities." VSBFA's current executive director was hired in October 2019. He has a lending background and is viewed positively by staff and the board.

Procurement spending with SWaM businesses is substantial, but approach to SWaM goal and planning has limitations

Though the executive branch has not reached its goal to award at least 42 percent of discretionary procurement spending to SWaM-certified businesses, agencies procure a substantial amount of goods and services from SWaM-certified businesses. Agencies purchased more than $2 billion in goods and services from certified SWaM businesses in FY19, making up about one-third of applicable state procurement spending.

However, the 42 percent goal for procurement spending through SWaM businesses is not realistic or achievable for many agencies. In FY19, agency spending through SWaM businesses ranged from 4 percent to 87 percent. Sixty percent of agencies fell short of the 42 percent goal. More than half of agencies responding to a JLARC survey found it extremely, very, or difficult to achieve the 42 percent goal. This is primarily because agencies' abilities to make purchases from SWaM-certified businesses vary substantially depending on the types of goods and services they need.

Meetings to discuss SWaM spending. Staff from SBSD and the governor's office have begun holding group meetings with agencies to emphasize the importance of achieving the SWaM goal and discuss SWaM spending.

Furthermore, the SWaM plans agencies are required to develop are of limited value for many agencies. Less than half of agencies agreed that their SWaM plans helped maintain or increase their SWaM expenditures. The plans include some useful information but do not define specific strategies for agencies to increase spending with SWaM businesses. Historically, SBSD has given agencies little to no feedback on their SWaM plans.

Some certified businesses are much larger than most others, and business size varies substantially by industry

Most certified businesses in Virginia are much smaller than the state's current definition of small business (a maximum of 250 employees or $10 million in average gross receipts). As of April 2020, the median certified small business employed 14 people and reported about $3.2 million in annual gross receipts—both well below the maximum allowable thresholds to be classified as a small business. Virginia's small business definition is important because the state's set-aside program requires agencies to use a micro business (a maximum of 25 employees and $3 million in gross receipts) for purchases up to $10,000 and a small business for most purchases up to $100,000, unless there are no micro or small certified businesses that meet the purchase requirements.

Some certified businesses in Virginia are substantially larger than most. For example, the top 5 percent of certified small businesses by size reported more than $25 million in average gross receipts (which is currently allowable because a business must only be at or below either the employee or gross receipt maximum thresholds.) In contrast to Virginia, some states require a business to be at or below both employment and gross receipt thresholds.

There are also considerable differences across industries that limit the usefulness of a single definition of a "small" business. One of the largest businesses in a given industry might be among the smallest in another industry. Virginia's small business definition applies the same to all businesses regardless of industry. In contrast, the federal government and several states use size definitions that vary by industry.

Virginia could consider changing its small business definition to narrow the size definition generally, or develop specific size definitions by industry. These options would have varying impacts on currently certified businesses, SBSD's administrative operations, and agencies' ability to procure goods and services through small businesses. When considering any changes, it may be prudent for the state to consider the results of a pending study of whether there are disparities in procurement opportunities for minority- and women-owned businesses. If evidence of disparities is found, the state could consider adjusting its preferences for the state's set-aside procurement program to include female or minority ownership.

WHAT WE RECOMMEND
Executive action

- Provide businesses with more information about the SWaM certification application and appeals processes
- Allow SWaM businesses who have been denied a new certification to appeal SBSD's decision
- Set annual utilization goals for small business loan programs that consider factors such as credit conditions and available loan funding, and track and report how much of available funding is being used
- Develop formal loan risk policies and implement a standardized risk assessment tool to govern loan application decisions
- Require VSBFA staff to develop an improvement plan and provide periodic progress reports to the board

- Institute a more meaningful SWaM plan development and review process that focuses on agencies' strategies to improve SWaM spending

POLICY OPTIONS FOR CONSIDERATION

- Develop agency-specific SWaM spending goals that are ambitious, but more realistically achievable based on each agency's procurement needs
- Amend the Code of Virginia to narrow the definition of small business to exclude larger businesses currently eligible for certification
- Amend the Code of Virginia to define small business based on industry or industry groupings
- Authorize an executive branch workgroup to consider whether and how to adjust the state's procurement preferences and small business definition using the results of the 2020 disparity study and JLARC study

Policy options for consideration. Staff typically propose policy options rather than make recommendations when (i) the action is a policy judgment best made by elected officials—especially the General Assembly, (ii) evidence suggests action could potentially be beneficial, or (iii) a report finding could be addressed in multiple ways.

The complete list of recommendations and policy options is available on page vii.

Recommendations & Policy Options: Operations and Performance of the Department of Small Business & Supplier Diversity

JLARC staff typically make recommendations to address findings during reviews. Staff also sometimes propose policy options rather than recommendations. The three most common reasons staff propose policy options rather than recommendations are: (1) the action proposed is a policy judgment best made by the General Assembly or other elected officials, (2) the evidence indicates that addressing a report finding is not necessarily required, but doing so could be beneficial, or (3) there are multiple ways in which a report finding could be addressed and there is insufficient evidence of a single best way to address the finding.

Recommendations

RECOMMENDATION 1
The Department of Small Business and Supplier Diversity (SBSD) should post precertification webinars or videos on its website that describe the application process, including the documents required, the purpose of each document, and the specific information SBSD requires in each document. (Chapter 2)

RECOMMENDATION 2
The Department of Small Business and Supplier Diversity (SBSD) should amend its regulations to provide a right of appeal to small, women-owned, and minority-owned businesses who have been denied a new certification if their basis for challenging the decision is that SBSD made a mistake in denying their application. (Chapter 2)

RECOMMENDATION 3
The Department of Small Business and Supplier Diversity should clarify its appeals process by revising denial letters and adding information to its website to more clearly describe the (i) circumstances and grounds to appeal a certification decision or seek a waiver, (ii) processes a business must follow, and (iii) documentation to provide when filing an appeal or seeking a waiver. (Chapter 2)

RECOMMENDATION 4
The Department of Small Business and Supplier Diversity should improve business awareness of and accessibility to its business assistance events and counseling sessions through (i) developing and implementing a coordinated written marketing plan and (ii) providing on-demand written materials and recorded webinars on its website. (Chapter 2)

RECOMMENDATION 5

The General Assembly may wish to consider including language in the Appropriation Act directing the Department of Small Business and Supplier Diversity (SBSD) to develop and submit a detailed improvement plan for the Business One Stop. The plan should include the following for each statutory requirement: (i) a description of the purpose and benefit to small businesses, (ii) the cost of fully implementing and maintaining the requirement, (iii) the resources needed beyond those currently available to implement and maintain the requirement, and (iv) SBSD's recommendation as to whether the requirement should be kept. The plan should be provided to the House Labor and Commerce, and Appropriations committees; and Senate Commerce and Labor, and Finance and Appropriation committees no later than November 1, 2021. (Chapter 2)

RECOMMENDATION 6

The Virginia Small Business Financing Authority Board should set annual utilization goals for loan programs that consider factors such as credit conditions and available loan funding. (Chapter 3)

RECOMMENDATION 7

The Virginia Small Business Financing Authority Board should direct staff to regularly track and annually report the percentage of loan and grant program funds that are utilized or awarded. (Chapter 3)

RECOMMENDATION 8

The Virginia Small Business Financing Authority should develop, submit to the Virginia Small Business Financing Authority Board for consideration and approval, and then implement internal policies that will govern loan application decisions and establish an appropriate risk standard that adequately reflects the public mission of the authority. (Chapter 3)

RECOMMENDATION 9

The Virginia Small Business Financing Authority should develop, submit to the Virginia Small Business Financing Authority Board for consideration and approval, and then implement a risk assessment tool to calculate the potential risk of loan applicants. (Chapter 3)

RECOMMENDATION 10

The Virginia Small Business Financing Authority should institute a process to conduct a risk-based review of outstanding loans at least annually and report the results to the Virginia Small Business Financing Authority Board. (Chapter 3)

RECOMMENDATION 11

The Virginia Small Business Financing Authority should add a requirement to formal loan participation agreements with banks that banks report support loans with a high risk of default as soon as they are identified. (Chapter 3)

RECOMMENDATION 12

The Virginia Small Business Financing Authority should set a goal that establishes an expected timeframe for processing loan applications and track and report how long it takes to process each loan application and the proportion of applications meeting the goal. (Chapter 3)

RECOMMENDATION 13

The General Assembly may wish to consider requiring the majority of citizen members of the Virginia Small Business Financing Authority Board to possess small business lending experience. (Chapter 3)

RECOMMENDATION 14

The Virginia Small Business Financing Authority (VSBFA) should develop a program improvement plan that addresses deficiencies, including low fund utilization; lack of loan approval policies; absence of a risk tool for loans; and lack of monitoring, tracking, and reporting on loans and fund utilization. The plan should be presented to the VSBFA board and transmitted to the House Appropriations and Senate Finance and Appropriations committees, and the secretary of commerce and trade no later than June 30, 2021. (Chapter 3)

RECOMMENDATION 15

The governor should revise Executive Order 35 to direct the Department of Small Business and Supplier Diversity (SBSD) to develop and implement a more meaningful SWaM plan development and review process focusing on strategies and substantive SBSD feedback to agency staff. (Chapter 4)

RECOMMENDATION 16

The Department of Small Business and Supplier Diversity should develop and maintain information about effective strategies agencies can use to increase their SWaM expenditures and provide agencies with guidance on how to implement the strategies. (Chapter 4)

Policy Options to Consider

POLICY OPTION 1
The Department of Small Business and Supplier Diversity could refer businesses seeking general business assistance to larger federal programs and offer more events and counseling sessions on Virginia-specific certification and contracting topics. (Chapter 2)

POLICY OPTION 2
The Department of Small Business and Supplier Diversity could offer the Scaling4Growth program in each region of the state and to more businesses. (Chapter 2)

POLICY OPTION 3
The Virginia Small Business Financing Authority could expand microloan program eligibility to startup businesses through a pilot program for the purpose of assessing the demand for, and viability of, offering such loans. (Chapter 3)

POLICY OPTION 4
The governor could direct each state agency to set ambitious, but achievable, SWaM procurement spending goals that account for (i) the availability of certified SWaM businesses to provide the goods and services the agency procures and (ii) the agency's ongoing and upcoming new procurements. (Chapter 4)

POLICY OPTION 5
The General Assembly could amend §2.2-4310 and §2.2-1604 of the Code of Virginia to change the small business definition to businesses that have no more than 250 employees and gross receipts of no more than $10 million. (Chapter 5)

POLICY OPTION 6
The General Assembly could amend §2.2-4310 and §2.2-1604 of the Code of Virginia to change the small business definition by reducing the number of employees and gross receipts that a business may have to qualify as a small business. (Chapter 5)

POLICY OPTION 7
The General Assembly could amend §2.2-4310 and §2.2-1604 of the Code of Virginia to direct that a small business definition be developed for each industry, with thresholds for number of employees or gross receipts, or both, that are based on the size characteristics of Virginia businesses in that industry. (Chapter 5)

POLICY OPTION 8
The General Assembly could amend §2.2-4310 and §2.2-1604 of the Code of Virginia to direct that a small business definition be developed that is set at 50 percent of the federal small business definition for each industry. (Chapter 5)

POLICY OPTION 9

The General Assembly could amend §2.2-4310 and §2.2-1604 of the Code of Virginia to direct that a small business definition be developed for groupings of industries based on size and types of goods and services state agencies purchase. (Chapter 5)

POLICY OPTION 10

The General Assembly could consider authorizing in the Appropriation Act an executive branch workgroup to consider whether and how to adjust the (i) state's procurement preferences for businesses (including women and minority ownership if the disparity study concludes doing so may be permissible), and (ii) state's definition of small business. The workgroup could be required to submit proposed legislative changes to the House General Laws Committee, Senate General Laws and Technology Committee, and Small Business Commission by November 1, 2021. (Chapter 5)

1 Overview of the Department of Small Business and Supplier Diversity

In 2018, the Joint Legislative Audit and Review Commission (JLARC) approved a study resolution that directed JLARC staff to review the operations and performance of the Department of Small Business and Supplier Diversity (SBSD). As part of this review, JLARC staff were directed to evaluate the staffing, performance, spending, and management of SBSD, including the Virginia Small Business Financing Authority (VSBFA); assess the efficiency and effectiveness of SBSD's business certification programs and economic development and outreach programs; and compare the state's definition of "small business" to federal and other state definitions. (See Appendix A for study resolution.)

Several previous state reviews identified shortcomings in SBSD's core functions. For example, a 2016 JLARC review of state contracting found that SBSD had a backlog of certification applications and did not effectively prioritize certifications. The review also found that businesses were dissatisfied with several aspects of the certification process. In addition, 2016 and 2017 Auditor of Public Accounts audits found that SBSD lacked clear policies and procedures for its staff and insufficient reporting practices for its financing programs. (See Appendix C for a list of previous external reviews of SBSD.)

To address the study resolution, JLARC staff interviewed agency staff, VSBFA board members, staff from state and federal agencies that SBSD interacts with, and stakeholders, including groups representing small businesses. Staff surveyed businesses that have participated in at least one of SBSD's certification, business assistance, or financing programs; SBSD staff; and state agency procurement staff. JLARC staff also reviewed and analyzed certification data, state agency procurement data, data about business employment and revenue growth over time, and VSBFA financial data. (See Appendix B for a detailed description of research methods.)

SBSD supports growth and competitiveness of small, women-, and minority-owned businesses

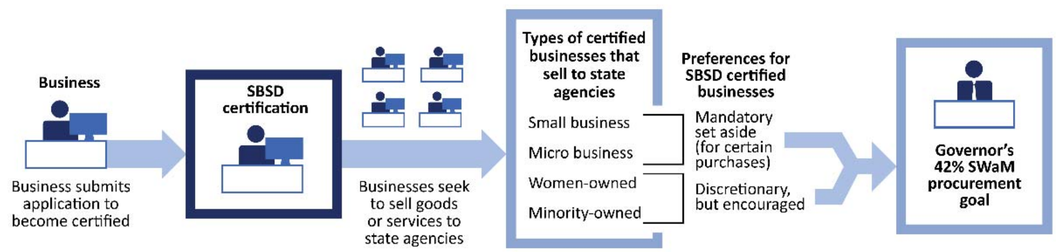
The legislature created SBSD in 2014 by merging the Department of Business Assistance and the Department of Minority Business Enterprise. The VSBFA was also merged into SBSD. VSBFA operates as a division within SBSD but works through a separate board to approve loan decisions.

SBSD's mission is to enhance growth opportunities for Virginia's small, women-, and minority-owned (SWaM) businesses. One way SBSD fulfills its mission is by certifying businesses seeking to sell goods and services (e.g., professional, non-professional, and construction) to the state through the state's SWaM program (Figure 1-1). SBSD certifies several types of businesses, including SWaM businesses and economically disadvantaged businesses for the U.S. Department of Transportation's Disadvantaged Business Enterprise (DBE) program.

JLARC's 2016 "Review of the Development and Management of State Contracts" assessed state procurement practices, including state spending on purchases set aside for small businesses, and the impact of the state's 20 percent small business criterion for requests for proposals. One of the review's unimplemented recommendations is for the General Assembly to direct the Department of General Services and SBSD to determine whether the 20 percent small business criterion requirement should be adjusted or eliminated.

Certified businesses can pursue state contracts through each agency's procurement process, and those that meet the state's "small" or "micro" business definitions are eligible for procurement preferences. SBSD helps implement these policies by maintaining a list of certified businesses so agencies can identify businesses that sell the goods or services they need to purchase. SBSD also tracks the state's progress toward the state's SWaM goal. The governor has set a goal for executive branch agencies to award at least 42 percent of discretionary procurement spending to certified small businesses, including those that are women- and minority-owned. SBSD also collects SWaM plans from agencies each year describing their projected spending with SWaM businesses and tracks how much agencies spend with SWaM businesses through an online SWaM expenditure dashboard.

FIGURE 1-1
SBSD plays a key role in the state's SWaM initiatives



SOURCE: JLARC analysis of Executive Order 35 (2019) and § 2.2-4310 of the Code of Virginia.
NOTE: Procurement preferences include set asides where purchases up to $10,000 are set aside for SBSD-certified micro businesses (up to 25 employees and $3 million in gross receipts), and purchases up to $80,000 for professional services and up to $100,000 for goods, nonprofessional services, and construction are set aside for SBSD-certified small businesses (up to 250 employees or $10 million in gross receipts).

Another key part of SBSD's responsibilities is offering programs and services directly to businesses. SBSD provides several services to support businesses, including financing through VSBFA loans and grants. SBSD also provides business assistance services, such as counseling and training, to help businesses become established and grow. Moreover, SBSD administers a Business One Stop website intended to help businesses identify relevant resources and complete state registration requirements in one place.

Providing assistance to SWaM businesses can benefit the businesses and the state economy. SWaM businesses may not have the same access to resources as larger businesses, and supporting SWaM businesses helps them compete with other businesses. Research literature indicates that providing assistance to small businesses generally has a positive effect on business outcomes, such as increased employment and sales, which improve businesses' likelihood of survival (Appendix D). Researchers have not, however, determined conclusively which type of assistance is most helpful. Supporting small businesses can also have positive economic impacts on the state because these small businesses are collectively responsible for a large portion of state jobs and revenue.

Virginia is one of few states to have a single agency dedicated to supporting small businesses and improving supplier diversity in state procurement. Surrounding states, including Maryland, North Carolina, and Tennessee, provide small business services through separate agencies instead of one centralized agency. The District of Columbia, though, has a centralized agency that provides certification, financing, and business assistance to small businesses. In addition, the majority of states administer their federal transportation business certification programs through their state departments of transportation, rather than through a dedicated small business agency such as SBSD. Some states, such as Maine, lack certification programs or procurement set-asides altogether.

The COVID-19 pandemic's negative economic impact increased the need for government assistance to small businesses, including the services provided by Virginia's SBSD. Stay-at-home orders and closure of "non-essential" businesses halted certain small business activities in April, May, and June 2020. During this time period, the federal government offered loans and grants to small businesses to help them remain viable and avoid substantial employee layoffs. In Virginia, this is resulting in increased interest in VSBFA financing programs and the creation of a new grant program. SBSD also has experienced additional demand for some of its other programs during the COVID-19 pandemic.

SBSD employs 40 staff across five divisions and receives about $7M in funding

SBSD employs 40 full-time staff to carry out its responsibilities. The agency is led by a governor-appointed director and is organized into five divisions—four program divisions and one administrative division (Figure 1-2). Each of the program divisions administers multiple programs with distinct purposes and eligibility criteria. For example, the SWaM certification division is responsible for administering seven types of business certifications. VSBFA is responsible for administering nine small business loan, bond, and grant programs. The largest portion of SBSD staff (28 percent) work in certification-related positions in the SWaM and DBE divisions. Most agency staff work at its main office in Richmond, with the exception of several regionally based staff who facilitate financing programs or provide business assistance.

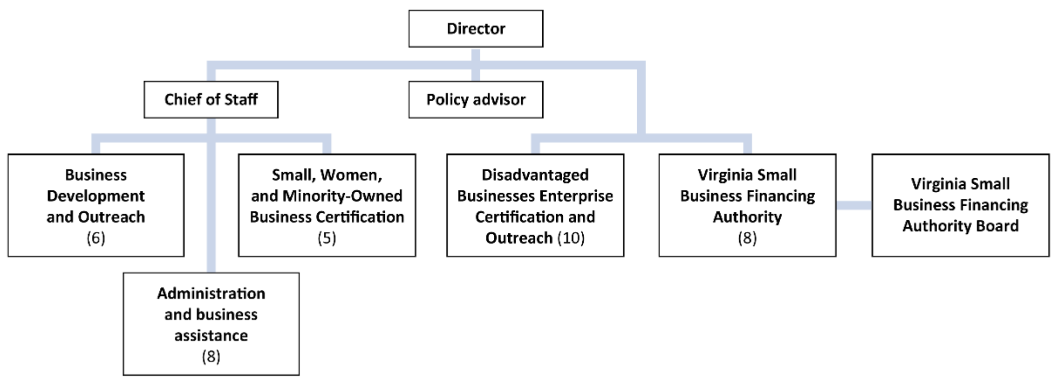
SBSD was scheduled to receive a budget increase in FY21 and FY22 ($370,000 and $740,000, respectively). This funding would have been used to fund seven new positions, including two SWaM certification officers, three business assistance staff, one marketing/public relations position, and one data analyst. These funds were removed from the budget in August 2020.

SBSD received approximately $6.8 million in funding from state and federal sources in FY20. Almost two-thirds of SBSD's funding in FY20 ($4.2 million) was from general funds and about one-fourth ($1.6 million) was from Commonwealth Transportation funds for the DBE certification program. The remainder was special funds for

Most SBSD services are provided to businesses free of charge, with some exceptions. If a Virginia business is seeking certification in another state that requires a site visit, SBSD will conduct the site visit for a $75 fee. VSBFA charges a fee for some financing programs, like the bond conduit program, which has a $1,000 application fee.

VSBFA's small business financing programs. Only a small portion of SBSD's activities are funded through fee revenue because most services are provided to businesses free of charge (sidebar). Over half of SBSD's funding (54 percent) is spent on staff salaries and benefits.

FIGURE 1-2
SBSD consists of five divisions that certify and support small businesses



SOURCE: JLARC analysis of SBSD organization chart and agency documents.
NOTE: Disadvantaged Business Enterprise is a federal program affiliated with the U.S. Department of Transportation. Business assistance services are provided through SBSD's Business Development and Outreach division.

Various federal, state, and local entities assist small, women-, and minority-owned businesses in Virginia

SBSD operates programs with missions similar to many other federal, state, local, or private programs. The federal government, in particular, has several large programs that primarily offer financing, certification to become eligible for certain programs, or business assistance.

Many organizations in addition to VSBFA provide financing to small businesses. For example, the federal Small Business Administration (SBA) offers direct loans and loan guarantees for small businesses. Similarly, the Virginia Economic Development Partnership offers financing (especially grants), some of which may go to businesses that happen to be small or owned by women or minorities. Some localities operate loan or grant programs for small businesses, or issue bonds to provide long-term financing to promote economic development by encouraging manufacturing, industrial, and governmental and commercial enterprises to locate in the locality. There are many private banks and non-profit organizations in Virginia that provide financing to small businesses.

In addition to SBSD's certifications, SBA offers certifications that businesses can obtain to receive federal procurement preferences. SBA has defined employment or revenue thresholds under which a business can receive preferences in federal procurements. SBA has used self-certification for some certifications in the past but is phasing out the self-certification process because many ineligible businesses were being certified (sidebar).

In addition to SBSD's business assistance programs, SBA also funds organizations that provide business assistance to help business owners start and grow their companies. For example, SBA funds and operates 27 Small Business Development Centers in Virginia, which provide counseling and training to help small business owners start or expand. These federal centers worked with nearly 9,000 Virginia businesses in 2019. SBA also funds six Procurement Technical Assistance Centers (one statewide and five regional) to help businesses compete in government procurements.

There are also state agencies with which SBSD coordinates on governmental requirements or policy. For example, SBSD's maintenance of the Business One Stop website requires coordination with the State Corporation Commission and the Department of Professional and Occupational Regulation, which set licensing or other requirements for businesses. SBSD also works with the Department of General Services and Virginia Information Technologies Agency on developing and administering certain state procurement policies.

Two federal studies found problems with self-certification programs. A March 2019 report by the Government Accountability Office found that about 40 percent of women-owned small businesses (WOSB) certified by SBA in its audit sample were ineligible for the program. The SBA's Office of Inspector General reviewed the WOSB program in June 2018, and found 50 of 56 sole-source contracts (89 percent) did not meet all of the criteria for the program.

2 SBSD Management and Programs

SBSD faced significant challenges that hindered agency performance and operations when the General Assembly merged two previous agencies to create SBSD (sidebar). SBSD's director had to establish a new agency mission, leadership team, organizational structure, and policies and procedures. SBSD faced challenges common when starting a new agency and inherited several programmatic challenges from the previous agencies (including a backlog of certification applications and inadequate IT systems). In addition, many key staff positions were vacant, including nearly all positions in the business assistance function.

SBSD's two predecessor agencies were the Virginia Department of Business Assistance, which housed general business assistance and hosted the Small Business Financing Authority, and the Department of Minority Business Enterprise, which handled certification designed to encourage supplier diversity in state procurement.

Two of the agency's key services are certifications to help businesses compete for public procurement dollars and business assistance services. SBSD handles certifications for the state's procurement programs and the U.S. Department of Transportation's Disadvantaged Business Enterprise (DBE) program. The agency also offers counseling and events to help encourage business growth and maintains the state's Business One Stop website, which is intended to be a single source of government requirements and information for businesses.

Services provided by business assistance agencies like SBSD have become increasingly important during the COVID-19 pandemic. Many small business owners have faced dramatic drops in revenue, which could continue with uncertainty surrounding the pandemic. As a result, more small businesses will likely seek SBSD services, and these services need to be administered effectively and efficiently.

SBSD has made significant operational and staffing improvements in recent years

SBSD has implemented several major operational improvements since it was created in 2014. SBSD implemented an electronic certification portal in 2017 that allows businesses to submit certification applications online, which helped staff automate the certification process and eliminate the previous backlog of nearly 2,000 certification applications. SBSD also streamlined the SWaM recertification process by requiring submission of fewer documents. SBSD is currently in the process of implementing a new IT system for its financing programs that will automate the application process and collect additional data for reporting. As a result of recent improvements, the majority of staff reported through a JLARC survey (sidebar) that the agency's processes, practices, and technology allow them to efficiently and effectively do their jobs. In addition, the Auditor of Public Accounts made no negative findings in its 2019 audit of SBSD's policies and procedures, information security, risk management and payroll function.

JLARC's survey of SBSD staff was sent to all SBSD employees. All employees responded to the survey. The survey asked questions about staff satisfaction with various aspects of their workplace and whether SBSD senior leadership effectively manages the office.
(See Appendix B for more information about this survey.)

A VSBFA loan officer left VSBFA on August 27, 2020, making one of VSBFA's three loan officer positions vacant. This position is essential to VSBFA's ability to administer its loan programs. As of early September, VSBFA had not yet advertised the position.

SBSD has also filled vacant staff positions, and its staff turnover rate is now relatively low. SBSD filled vacant certification and business assistance positions (sidebar). SBSD's staff turnover rate (including retirements) was 15 percent in FY20, down from 24 percent in FY17. SBSD's turnover rate is comparable to the median turnover rate across all agencies statewide (13 percent) and similarly sized state agencies (14 percent).

Staff are largely satisfied with key aspects of their job, their division, and the management of SBSD. Over 85 percent of staff reported being satisfied with their job and with SBSD/VSBFA as an employer through a JLARC survey. This is similar to or higher than other agencies recently reviewed by JLARC. Similarly, over 75 percent of staff provided positive feedback about the clarity of their job role, how their talents are used, the level of collaboration across and within divisions, SBSD's culture, and senior leadership's communication of agency goals and objectives to staff.

A few staff cited concerns related to their compensation and workload, but evidence suggests these staff concerns may not require immediate attention. Nearly 40 percent of staff disagreed that their salary is reasonable through a JLARC survey. Yet, only one out of 17 staff who left SBSD since 2017 cited compensation as a factor contributing to their decision to leave. SBSD previously had difficulty filling finance staff positions because the salaries for these positions were lower than comparable positions in the private sector, but SBSD raised the starting salary for these positions. In addition, staff in several divisions reported having too much work; however, staff only worked an average of 72 hours of overtime per person in FY19 (an additional one to two hours per week). This additional time was heavily concentrated among four staff (three in the certification divisions and one in the administration division worked more than 70 percent of the total overtime hours).

Certifications are timely, fair, and accurate, but businesses need clarity on document requirements and increased access to appeals

One of SBSD's primary responsibilities is certifying businesses so they can participate in the state's SWaM procurement program and federally funded state transportation projects. These certifications can help businesses that may face economic disadvantages compete for state procurements. To evaluate SBSD's certification function, JLARC reviewed the timeliness and fairness of the agency's certification process and the accuracy of certification determinations.

SBSD administers seven types of certifications and processes an average of 10,000 applications each year. Most certifications (91 percent) are for small, women-owned, and minority-owned (SWaM) businesses (Table 2-1). Some businesses are only certified as small and/or micro, but 55 percent of certified small/micro businesses also have a minority-owned or women-owned certification. About 45 percent of SBSD's certifications are new certifications that go through the full application process, and

55 percent are recertifications that go through a streamlined process. SBSD is the predominant business certification entity for Virginia state government, though other entities also offer some certifications necessary for state contracting (sidebar).

Other certification entities include the U.S. Small Business Administration (for 8a and women-owned businesses), WBENC (for women-owned businesses), and NMDSC (for minority-owned businesses). SBSD recognizes businesses with these certifications, but they cannot participate in the state's procurement set-aside. Federal certifications are free like SBSD's certifications, but WBENC and NMSDC charge between $350 and $1,250.

TABLE 2-1
SBSD offers four types of SWaM certifications and several others

Certification type	Certification requirements	# certified in 2019 [a]	% of certified businesses [b]
SWaM certifications			
Small	250 or fewer employees <u>or</u> $10M or less in gross receipts [c]	10,486	40%
Micro	25 or fewer employees <u>and</u> $3M or less in gross receipts [c]	6,058	23%
Minority [d]	Controlled, and at least 51% owned, by one or more minority individuals	3,843	15%
Women	Controlled, and at least 51% owned, by one or more women	3,616	14%
Other certifications			
DBE	Controlled, and at least 51% owned, by a socially and economically disadvantaged individual	2,066	8%
Disabled veteran [e]	Owned by a service-disabled veteran certified by the Virginia Department of Veterans Services	415	2%
Employment service organization	Small or micro business that provides community-based employment services to individuals with disabilities	12	0%
TOTAL		**26,496**	

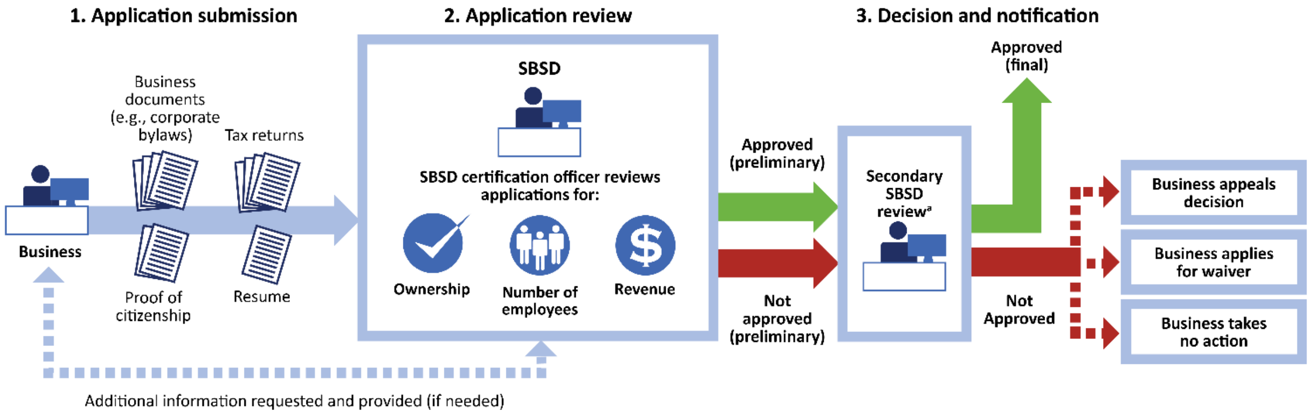
SOURCE: JLARC staff analysis of SBSD certification data (2019).
NOTE: [a] Businesses that hold multiple certifications are listed in each category. [b] Numbers do not sum because of rounding. [c] Annual gross receipts averaged over a three-year period. [d] Historically Black colleges and universities (HBCUs) can also be certified by SBSD and are counted in the minority certification category. Currently, three HBCUs are minority certified. [e] This is not a separate certification, but a "status" in the SWaM vendor database.

Some certifications, including "small" and "micro" certifications, make a business eligible to receive preferences in the state procurement process. According to SBSD, Virginia procurement law prohibits businesses with other certifications, including "women-owned" and "minority-owned" certifications, from receiving procurement preferences (sidebar), but agencies are encouraged to purchase from them to increase the state's SWaM spending. About 12 percent of the businesses that sold goods and services (including construction) to the state over the last decade were SWaM certified.

The **Virginia Public Procurement Act** requires race and gender neutral procurement practices unless the governor has authorized enhancement or remedial measures. A disparity study is currently under way to determine if race and gender conscious policies are necessary and appropriate.

SBSD's certification process generally follows three main steps: (1) application submission, (2) application review, and (3) decision and notification (Figure 2-1). The application submission step requires businesses to complete an application and submit documents such as tax returns, resumes, and business ownership documents through an online certification portal. Once the information is received, a SBSD certification officer reviews the application and decides whether to approve it. SBSD has an internal goal of 60 business days for processing SWaM applications, which is similar to other states and external certification entities. Federal DBE regulations require applications to be processed within 90 days of receiving the required information (unless businesses are notified of an extension).

FIGURE 2-1
SBSD's certification process has three main steps

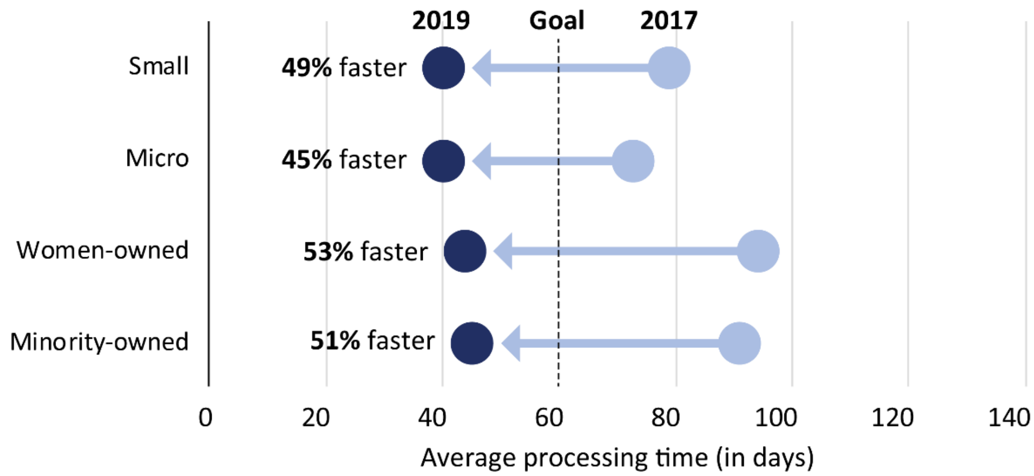


SOURCE: JLARC staff analysis of SBSD certification documents and interviews with SBSD staff.
NOTE: [a] For SWaM certifications, the SWaM director reviews all denials and a sample of approvals. The DBE division uses a process whereby each application is reviewed by another DBE staff member.

Certification processing times have decreased, but staff often need to follow up with businesses to request more information

SBSD is processing applications much faster than it used to and has reduced the number of applications that exceed its processing goals. The agency has primarily accomplished this through converting the application process to an online system and streamlining certain processes. Since 2017, average processing times have decreased across all certification types. For example, SBSD processed small business certifications 49 percent faster in 2019 than in 2017 (Figure 2-2). No small, micro, women-owned, or minority-owned certifications took longer than the 60-day goal to process, a substantial improvement from 2017 when 2,052 took longer than 60 days to process. SBSD also processes DBE applications faster than in 2017; the average processing time of 72 days in 2019 was quicker than the federal goal of 90 days. There are still, though, some DBE applications (99 in 2019) that take longer than the 90-day goal.

FIGURE 2-2
SBSD is processing certification applications much faster since 2017



SOURCE: JLARC staff analysis of SBSD data (2017-2019).
NOTE: The time it takes SBSD to process applications for disadvantaged business enterprises, service disabled veteran-owned businesses, and employment service organizations also decreased over time.

While applications are processed faster, certification staff often have to request more information or documentation during the application process, which frustrates businesses. There were almost 17,000 follow-up requests for 10,000 applications in 2019. SBSD follow-up requests are often needed because some businesses are unclear about the information they need to submit and the reasons for submitting it, according to staff. For example, business owners are required to submit their resume, which SBSD uses to validate the business owner's experience and control of the business. Business owners sometimes submit resumes without adequate information or detail for SBSD to use.

Some businesses expressed confusion about the information required for their certification application and dissatisfaction with follow-up requests from SBSD. About one-fourth of businesses that responded to a JLARC survey (sidebar) *disagreed* that it was easy to understand the information they needed to submit. Multiple businesses commented on the lack of clarity about required information or the extent of follow up. One noted: "It seemed that every time I submitted what was requested I got another request to submit something else, requiring more work." Another remarked: "More precise instructions about the documents and information needed for submission, and where to get them so they would be accepted, would be helpful."

SBSD staff have used various methods to try to inform businesses about the certification process and documentation requirements. SBSD offers SWaM certification workshops and one-on-one sessions to answer questions about certification, but few businesses participate in these events. SBSD's website has a list of documents that businesses are required to submit, but this list does not describe the purpose of each

JLARC's survey of businesses was sent to approximately 23,000 businesses that recently participated in SBSD programs; a total of 918 businesses responded (4 percent). The survey asked questions about the application process, approval decisions, effectiveness, and awareness of SWaM certifications, DBE certifications, financing programs, and business assistance programs. *(See Appendix B for more information about this survey.)*

Some entities encourage businesses to participate in precertification meetings, webinars, or other online information sessions before applying. The National Minority Supplier Diversity Council strongly encourages businesses to attend a monthly in-person precertification briefing 30 days before they apply to review the application process and documents required. Other states (including Florida, West Virginia, Illinois, and Washington) have videos on their websites to explain the certification process.

document. SBSD previously had a precertification webinar available online that covered the certification process and documentation requirements, but it removed the webinar because of a contractual issue with the webinar vendor.

To reduce the follow up required with businesses, SBSD should maintain precertification webinars or videos on its website. These should describe the SWaM and DBE application processes, with a particular emphasis on the documents required, the purpose of each document, and the specific information each document should include. Several other states and third-party certifiers offer (but do not require) businesses to participate in precertification webinars or videos (sidebar). SBSD could strongly encourage businesses to view the webinar(s) or video(s) before applying (or even require them to attest that they have viewed them as part of their application, depending on the additional burden that would add to the application process).

RECOMMENDATION 1
The Department of Small Business and Supplier Diversity (SBSD) should post precertification webinars or videos on its website that describe the application process, including the documents required, the purpose of each document, and the specific information SBSD requires in each document.

Certification process is rigorous and decisions are mostly accurate

SBSD's certification process has several elements in place to ensure that SWaM and DBE certification decisions are accurate and the process itself is fair to businesses. Businesses generally perceive the certification process as fair and determinations as accurate, according to a JLARC survey.

The process for *initial* certifications is designed to help SBSD make accurate decisions. A business must submit tax returns and business documentation (e.g., corporate bylaws) to prove it meets the necessary ownership, revenue, and employment requirements. SBSD staff review SWaM applications to reach an initial certification decision. The SWaM director then reviews all applications that were not approved and a subset of approved applications to ensure accuracy. DBE applications are reviewed independently by two certification staff members. When necessary, certification staff request and receive OAG assistance on unique or complex ownership situations.

SBSD's process for *recertifying* SWaM businesses also is designed to ensure accurate determinations, though it has been streamlined to ease the burden on businesses. Businesses are required to submit fewer documents to recertify because documents submitted during the initial certification process (including documents to prove the business meets ownership requirements) are retained in the online certification portal. To ensure the business still meets certification requirements during recertification, SBSD requires businesses to submit updated tax documents showing they still meet the size requirements and an affidavit verifying there have been no substantial changes to the business since initial certification.

To test the accuracy of SBSD's certification determinations, JLARC reviewed the reported employment and revenue of approximately 10,500 currently certified businesses and found that nearly 100 percent of those approved met the requisite employee or revenue thresholds. The review did find, though, 27 businesses (less than 1 percent) certified as micro that were actually larger than the micro business threshold. SBSD indicated that certification staff mistakenly applied the small business threshold—rather than the micro business threshold—to these businesses and are in the process of correcting the errors.

Certification process is fair, but appeals process is not available to all businesses and is not well understood

The certification process has several attributes to ensure fairness. SBSD gives businesses the opportunity to provide additional information during the application review process and does not deny an application outright if a business provides inadequate or incorrect information. Most certification applications are approved. The denial rate is less than 5 percent for SWaM certifications and about 10 percent for DBE certifications.

Businesses that are denied SWaM recertification or whose certification is revoked can appeal on the ground that SBSD has made a mistake in reaching its decision. SBSD has held appeals hearings for seven SWaM certification denials since mid-2019, none of which were overturned. (Appeals of DBE certifications are handled by the U.S. Department of Transportation, sidebar.)

The U.S. Department of Transportation handles DBE certification appeals. Denied firms may file an administrative appeal within 90 days from the date of denial. Only three DBE decisions out of 17 appeals (and nearly 3,200 applications) have been overturned in the past 10 years.

The appeals process has several positive aspects. A different SWaM certification staff member reviews appeals than the staff person who originally reviewed the application. Appeals are decided by an internal staff committee, which holds an appeals hearing where the business can present its case. Additionally, a business has the right to be represented by an attorney in the proceeding.

However, the appeals process is not available to businesses who are denied a new certification. This limitation appears to lack any policy basis and instead be for the purpose of limiting the SWaM certification division's workload.

SBSD should allow all businesses that have been denied SWaM certification—including businesses that have applied for a new certification—the opportunity to appeal SBSD's decision. Denials for new certifications should follow the same process as denials for recertifications. Businesses denied new certifications should be able to submit an appeal to SBSD's appeals committee and request an appeals hearing. Allowing new certification applicants the ability to appeal should not substantially increase the volume of appeals because of SBSD's low denial rate. Additional efforts to educate businesses about grounds on which they can make an appeal should further help to keep the number of appeals low. To implement this change, SBSD may need to coordinate with OAG staff and would need to amend its regulations as necessary.

RECOMMENDATION 2

The Department of Small Business and Supplier Diversity (SBSD) should amend its regulations to provide a right of appeal to small, women-owned, and minority-owned businesses who have been denied a new certification if their basis for challenging the decision is that SBSD made a mistake in denying their application.

In addition to the appeals process, SBSD has a waiver process for businesses whose applications were denied. This process is for businesses that have new information for SBSD to consider and want to reapply earlier than the required six-month waiting period. The SBSD director decides whether to grant a waiver.

Some businesses that are denied certification appear confused about the appeal and waiver processes. SBSD sends a letter to denied businesses that describes them, but the processes remain unclear to some businesses. For example, some businesses do not understand the basis on which they can appeal a determination or the difference between the appeal and waiver processes.

SBSD has made recent efforts to clarify the waiver and appeals processes, which seem to have reduced some of the confusion that businesses have experienced with these processes in the past. For example, SBSD had received no waiver requests until August 2019 when SBSD revised its denial letters to include the waiver option. As a result, at least 31 businesses submitted waiver requests from September 2019 to January 2020. Beginning in 2020, SBSD also clarified the reasons for which a business can appeal a denial with the 30 businesses that had appealed. After receiving this clarification, 23 of these businesses withdrew their appeal.

Despite SBSD's attempts to clarify these processes, some businesses remain confused about the reasons they can apply for an appeal or waiver. Consequently, SBSD should provide businesses with more information on the appeals and waiver processes to further reduce confusion and improve transparency. SBSD should clearly describe the reasons businesses can file an appeal or seek a waiver, eligible applicants, the differences between appeals and waivers, and the types of documentation businesses should provide in each case. This information should be more clearly described in SBSD's denial letters and added to SBSD's website.

RECOMMENDATION 3

The Department of Small Business and Supplier Diversity should clarify its appeals process by revising denial letters and adding information to its website to more clearly describe the (i) circumstances and grounds to appeal a certification decision or seek a waiver, (ii) processes a business must follow, and (iii) documentation to provide when filing an appeal or seeking a waiver.

Business assistance services are generally useful but could be more accessible and targeted

SBSD's business assistance division works directly with businesses to help them develop and grow. Staff provide three types of services: group events, one-on-one counseling sessions, and an intensive training program called Scaling4Growth (Table 2-2). The Code of Virginia requires SBSD to "provide technical and management assistance," which gives SBSD broad discretion over the topics covered and delivery method of services. Business assistance services are currently provided by five regionally based staff.

TABLE 2-2
SBSD offers several types of business assistance services

Program	Description	Participants (2019)
Events	Group training or networking events open to multiple businesses (e.g., webinars, conferences).	2,423
Counseling sessions	One-on-one consulting sessions where SBSD staff provide personalized assistance to businesses (e.g., help registering a business, pursing certification) in-person or through a phone call.	786
Scaling4Growth[a]	6-month business development course with ~ 16 businesses, a trained course instructor, and standardized curriculum.	32
Total		**3,241**

SOURCE: JLARC interviews with SBSD and analysis of SBSD data.
NOTE: Aside from Scaling4Growth, participation counts are non-unique. For example, a business attending two counseling sessions and one event will be counted three times. [a] Scaling4Growth was created by Interise, a national organization.

Events and counseling sessions are helpful, but use is hindered by lack of awareness and similarity to other programs

SBSD offers state contracting and general business information through its events and counseling sessions. The majority of SBSD events and counseling sessions cover state government contracting topics, particularly SWaM certification and the state's procurement system. For example, in a May 2020 counseling session, SBSD staff explained which documents a startup owner needed to submit for the SWaM certification application and how to search the state's procurement website to find contracts relevant to her industry.

SBSD also offered events and counseling sessions on general business topics, rather than Virginia-specific topics. In 2019, one-third of businesses attended events that covered general business topics such as sales, starting a new business, business financing, or succession planning. Similarly, 21 percent of the counseling sessions that SBSD conducted in early 2020 covered general business topics such as marketing, starting a new business, and business funding sources.

Businesses that participate in SBSD's events and/or counseling sessions generally consider them useful. About two-thirds of the businesses responding to JLARC's survey question on events and counseling sessions agreed the information provided was helpful. Several Virginia business groups interviewed spoke favorably about SBSD's events and counseling sessions and reported that these services are beneficial for their members.

Business participation in events and counseling sessions varies, but SBSD's business assistance services are generally under-utilized. SBSD staff report that events are rarely filled to capacity and that they do not maintain waiting lists. Lack of awareness and similarity to other services offered by larger organizations each contribute to low utilization.

Many businesses are unaware SBSD offers events or counseling sessions. Over half of businesses responding to a JLARC survey said they had not participated in SBSD's events or counseling sessions because they were unaware of or had insufficient information about them. The president of one business group said: "I don't think the word is out there about SBSD's business assistance services." Currently, marketing efforts are ad hoc and vary by region. For example, business assistance staff in some but not all regions regularly email previous business participants about upcoming events. However, SBSD recently started television advertisements and sending staff to business conferences to increase awareness.

Several federally administered or supported organizations are much larger than SBSD and provide similar services (Figure 2-3). For example, two SBA programs—Small Business Development Centers (SBDCs) and SCORE—provide a variety of general business assistance through statewide networks. These entities specialize in these services, and their staff have professional backgrounds or receive detailed training on these topics. Moreover, they have far greater capacity; the Virginia chapter of SBDC has 37 full-time equivalent staff, compared with SBSD's five. SBA's statewide SCORE and SBDC programs served six times as many businesses as SBSD through counseling and events in 2019.

FIGURE 2-3
SBSD and several federal providers offer general business assistance

	General business assistance		Contracting assistance		Certification assistance	
	Business creation	Business growth & development	Federal & local	State	Federal	State
Virginia SBSD	✓	✓		✓		✓
Small business development centers	✓	✓	✓			
SCORE	✓	✓				
Procurement technical assistance centers			✓		✓	

SOURCE: JLARC analysis of federal program websites and interviews with SBSD and federal program staff.
NOTE: Checkmarks indicate the provider's primary specialties.

SBSD could narrow focus of business assistance services and should improve its marketing and accessibility

SBSD could improve its business assistance by narrowing its focus to Virginia-specific content and increasing awareness and accessibility of its programs. SBSD business assistance staff indicated they specialized in their knowledge of state government, which was also the most common reason for receiving referrals. These staff are also uniquely positioned to assist businesses with state contracting and certification because SBSD also administers SWaM certifications and works with state agencies to increase SWaM procurement.

Several other states, such as North Carolina and Kentucky, have more intentionally identified roles for their business assistance staff that avoid overlap with other general business development programs (sidebar). Several national experts and Virginia business groups identified by JLARC also noted that helping businesses navigate state contracting and certification is SBSD's specialty. These groups said SBSD's state government expertise is not commonly available elsewhere, in contrast with general business development services offered by larger federal and other organizations.

North Carolina's staff only provide referrals and responses to quick turnaround inquiries, while **Kentucky**'s staff focus on entrepreneurs (not all small businesses).

SBSD could discontinue offering general business assistance that businesses can obtain in many other places and instead refer businesses to larger organizations with more scale and expertise. Doing so would allow SBSD to build on its core competency and comparative "niche" offering events and counseling sessions focused on Virginia-specific topics related to certification and contracting.

Policy options for consideration. Staff typically propose policy options rather than make recommendations when (i) the action is a policy judgement best made by elected officials—especially the General Assembly, (ii) evidence suggests action could potentially be beneficial, or (iii) a report finding could be addressed in multiple ways.

POLICY OPTION 1
The Department of Small Business and Supplier Diversity could refer businesses seeking general business assistance to larger federal programs and offer more events and counseling sessions on Virginia-specific certification and contracting topics.

If SBSD refined its offerings, the agency can then more effectively market and improve the accessibility of its programs. SBSD's marketing and public relations efforts should include the development of an integrated, written marketing plan for SBSD's business assistance. The plan should establish SBSD's strategy for increasing awareness of its programs among businesses and specify the types of businesses staff will contact, the marketing methods staff will use, and which staff will conduct the outreach. SBSD had planned to create a new marketing/public relations staff position in FY21, but the funding for this position was removed from the budget in August 2020. Current SBSD staff could draft a marketing plan, but additional staff may be needed to conduct planned business outreach activities as funding becomes available. To leverage existing state resources, the plan should cover key groups across the state that assist small and disadvantaged businesses (e.g., local chambers of commerce and startup support organizations). The Virginia Economic Development Partnership and North Carolina's economic development agency (which includes small business programs) both create annual marketing plans. VEDP's most recent plan identified industries and stakeholders to target, while North Carolina's plans specify outreach to localities with low use of its programs the prior year.

Other state agencies serving small businesses, such as the Virginia Department of General Services and the State Corporation Commission, have posted videos and explanatory documents online about website functions (e.g., registering a business name, submitting bids) in addition to having customer service staff for direct communication with businesses.

SBSD should also make these improved services more readily accessible to businesses. Experts emphasize the importance of making business assistance services available in a variety of platforms and formats to meet businesses' diverse preferences. Most of SBSD's services currently require real-time attendance to access information. For example, SBSD only shares training documents directly with event participants; it has not made these materials available on its website. Posting more information online as other state agencies do (sidebar) would maximize the number of businesses served and could decrease the time staff spend answering common questions.

RECOMMENDATION 4

The Department of Small Business and Supplier Diversity should improve business awareness of and accessibility to its business assistance events and counseling sessions through (i) developing and implementing a coordinated written marketing plan and (ii) providing on-demand written materials and recorded webinars on its website.

Scaling4Growth seems beneficial for businesses but is not widely available

In contrast with SBSD's events and counseling sessions, Scaling4Growth is a longer-term, intensive program. Scaling4Growth is administered by SBSD, but services through the program are provided through a private company under contract to SBSD.

Participating businesses provided positive feedback about SBSD's Scaling4Growth program. All previous or current Scaling4Growth participants (11) who responded to a JLARC survey viewed the program as useful and informative and expressed overall satisfaction. Metrics tracked by Scaling4Growth indicate preliminary evidence of benefits for businesses that participate in the program. For example, businesses that participated in the program in 2018 reported creating three new jobs and growing their revenue by 44 percent, on average. (No analysis has been done to determine whether this growth was the result of Scaling4Growth or how Scaling4Growth participants' growth compares to other businesses.) The national organization overseeing Scaling4Growth programs (Interise) views SBSD as a committed and successful administrator. One participant remarked that the Scaling4Growth "program has helped me become better focused and goal oriented for successful outcomes. We are now in a position to actually push our own growth."

Only a small number of businesses have been able to participate in Scaling4Growth because of the program's location and limited capacity. SBSD is currently the only entity that administers the Scaling4Growth program in Virginia. SBSD has hosted Scaling4Growth in three regions since it began in 2016. It was held four times in the Richmond area, once in Hampton Roads, and once in Northern Virginia. Additionally, each six-month cohort is capped at 16 businesses. The COVID-19 pandemic prompted several temporary changes to the program. For example, the seventh and eighth cohorts have been offered virtually and statewide. SBSD plans to continue this approach with the next cohort to ensure businesses' safety during the pandemic.

Businesses' ability to participate in Scaling4Growth could be improved if SBSD offered the program statewide on a permanent basis. SBSD could accomplish this by rotating locations of each cohort or by continuing to offer the program virtually. If the number of qualified businesses who apply for Scaling4Growth exceeds the number of cohort spots, SBSD could also consider operating two cohorts concurrently. This expansion could increase the cost of Scaling4Growth by about 40 percent. Scaling4Growth has a much higher cost-per-business than SBSD's counseling and events because SBSD pays a third party to facilitate the program.

POLICY OPTION 2
The Department of Small Business and Supplier Diversity could offer the Scaling4Growth program in each region of the state and to more businesses.

Virginia's "Business One Stop" website is not comprehensive and lacks key functionality

Starting a business requires registrations and applications with several government entities. Businesses can benefit from a "one stop" resource for all their registration requirements, which can help them understand and comply with governmental requirements for registration, according to national experts and Virginia business groups. Without a one-stop resource, businesses may attempt to complete actions in the wrong order (e.g., registering for a tax ID before receiving a State Corporation Commission ID), overlook applicable permits, or make detrimental decisions such as selecting a costlier business structure than needed.

Of **Virginia's six neighboring states** and the District of Columbia, only two states operate one stops for new business registration that incorporate multiple agencies. Kentucky's One Stop includes two state agencies, and West Virginia's One Stop includes three state agencies; neither are integrated with local or federal agencies.

SBSD is responsible for overseeing the state's Business One Stop (one stop) website, which is intended to serve as a "single access point" for starting a new business. Virginia is one of a few states in the region that attempts to provide a comprehensive website for required business registrations (sidebar). One stop websites are designed to simplify business startup requirements, but they are complex to develop and can be resource-intensive to adequately maintain over time.

Business One Stop website fulfills few of its statutory requirements and lacks functionality

SBSD is not fulfilling most statutory requirements for Virginia's Business One Stop (Table 2-3). The Code of Virginia outlines several required functions that the Business One Stop does not offer, one of which is an in-house "comprehensive" application for new business registration (sidebar), enabled by SBSD "exchanging" information with other agencies. Rather than meeting the requirement as intended, the website merely provides links to other agencies' websites. Businesses must start over at each agency website, requiring a business to interact separately with each website and provide similar or identical information across the various sites.

New businesses may be required to register with multiple government agencies: the federal IRS, several state agencies (State Corporation Commission, Department of Taxation, relevant regulatory agency, such as the Department of Professional and Occupational Licensing) and local government (for zoning and business permit), depending on the businesses' size, industry, and other characteristics.

Some of the site's information sources are incomplete, absent, or are not adequately maintained. For example, the link to the Department of Professional and Occupational Regulation licensing has not worked, and the local governments contact list for permitting was blank as of June 2020. (SBSD fixed both of these problems as of September 2020, but several other links remain inaccurate.) The website currently references some resources at agencies such as the Department of Environmental Quality and SBA, but omits programs such as VEDP's Virginia Jobs Investment Program, the Center for Innovative Technology's equity funds for startups, and the Virginia Department of Housing and Community Development's Virginia Main Street program. Resource links are categorized by business growth stage, but many do not reference specific programs. Additionally, the website contains some outdated language (e.g., references to SBSD's previous agencies).

Comparatively few businesses use the website. Business groups and state agencies described the Business One Stop as "cumbersome" and "not very intuitive," and at least two SBSD staff members refrain from referring businesses there. In 2019, only 2 percent of businesses (2,111) began registering their businesses through the Business One Stop out of the 93,065 businesses that registered with the state.

SBSD leadership acknowledge the lack of compliance and indicated they have chosen to focus on improving other SBSD programs before addressing issues with the Business One Stop. SBSD's business assistance division is technically responsible for the website, but no single SBSD employee has full responsibility for it. Rather, responsibilities are spread across staff in several divisions. This lack of designated responsibility has likely contributed to a lack of focus on fulfilling legislative intent.

TABLE 2-3
Business One Stop is not fulfilling statutory requirements

Code of Virginia requirement	SBSD fulfillment
Create a "comprehensive application" containing basic information (e.g., address) thus "eliminating the need to repeatedly provide" this information	○
For approved applications, provide a "comprehensive permit that incorporates the endorsements for individual permits"	○
"Develop and administer a computerized system program capable of storing, retrieving, and exchanging permit information"	○
Provide "a customized to-do agency checklist" with applicable applications and government requirements [a]	○
"Allow a business owner to submit electronic payment" for application, with an exemption for veterans	●
Serve as a source of "information and pertinent factors of interest and concern" for businesses	◒

SOURCE: JLARC analysis of §§ 2.2-1617, 2.2-1605, review of SBSD website, and interviews with state agencies.
NOTE: Statutory requirements for the Business One Stop website were implemented in 2008, although the exact language has changed over time. [a] House Bill 1221, which passed in 2020 and takes effect in FY21, specified the following government requirements to be included in this list: "sales tax and unemployment tax requirements, workers' compensation insurance requirements, and postings required by the Virginia Department of Labor and Industry and the U.S. Department of Labor."

SBSD is in the process of attempting to improve the Business One Stop website and fulfill legislative intent. However, doing so likely will require substantial resources. SBSD receives $500,000 in appropriations annually for the Business One Stop and currently has $705,000 in additional funding from user fees that can be used for improvements. Additional funding may be needed, as an informal quote obtained from a vendor that administers another state's Business One Stop website estimated that improvements to Virginia's website could cost several million dollars per year.

SBSD has begun working with the website's new host vendor and state agencies to identify flaws with the website. The agency has also drafted an improvement plan; however, the plan does not include improvements needed to fully comply with the Code of Virginia. For example, the plan does not commit to covering all professional and local licenses or to providing businesses with a "customized to-do" list of government requirements. SBSD agency staff have said they plan to integrate State Corporation Commission (SCC) registrations into the Business One Stop, but it is not explicitly specified in their written improvement plan. Recent legislation directed the Business One Stop and SCC to adapt their systems to exchange information electronically (sidebar).

SB 1137 (2013) required full integration between the One Stop and State Corporation Commission's "processes and forms" by June 2018. **HB 237 (2018)** extended the previous deadline for full integration to January 2020.

SBSD needs to work with the General Assembly to determine which of the current legislative requirements for the One-Stop remain legislative priorities and the resources needed to meet those requirements. The General Assembly may wish to require SBSD to submit an improvement plan that includes the following for each statutory One-Stop requirement: (i) the purpose and benefit to small businesses; (ii) the cost of fully implementing and maintaining the requirement; (iii) any additional resources (both funding and staff) needed to implement and continue to meet the requirement; and (iv) SBSD's recommendation whether the requirement should be kept. SBSD may need to issue a Request for Information to obtain cost estimates for meeting the various requirements.

RECOMMENDATION 5

The General Assembly may wish to consider including language in the Appropriation Act directing the Department of Small Business and Supplier Diversity (SBSD) to develop and submit a detailed improvement plan for the Business One Stop. The plan should include the following for each statutory requirement: (i) a description of the purpose and benefit to small businesses, (ii) the cost of fully implementing and maintaining the requirement, (iii) the resources needed beyond those currently available to implement and maintain the requirement, and (iv) SBSD's recommendation as to whether the requirement should be kept. The plan should be provided to the House Labor and Commerce, and Appropriations committees; and Senate Commerce and Labor, and Finance and Appropriation committees no later than November 1, 2021.

3 Virginia Small Business Financing Authority

The Virginia Small Business Financing Authority (VSBFA) is technically part of SBSD but operates somewhat separately from the rest of the agency. VSBFA has its own executive director (who reports to the SBSD director) and a board that makes final decisions about the agency's financing programs. VSBFA consists of eight staff, including the executive director, a chief credit officer, three loan officers, and three accounting and administrative personnel.

VSBFA operates several financing programs to support businesses. Three of VSBFA's programs provide *direct loans*, which are underwritten and administered by VSBFA staff (Table 3-1). VSBFA also provides three *support loan* programs, through which VSBFA encourages banks to loan to small businesses by committing financial assistance to the banks if the loans are not repaid. VSBFA also offers *grants* and *conduit bonds*. All of VSBFA's programs serve small businesses except conduit bonds, which primarily serve large businesses and large non-profits (sidebar). (For more information about VSBFA's individual financing programs, see Appendix E.)

VSBFA plays a facilitating role for the conduit bond program, in which private bond purchasers provide funding to the business or nonprofit who repays them over time. VSBFA's primary bond responsibilities include hosting public bond hearings during VSBFA board meetings and approving the bonds. VSBFA facilitated three conduit bonds in 2019 totaling $658 million.

TABLE 3-1
VSBFA primarily provides direct and support loans, and grants

Program	Number of businesses served [b] (FY19)	Amount of funding used ($ Thousands)
Direct loans	***15***	***$965***
Microloan	12	198
Economic Development Loan Fund	2	742
Child Care Financing Program	1	25
Support loans	***9***	***2,039***
Loan Guaranty	5	1,698
Capital Access	4	4
Cash Collateral	0	337
Grants	***44***	***830***
Small Business Investment Grant	41	824
Small Business Jobs Grant [a]	3	6

SOURCE: JLARC analysis of VSBFA data (FY19).
NOTE: Programs as shown above do not distinguish by funding source. For example, the Economic Development Loan Fund includes federal and state-funded loans. [a] The Small Business Jobs Grant was eliminated during the 2020 GA session through House Bill 1505. [b] The number of businesses served reflects the number that were approved for funding (due to limited data), which can differ from the number that received funding.

VSBFA exists "to provide financial assistance to small and other eligible businesses in the Commonwealth by providing loans, guarantees, insurance and other assistance to

VSBFA is now responsible for two new COVID relief programs that will award $80.3 million to businesses. Most funding for these programs was provided through the federal CARES Act.

The **Rebuild VA** grant program will provide $70.7M to businesses in non-essential industries that have less than $1.5 million in revenue and 25 or fewer employees. VSBFA began accepting applications in August 2020.

VSBFA also received $10.2M for a **COVID loan program**. VSBFA is currently designing the program and is not yet accepting applications as of early September.

small and other eligible businesses, thereby encouraging the investment of private capital in small and other eligible businesses in the Commonwealth." The General Assembly created the VSBFA because small businesses often face difficulty receiving financing since they are riskier investments than larger businesses, and small loans are not as profitable for banks. Financing challenges can be exacerbated for small businesses that are women- or minority-owned, as these businesses may lack established connections to capital. In addition to VSBFA, the federal government, some local governments, and nonprofit organizations administer financing programs for small businesses.

VSBFA's financing programs have become especially important to assist small businesses that have been negatively affected by the COVID-19 pandemic. Many businesses are currently experiencing unprecedented operational challenges, such as increased costs or decreased consumer demand, and may need additional capital to address these challenges. Experts predict commercial banks may become more restrictive with business lending, making VSBFA a critical funding source for small businesses. In this environment, it is especially important for VSBFA to operate its financing programs efficiently and effectively, particularly as staff begin administering two new COVID relief programs (sidebar).

Operational shortcomings have prevented VSBFA from fully achieving its mission

VSBFA has not been meeting most key criteria necessary to effectively administer financing programs and meet its legislative mission (Table 3-2). VSBFA is not ensuring that an adequate portion of available funds are loaned to businesses or setting goals for utilization. VSBFA also lacks written policies that establish appropriate risk standards for loans and a standardized tool for staff to consistently assess applicants' repayment risk, which has impeded full achievement of VSBFA's mission to serve small businesses most likely to face financing challenges.

TABLE 3-2
VSBFA is not meeting most criteria for effective program administration

Criteria	VSBFA fulfillment
Adequate proportion of available funds loaned to businesses	○
Goals for and tracking of loan and grant program utilization	○
Regular targeted outreach to businesses and banks	◒
Written policies that establish appropriate risk standards for loans	○
Standardized tool to consistently assess applicant risk	○
Regular monitoring of processing times, loan decisions, and outstanding loan health	○
Adequate board expertise to evaluate all loan applications	◒

SOURCE: JLARC interviews with experts and VSBFA staff, review of literature on small business financing programs and VSBFA policies.

The lack of consistent leadership likely contributed to VSBFA's operational shortcomings. The authority has had five permanent or acting executive directors in three years. After VSBFA's long-time executive director departed in 2017, the agency's chief credit officer became the acting director for nine months (while also still performing the chief credit officer duties). The next two executive directors served for short time periods; a permanent executive director served from June 2018 to July 2019, while an acting executive director served from August 2019 to September 2019. Turnover in the executive director position left VSBFA without consistent leadership and hindered any potential initiatives to increase loan utilization and develop standardized policies. Several staff emphasized the adverse impact of inconsistent leadership, with one noting "this revolving door of leadership has caused the team to continually reset priorities." VSBFA's current executive director was hired in October 2019 and has been in the position for nearly one year. He has a lending background and is viewed positively by staff and board members.

JLARC's 2018 "Workforce and Small Business Incentives" made seven recommendations related to VSBFA. Several have been partially implemented or fully implemented, and two are not yet implemented: (1) establishing a scoring system for the Small Business Investment Grant, and (2) establishing job creation standards for certain VSBFA loans. *(For more information see Appendix C.)*

VSBFA programs are beneficial, but low lending levels limit assistance provided to businesses

JLARC's 2018 review of "Workforce and Small Business Incentives" found that VSBFA's *grant* programs had a moderate benefit to the state economy (e.g., growth in jobs and income), and its *loan* programs (even though they are not targeted to high growth businesses) have moderate to high economic benefit when considering the relatively low cost to the state (sidebar). The VSBFA loan programs can play a key role helping businesses receive loans they otherwise would not have been able to obtain. The 2018 review also noted that VSBFA loan programs appeared to be warranted in Virginia, particularly during and immediately following the Great Recession. The need for these programs may be greater as the economic effects of the COVID-19 pandemic continue to be realized.

During this 2020 review, stakeholders similarly pointed to the positive impact VSBFA programs can have. All businesses responding to a JLARC survey reported that receiving the funding was helpful (sidebar). Stakeholder groups and state agencies described VSBFA staff as knowledgeable and responsive. Additionally, several banks highlighted the ease of VSBFA's paperwork and processes compared with financing programs from the U.S. Small Business Administration (SBA).

JLARC survey of businesses was sent to approximately 23,000 businesses that recently participated in SBSD programs; 918 businesses responded (4 percent). The survey asked questions about the application process, approval decisions, effectiveness, and awareness of SWaM certifications, DBE certifications, financing programs, and business assistance programs. *(See Appendix B for more information about this survey.)*

Public entities like VSBFA, which provide gap financing to small businesses, must balance two goals: helping small businesses access capital and being prudent stewards of public funds. Public financing authorities may find it difficult to achieve both goals because one can jeopardize the other (sidebar). Government-sponsored small business loan programs typically consider higher-risk loans than those approved by commercial banks. However, avoiding unreasonably high-risk loans is necessary to protect state dollars and ensure that outstanding loans are repaid to fund future loans.

Other public finance programs have struggled with adequately deploying funding. A JLARC review in 2000 found that the Virginia Housing Development Authority held overly high fund balances because it was retaining funds at the expense of making loans to households not served by the private market.

VSBFA did not award most available loan funding to businesses in recent years, and loan applications have declined

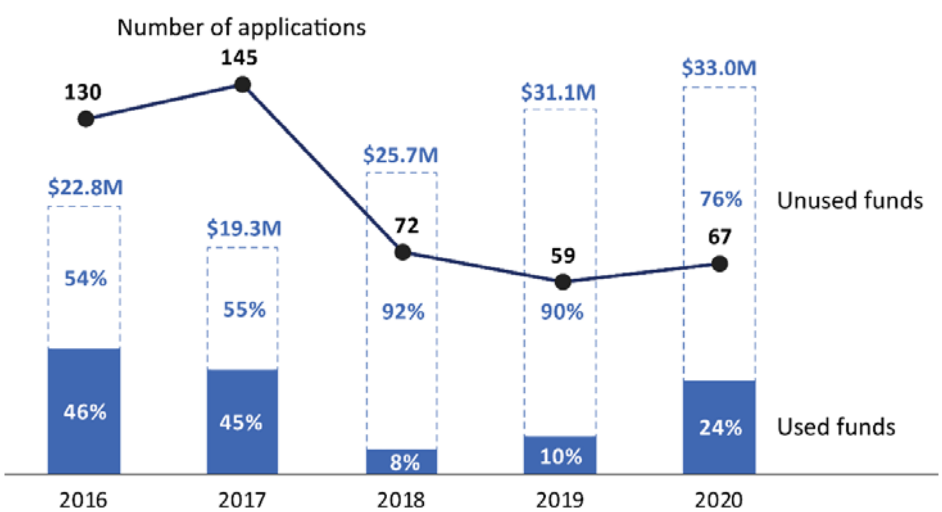
The Code of Virginia tasks VSBFA with providing financing, yet in 2018 and 2019 the authority used only a small amount of available funding. VSBFA's loan programs used only 10 percent of their available funds in FY19, leaving 90 percent of available funding unused (Figure 3-1). Similarly, VSBFA used only 8 percent of its available funds in 2018. These unused loan funds—$28 million in total—represent a lost opportunity for businesses. Usage has begun to rise in 2020 but is still comparatively low at 24 percent.

Usage varied by loan program, but three programs used less than 5 percent of available funding in FY19. (See Appendix E for more information about funding utilization for specific programs.) Low utilization was reported as a "weakness" by the federal U.S. Economic Development Administration (EDA) during its most recent review of VSBFA's EDA program. Utilization of grant programs has been mixed (sidebar).

The recently eliminated **Small Business Jobs Grant** was not heavily used in recent years. In contrast, the **Small Business Investment Grant** was fully used in FY18 and FY19 after its eligibility criteria was broadened by the General Assembly.

Over the last few years, the trend in loan applications has mirrored the trend in utilization (Figure 3-1). VSBFA received 145 applications in 2017, but applications steadily declined the next two years, with applications dropping by half from 2017 to 2018. Applications rose slightly in 2020, but remain far below 2016 and 2017 levels.

FIGURE 3-1
VSBFA's utilization rate and number of applications received have declined in recent years



SOURCE: JLARC analysis of VSBFA loan disbursement data, annual financial balance sheets, and applications data.
NOTE: Years shown are state fiscal years. Amounts reflect the amount of funding loaned out of the amount of funding available, by program. Utilized amounts do not account for funding that VSBFA has committed to providing in the future but has not yet disbursed because commitments are subject to change. (See Appendix B for more information on utilization and application receipt calculations and Appendix E for more information about utilization levels for specific programs.) Favorable credit conditions may have contributed to declining number of applications.

Credit conditions, which have been favorable in recent years, can have a big impact on the need for government financing programs. Fewer small businesses need government financing programs when financing is readily available through private lending markets. The number of businesses unable to obtain financing decreased 17 percent between FY16 and FY19, according to the Federal Reserve's annual small business credit survey (sidebar). However, VSBFA experienced a much larger decrease in lending during the same time period; loan applications decreased 53 percent between FY16 and FY19. The magnitude of VSBFA's decrease suggests additional factors beyond credit conditions.

The annual **Federal Reserve Small Business Credit Survey** uses a national non-representative sample of businesses with fewer than 500 employees. Businesses "unable to obtain financing" consists of those awarded none of requested loans or some of requested loans, or those that did not apply for a loan because they assume they will be denied.

Even with favorable credit conditions, though, many small businesses still need help accessing financing. The same Federal Reserve survey also found that 30 percent of small businesses nationwide reported needing financing in FY19. Demand for small business financing exists even with positive credit conditions because some barriers to obtaining financing are not dependent on the economy. For example, private banks may not provide small business loans because loans for small amounts are unprofitable or the businesses lack sufficient collateral. In late 2019 and early 2020 (prior to the COVID-19 pandemic), access to capital was cited as a top challenge for small businesses by several Virginia business organizations.

Lack of cohesive outreach leads to low awareness among businesses and banks

VSBFA staff engage in outreach efforts, but their approach is not well planned or coordinated. VSBFA requires staff to conduct a minimum number of outreach events annually, and staff report on their outreach weekly, such as attending business events and reaching out to banks. However, VSBFA has not established a cohesive plan that identifies specific business groups or banks to contact. Without a formal plan, staff conduct outreach ad hoc and largely work with the same businesses and banks.

Effective marketing to businesses who may need loans is essential, but many businesses are unaware of VSBFA. An evaluation of federally funded loan support programs highlighted "effective, focused, and continuous marketing efforts" as "critical" to success. Of businesses that participated in a SBSD program but never applied for VSBFA financing, 51 percent cited lack of awareness or information about VSBFA's programs as the reason. Business groups interviewed by JLARC staff were often unaware of VSBFA's loan programs. Moreover, a substantial portion of VSBFA's loans go to businesses that have already received VSBFA loans. Since FY15, at least 22 percent of VSBFA's direct loans were to businesses that had previously received VSBFA loans.

Effective marketing to banks is also essential. Three of VSBFA's six loan programs depend on bank participation, and banks play a key role in referring businesses they are unable to serve to VSBFA. Banks interviewed by JLARC staff emphasized the need for VSBFA to regularly communicate with them so they understand and remember to use its programs. In FY19, VSBFA approved support loans through only five of 127 (4 percent) banks in the state.

SBSD's agency wide marketing plan (discussed in Chapter 2) should specifically address VSBFA's programs. The plan should specify which entities staff will contact, covering key groups across the state that assist small and economically disadvantaged businesses. For example, VSBFA staff should market loan programs to local economic development entities (whose partnerships are crucial to the EDA loan program) and community banks who are not federal SBA lenders.

Recent staffing shortages contributed to low lending levels

Staff shortages contributed to low usage of VSBFA loan programs in recent years. Staff vacancies track closely with decreases in loan utilization over time. In 2016, VSBFA used 46 percent of its funding. But for the next two years, staff shortages hindered its ability to make loans because it had only one loan officer. Two of VSBFA's three loan officer positions were vacant for extended periods of time; one was vacant from October 2017 to September 2019 (23 months) and the other was vacant from September 2018 to February 2020 (18 months). All three loan officer positions were filled for only six months, because one loan officer left in August 2020. This new vacancy is likely to reduce the number of loans VSBFA is able to make, unless it is quickly filled. SBSD previously had difficulty filling loan officer positions because the salaries were less than for comparable positions in the private sector, but SBSD raised the starting salary for loan officers.

VSBFA management and board do not set loan and grant utilization goals or sufficiently track lending levels

VSBFA does not set performance goals for loan and grant utilization rates. Without goals on loan program usage, the agency cannot clearly identify the extent to which programs are underutilized.

VSBFA does not currently track loan program utilization of available funds. While administrative staff track disbursements for new loans and repayments of outstanding loans, this information is only used for internal accounting purposes. VSBFA does not track the amount of remaining funding available for new loans, a metric that is essential to strike the appropriate balance between achieving its mission to serve small businesses and maintaining an adequate reserve.

Several board members and VSBFA staff said that utilization goals and loan usage data would help inform their work. One explained that the amount of funding remaining for a specific program could assist in deciding whether to approve or deny applications when the decision is difficult. Another stated:

> "It's very concerning to me that we have funding sitting there that is not being utilized…If I knew how much we had to lend, our outreach activity would be much more assertive."

Several agencies similar to VSBFA regularly track their loan and grant usage, and some establish goals for using a specific percentage of available funding. For example, the Virginia Resources Authority annually calculates the percentage of available funds it uses for certain loan programs and aims to loan 100 percent of available funds. Similarly, the Center for Innovative Technology (a state-funded nonprofit) sets annual goals for the amount of funds awarded by its startup equity programs, and its board reviews progress against these goals and remaining funds quarterly. In addition, VSBFA should regularly monitor economic conditions that could affect demand for VSBFA's loan programs, as recommended by JLARC's 2018 review of economic development incentives.

RECOMMENDATION 6
The Virginia Small Business Financing Authority Board should set annual utilization goals for loan programs that consider factors such as credit conditions and available loan funding.

RECOMMENDATION 7
The Virginia Small Business Financing Authority Board should direct staff to regularly track and annually report the percentage of loan and grant program funds that are utilized or awarded.

VSBFA could increase use of microloan by allowing startup businesses to participate

VSBFA is the only state agency that offers loans specifically to startup businesses, but businesses less than two years old are not eligible for its microloan program. (The Center for Innovative Technology makes equity investments in new businesses but only in certain industries.) VSBFA's other programs served 76 startups (27 percent of businesses receiving financing) in the last five years, but these programs tend to provide higher loan amounts than the microloan. Other similar loan programs, such as SBA's microloan program and the only neighboring state with a direct microloan, are available to startups. Eligibility does not mean automatic approval, as startups need to demonstrate sufficient repayment likelihood in the same manner as other applicant businesses.

Startup businesses find it particularly challenging to obtain financing from the private sector, according to national experts and Virginia business groups, such as the Virginia Chamber of Commerce. Startups lack the years of tax and financial records that banks use to assess businesses and are likelier to fail than long-established businesses. VSBFA could broaden the eligibility criteria for its microloan program to allow startups to participate. Including startups would help VSBFA increase the support it provides to businesses in need and may also enable staff to fully use microloan funds. To avoid overly high exposure to risk, VSBFA could review additional information to assess startups' likelihood of repayment. For example, Center for Innovative Technology staff research the startup's industry and the owners' backgrounds. To further reduce risk, VSBFA could first extend microloans to a small number of startups through a pilot program and report the results of the pilot, including any delinquencies or defaults, to the VSBFA board after all the pilot loans end (maximum of four years).

Policy options for consideration. Staff typically propose policy options rather than make recommendations when (i) the action is a policy judgment best made by elected officials—especially the General Assembly, (ii) evidence suggests action could potentially be beneficial, or (iii) a report finding could be addressed in multiple ways.

POLICY OPTION 3

The Virginia Small Business Financing Authority could expand microloan program eligibility to startup businesses through a pilot program for the purpose of assessing the demand for, and viability of, offering such loans.

VSBFA lacks lending policies that set appropriate risk standards and adequate loan oversight

An effective loan program requires sound and clearly defined risk management policies, an effective risk assessment tool to evaluate loan applications, and reliable loan oversight. For public loan programs like those administered by VSBFA, risk management policies should give programs the flexibility to extend loans to higher risk applicants who are not able to qualify for loans in the private market. A program also needs to be able to systematically assess the risk of each loan application. To mitigate the risk of loan defaults, outstanding loans should be monitored to ensure that proactive steps can be taken to prevent or minimize repayment losses.

Lack of formal loan risk policies and risk assessment tool have contributed to confusion and overly conservative loan decisions

The VSBFA board, leadership, and staff share a general understanding of the agency's mission and the factors that should be considered in assessing risk. However, VSBFA lacks clear written policies or a defined risk tool for systematically assessing and approving loan applications.

Without standard definitions of acceptable risk to govern loan decisions, VSBFA has tended toward caution, with a loan default rate closer to private banks than federal financing programs. Nearly all of the businesses that received loans repaid their loan in full between 2015 and 2020, and VSBFA lost only $619,000 through loan defaults across all loans. In FY19, the loan programs lost 1 percent of the amount of active loans. This rate is substantially below one federal benchmark and close to that of private banks. The federal EDA sets a maximum loss threshold of 10 percent for the loan program it funds with VSBFA and with other lenders. The average private bank reports losses of 0.25 percent.

VSBFA's comparatively few loan defaults or losses suggests that the authority could be making loans to businesses with a higher default risk. Because of its mission to provide gap financing to businesses who may not be eligible for commercial loans, VSBFA should be more risk tolerant than private banks. Four of five banks interviewed by JLARC described VSBFA as too risk averse, which undermines the value of partnering with VSBFA on higher risk loans. VSBFA staff cited several instances when they deemed a loan sufficiently creditworthy, only to have the loans ultimately disapproved by management for being too risky.

In addition to contributing to an overly risk averse approach, the lack of standard risk policies also contributes to confusion by banks. One bank noted that "after several unsuccessful attempts to partner, I just gave up on having the VSBFA as an option." Another wrote to VSBFA that:

> "In the last couple of years I have referred three borrowers to your group, all of which were declined due to poor credit quality … The last deal we referred, you declined because the credit quality was too good … I am very confused about your goals in helping small business."

VSBFA also lacks a standardized risk assessment tool to collect information and assess the potential risk of loan applicants. Staff analyze loan applications and sometimes conduct additional research, but loan decisions are left to the subjective judgment of the loan officers. According to one expert, "that is a problem...There are all sorts of opportunities for bias to creep in."

Without standard risk policies and an assessment tool, loan officers cannot predict whether their loan application decisions will be approved or denied by management. This unpredictability has contributed to low staff morale and made it harder to maintain good working relationships with banks.

Other state agencies and private banks use risk assessment policies and tools to standardize financing. For example, the Virginia Economic Development Partnership has a tool to assess the risk of businesses that apply for economic development grants. The Virginia Resources Authority has a tool to annually assess the risk of localities with outstanding infrastructure loans. Most commercial banks, including some small Virginia banks, also use risk assessment tools to quantify applicants' risk level and policies to govern their decision-making. These policies and tools add consistency to approval decisions, while retaining the flexibility to incorporate staff expertise and extenuating circumstances.

VSBFA should better define its risk tolerance for loan programs through written risk policies that govern lending decisions. Policies should articulate how much risk VSBFA is willing to take to provide gap financing to businesses and circumstances where providing financing would not fulfill this mission. Supplemental policies should also be developed that specify the impact of other factors on loan decisions, such as the number of jobs created or location in an economically distressed region.

These policies should be developed in conjunction with a designated risk assessment tool. The tool should list the categories used to assess an individual business's repayment risk (e.g., cash to debt ratio, credit score) and result in an aggregate risk rating.

The risk assessment tool would likely include many of the same assessment categories across VSBFA's loan programs, but this tool should also contain additional categories as needed for specific programs (such as adding an assessment of the business plan for microloan startup applicants).

Given the VSBFA board's role in the approval of loan applications, it needs to play an active role in the development and approval of the risk policies and an assessment tool. VSBFA could consider seeking outside expert assistance to select or develop its risk assessment policies and tool.

RECOMMENDATION 8
The Virginia Small Business Financing Authority should develop, submit to the Virginia Small Business Financing Authority Board for consideration and approval, and then implement internal policies that will govern loan application decisions and establish an appropriate risk standard that adequately reflects the public mission of the authority.

RECOMMENDATION 9
The Virginia Small Business Financing Authority should develop, submit to the Virginia Small Business Financing Authority Board for consideration and approval, and then implement a risk assessment tool to calculate the potential risk of loan applicants.

Monitoring outstanding loans would help VSBFA prevent and prepare for losses

As VSBFA sets lending standards and potentially provides riskier loans, the authority needs to better monitor outstanding loans. VSBFA is not regularly monitoring outstanding loans, which can help loan programs reduce the risk of financial loss, according to the FDIC and a national association for economic development financing. Monitoring consists of reviewing businesses' repayment history and information about their financial strength, such as financial statements, to identify and proactively help struggling businesses. Loan administrators can take proactive actions such as reducing the interest rate, connecting businesses to technical assistance, or preparing for default by reassessing the value of collateral. Banks typically review outstanding loans on a regular basis, focusing on loans above a certain size and with higher risk.

VSBFA regularly monitors businesses' monthly repayments but does not currently monitor the financial health of businesses with outstanding loans. Of the three direct loan programs, VSBFA staff collect financial documents for outstanding loans in one program, but do not use this information to identify problems that could adversely affect businesses' ability to make loan repayments. For the three loan support programs, VSBFA relies on banks' monitoring of businesses but explicitly requires banks to notify VSBFA of major adverse changes in borrowers' conditions for only one of these programs. Moving forward, more businesses will likely have difficulty making loan payments because of the COVID-19 pandemic. Furthermore, the CARES Act is funding two new programs for VSBFA to administer. Therefore, the need for proactive monitoring of outstanding loans is especially important now. VSBFA staff have expressed concern with the current lack of monitoring of outstanding loans. One noted that "we don't know where our landmines in our portfolio are right now. That concerns me."

VSBFA should implement an outstanding loans monitoring process to proactively identify loans with a significantly deteriorating likelihood of repayment. For direct loans, VSBFA's monitoring process could initially reflect the risk level assigned to loans at approval, and loan officers could update risk levels based on the results of periodic reviews of business health. For support loans, VSBFA should require banks to report loans under specified circumstances, such as those identified by bank staff as financially deteriorating or repeatedly delinquent. The results should be provided to the board regularly. Three members said they wanted to see more loan program performance metrics. The Virginia Resources Authority has a monitoring process that VSBFA could use as a model where staff annually rate outstanding loans as poor, adequate, or strong (based on multiple subjective and quantitative factors) and report the information to its board in summary form.

RECOMMENDATION 10

The Virginia Small Business Financing Authority should institute a process to conduct a risk-based review of outstanding loans at least annually and report the results to the Virginia Small Business Financing Authority Board.

RECOMMENDATION 11

The Virginia Small Business Financing Authority should add a requirement to formal loan participation agreements with banks that banks report support loans with a high risk of default as soon as they are identified.

VSBFA does not monitor application processing timeliness and loan decision patterns

Timely loan approval and fund disbursement can be critical for businesses. Equipment purchases and order fulfillment can depend on the availability of capital, and applicants may need to pursue funding from an alternative source if rejected by VSBFA. Additionally, timely communication with banks is important for productive working relationships.

Evidence suggests VSBFA's approvals and fund disbursements are not always timely, but insufficient data makes it difficult to calculate average loan processing times. Staff record loan dates inconsistently, so the timing of application processing and fund disbursement cannot be calculated. Businesses' perceptions overall about the timeliness of VSBFA's decision are largely positive, but a few businesses that responded to a

JLARC survey reported that VSBFA's decisions were not timely. Many loan applications wait a month for approval by VSBFA leadership, and half of loan disbursements occur at least two months after approval, according to VSBFA staff. Delays can also be caused by the need for larger projects to receive board approval. While two banks were satisfied with VSBFA's timeliness, one bank described multiple instances of not receiving responses from staff about potential loans.

VSBFA should regularly report key metrics related to the timeliness of its processes and application decisions. Key metrics should include the time it takes VSBFA to notify applicants of a decision after receiving a complete application and the time between VSBFA's application approval and disbursement of funds. Similar to SBSD's certification divisions, VSBFA should set timeliness goals and publish its performance compared to the goals in the agency's annual workplan document. VSBFA is currently implementing new software that should enable regular tracking of performance, according to management, but the software had not been implemented as of July 2020.

RECOMMENDATION 12
The Virginia Small Business Financing Authority should set a goal that establishes an expected timeframe for processing loan applications and track and report how long it takes to process each loan application and the proportion of applications meeting the goal.

VSBFA board could use additional lending expertise and should oversee loan program improvements

The VSBFA board is composed of nine members appointed by the governor and confirmed by the General Assembly, as well as the state treasurer and SBSD director. At each board meeting, members review staff recommendations for loan and bond applications and make the final approval or denial decision through a vote. The board conducts in-depth reviews of loans above $500,000 (for which its approval is required) and abbreviated reviews of loans below that amount.

Board members were actively engaged in reviews of bond and loan applications during board meetings observed by JLARC. The board is scheduled to meet monthly, but almost half of its 2019 meetings (five of 12) and 2020 meetings (three of eight prior to September) were cancelled. As COVID-19 emerged, the board switched to virtual meetings. The board affirmed staff recommendations for all loans reviewed during 2019 meetings, but members asked detailed questions of staff and business applicants. For example, board members asked about business challenges or projected job retention rates cited in the application materials. The board sometimes imposes conditions on approved loans, such as requiring a business needing better financial recordkeeping to contract with an accountant.

All board members currently possess relevant small business experience as required in the Code of Virginia but could use additional lending expertise to help review loan applications. The ability to interpret financial information, such as balance sheets and tax records, is crucial for the board's ability to assess the repayment risk of a business. According to one member, most members feel uncomfortable considering the creditworthiness of applications because of lack of related expertise. Requiring the majority (at least five) of board members to have loan expertise would be prudent and would more closely align VSBFA's board with another state board that supports businesses (sidebar). Five out of nine board members currently have some lending experience, but statutory requirements do not require board members to have loan expertise.

The **Virginia Innovation Partnership Authority**, the oversight board for the Center for Innovative Technology (CIT), requires citizen board members to have specialized expertise. For example, two members must be partners in venture capital funds, two members must have experience acquiring or commercializing intellectual property, and two members need experience in entrepreneurial development. CIT staff report that this requirement helps ensure that board members provide informed oversight.

RECOMMENDATION 13
The General Assembly may wish to consider requiring the majority of citizen members of the Virginia Small Business Financing Authority Board to possess small business lending experience.

Finally, making the needed improvements at VSBFA and accommodating the additional funding being allocated to help small businesses during the COVID-19 pandemic will be challenging. The scope and scale of improvements recommended in this chapter represent substantial changes. These improvements are even more essential because of VSBFA's new role to implement the state's COVID grant program ("Rebuild VA") and a new COVID loan program. In August 2020, VSBFA began reviewing applications for grants of up to $10,000 for up to 7,070 eligible businesses (for a total of $70.7 million). Also in August 2020, the federal EDA provided $10.2 million for VSBFA to implement a new COVID loan program. As of early September, VSBFA was developing eligibility and loan size requirements for this new loan program.

VSBFA should develop an improvement plan to effectively address key deficiencies outlined in this chapter. This plan should address low fund utilization, lack of loan approval policies, lack of a risk tool, and lack of tracking, monitoring, and reporting. The plan should identify the sequence of the needed improvements and set reasonable timeframes in which the improvements can be made. The plan should be submitted to the VSBFA board, the General Assembly, and the secretary of commerce and trade. VSBFA should report quarterly to the VSBFA board on progress in meeting key milestones until the improvements have been fully implemented.

RECOMMENDATION 14
The Virginia Small Business Financing Authority (VSBFA) should develop a program improvement plan that addresses deficiencies, including low fund utilization; lack of loan approval policies; absence of a risk tool for loans; and lack of monitoring, tracking, and reporting on loans and fund utilization. The plan should be presented to the VSBFA board and transmitted to the House Appropriations and Senate Finance and Appropriations committees, and the secretary of commerce and trade no later than June 30, 2021.

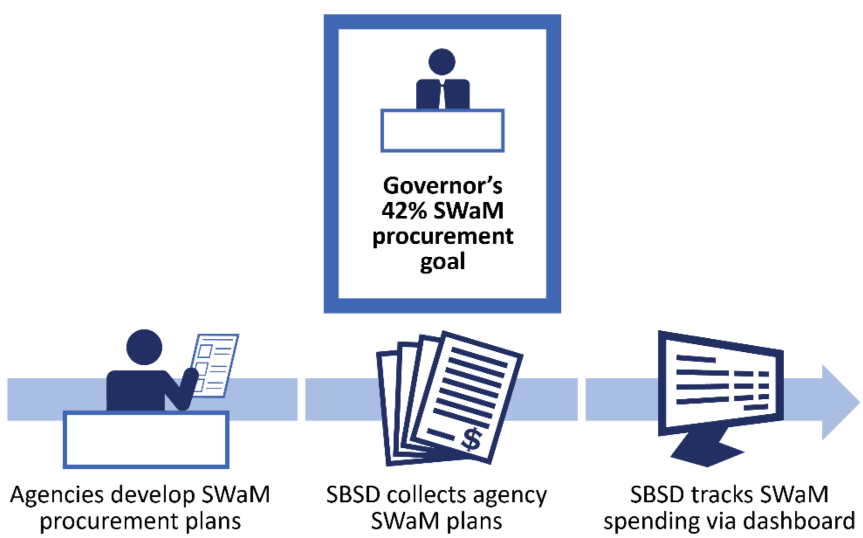
4 SWaM Goal and Plans

Through Executive Order 35 (2019), the governor set a goal for the state to award at least 42 percent of discretionary procurement spending to certified small businesses, including those that are women- and minority-owned. The executive order directs spending to exceed the 42 percent goal. While SBSD does not set the SWaM goal, SBSD works with agencies to help them achieve the goal. Each agency is required to submit a SWaM plan to SBSD each year describing how much it will spend with nine different categories of businesses (sidebar) and the types of activities the agency undertakes to meet the goal (Figure 4-1). Agencies designate one or more staff members to serve as "SWaM Equity Champions." These individuals are responsible for the agency's SWaM program and are typically members of agency procurement staff.

Categories of businesses in agency SWaM plans include: (1) small, (2) micro, (3) women-owned, (4) minority-owned, (5) service-disabled veteran, (6) employment service organization, (7) federal 8a, (8) federal service disabled veteran, and (9) economically disadvantaged women-owned business.

SBSD tracks each agency's spending toward the SWaM goal through a spending dashboard. SBSD also works through each secretary and the governor's office to meet with agency heads and other staff to emphasize the importance of achieving the goal. For example, SBSD hosts meetings with different groups of agencies each month to discuss SWaM spending. There are no penalties for agencies that do not meet the goal, though agencies that fall short are reported to the administration and periodically discussed in cabinet meetings.

FIGURE 4-1
The governor, agencies, and SBSD play a role in state's SWaM initiatives



SOURCE: JLARC analysis of Executive Order 35 (2019) and § 2.2-4310 of the Code of Virginia.

The state has implemented several policies, such as agency SWaM plans, to try to increase SWaM procurement and meet the 42 percent goal. In addition to this goal, the state has procurement preferences for small and micro-certified businesses. These set-asides require agencies to make small purchases from small and micro businesses. (See Chapter 5 for JLARC's analysis of the small business definition.)

SWaM program has benefits, but procurement goal is challenging for many agencies to achieve

The Code of Virginia directs state agencies to establish programs to procure goods and services through SWaM-certified businesses in accordance with the governor's requirements, though the code does not set specific SWaM goals or percentages. Previous governors and Governor Northam have signed executive orders that establish specific SWaM spending goals for agencies to achieve. The state has had a SWaM spending goal since at least 2004, when a goal of 40 percent was established. Governor McAuliffe raised the goal to 42 percent in 2014 and Governor Northam has kept it at 42 percent.

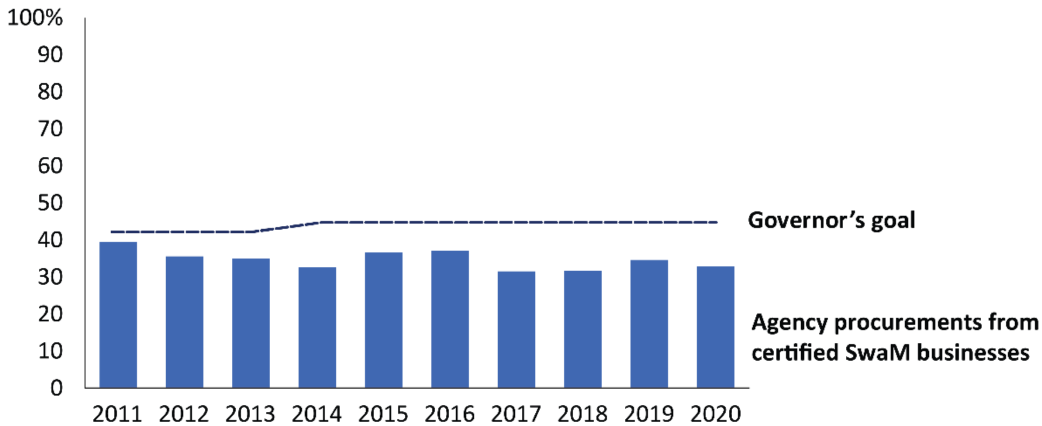
42 percent goal not based on analysis of achievable spending with SWaM businesses, and executive branch has not reached goal

Setting realistic goals is considered a best practice for supplier diversity programs. CVM Solutions (a supplier diversity data, software, and management solutions firm) states that goals should be "specific, measurable, and achievable… if key stakeholders in your program's success view the goals as unachievable, your program will likely lose internal support."

The 42 percent SWaM procurement goal does not appear to be based on an analysis of a reasonably achievable level of SWaM expenditures by agency. In addition, it is above Virginia's highest recorded level of SWaM spending (39 percent) in the last decade. A lack of analysis could lead to an unrealistic goal, which may have some adverse impact on agencies' commitment to trying to meet it (sidebar). Many agencies expressed confusion about the rationale for the 42 percent goal and how it applies specifically to their agency. Nearly 40 percent of agencies reported it was not clear to them why the goal was set at 42 percent.

Despite the substantial state efforts to promote procurement with SWaM businesses, the executive branch has not met the governor's SWaM spending goal in the last decade (though agencies came close in FY11, FY15, and FY16). During the last 10 fiscal years, spending with SWaM businesses fluctuated between 31 and 39 percent (Figure 4-2). In FY19, agencies in aggregate made 34 percent of their discretionary expenditures with certified SWaM businesses. (Agencies' discretionary spending with SWaM businesses decreased to 33 percent in FY20, but this decline may be at least partially attributable to the COVID-19 pandemic.)

FIGURE 4-2
Executive branch SWaM spending has varied from 31 to 39 percent (FY11–FY20)



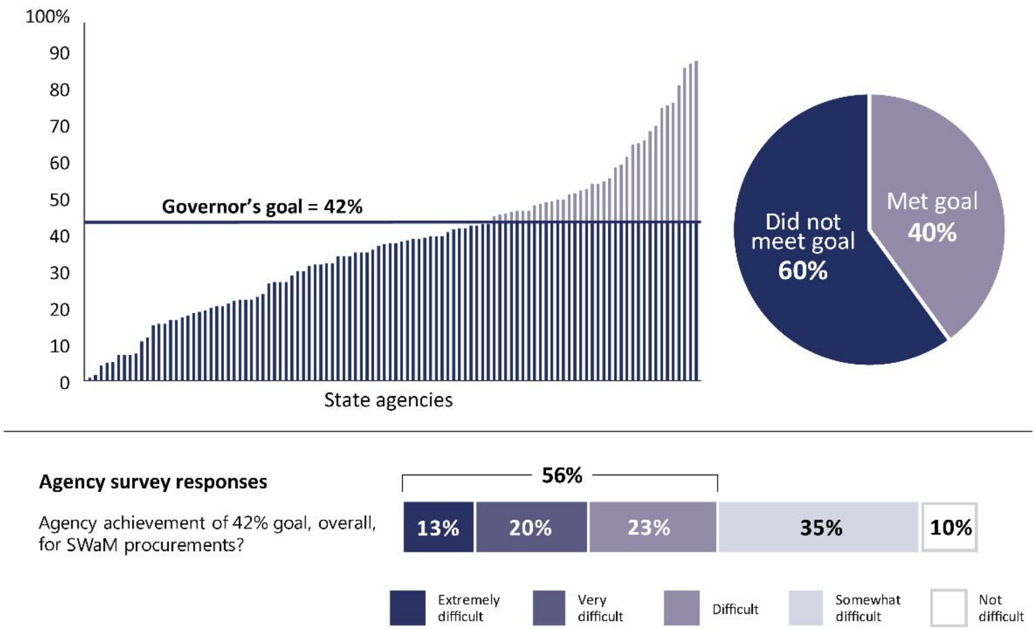
SOURCE: JLARC analysis of data from the Commonwealth Spend Report and SWaM spending dashboard.

Agencies' abilities to meet the state's SWaM goal vary, and the majority report difficulty achieving the goal

Each agency's SWaM procurement spending varies widely. In 2019, agencies' SWaM expenditures varied from 4 percent to 87 percent of their discretionary expenditures. Moreover, the majority (60 percent) of agencies fell short of the 42 percent goal in FY19, including several of the state's largest purchasers (e.g., Virginia Department of Transportation, Virginia Tech, University of Virginia, Virginia Information Technologies Agency, and Department of Corrections). More than half (56 percent) of agencies expressed difficulty in achieving the 42 percent goal (Figure 4-3). This includes one-third that reported it was extremely or very difficult.

There are two primary factors why agencies' percentages of SWaM procurement spending vary so significantly and why some agencies have more difficulty meeting the 42 percent goal than others. First and foremost, agencies purchase a variety of goods and services, some of which may not be offered by SWaM-certified businesses. Some agencies primarily purchase goods or services that are readily available from SWaM-certified businesses. Other agencies purchase a large portion of goods or services in industries that have few certified SWaM businesses. For example, several higher education institutions have large contracts for specialized research materials and outsourced dining services. Some state agencies dedicate a large portion of spending to contracts for specific computer systems or consulting services. These procurement needs may make it impossible for certain higher education institutions (especially larger research institutions) and agencies to meet the 42 percent goal. Agencies can work with large vendors to subcontract to small businesses to increase their percentage of SWaM spending, but this is not possible for all types of purchases.

FIGURE 4-3
SWaM purchasing varies widely across state agencies, with the majority unable to meet the 42 percent goal (FY19)



SOURCE: JLARC analysis of data from the Commonwealth Spend Report (FY19). JLARC survey of state agency SWaM champion (2020).

In addition, the number and size of agency procurements vary each year, which can affect an agency's opportunity to procure goods or services from SWaM businesses in a given year. For example, an agency with no large procurements in a particular year and only small ongoing purchases may be able to allocate a high percentage of its procurement spending to SWaM businesses with a small or micro certification through the set-aside program. In contrast, an agency with a large upcoming procurement that cannot be fulfilled by a SWaM-certified business may only be able to direct a low percentage of procurement spending to these businesses.

To address the challenges that some agencies face in meeting the goal, the governor could consider implementing SWaM spending goals for individual agencies that are more realistic for them to achieve. Two main considerations to set more realistic SWaM goals for each agency could be: the extent that certified SWaM businesses provide the types of goods or services they procure and the variability in procurement needs, including known upcoming procurements. Developing agency-specific SWaM goals that take into account these considerations would be a substantial administrative undertaking. However, it is likely the only way for many agencies currently unable to achieve the 42 percent goal to have a realistic SWaM procurement goal.

POLICY OPTION 4
The governor could direct each state agency to set ambitious, but achievable, SWaM procurement spending goals that account for (i) the availability of certified SWaM businesses to provide the goods and services the agency procures and (ii) the agency's ongoing and upcoming new procurements.

Executive branch spending with SWaM-certified businesses is substantial and benefits certified businesses

While the executive branch has not met the governor's SWaM procurement goal, state spending with SWaM certified businesses is substantial and has increased in recent years. Agencies procured more than $2 billion in goods and services through SWaM-certified businesses in FY19. This represented about one-third of applicable state procurement spending included in the eVA system (Virginia's online procurement system) and has increased by about 15 percent during the last five years.

Businesses report that SWaM certification helps them win contracts, and this was confirmed by JLARC analysis (sidebar). More than 70 percent of SWaM-certified businesses responding to a JLARC survey said certification helped them secure state contracts or other contracts. Similarly, a longitudinal quantitative analysis found that median sales per business were roughly 20 percent higher after SWaM certification. The positive effect is largest for businesses with lower levels of sales ($4,000 or less per quarter).

Businesses also reported nonmonetary benefits from certification. Many businesses reported that SWaM certification improved their image and marketing opportunities. Over two-thirds of newly SWaM-certified businesses said they would pursue recertification.

Outside of the state procurement process, though, JLARC found no evidence that SWaM certification leads to business growth. JLARC analysis found no evidence that SWaM-certified businsses had more employees after becoming SWaM certified. There was also no evidence that these businesses paid more in total wages (a proxy for revenue). This may be because, for many businesses, state procurement contracts represent a comparatively small percentage of their total business. For example, for SWaM certified businesses that sold to the state over the last decade, sales to the state equated to only 6 percent of the business's total wages paid.

SBSD should give agencies more assistance to identify and implement effective SWaM strategies

Regardless of whether each agency's SWaM procurement goal remains at 42 percent, agencies need to identify and implement workable strategies to maintain or increase spending with SWaM businesses. Ideally, agencies' SWaM plans would detail these

Policy options for consideration. Staff typically propose policy options rather than make recommendations when (i) the action is a policy judgment best made by elected officials—especially the General Assembly, (ii) evidence suggests action could potentially be beneficial, or (iii) a report finding could be addressed in multiple ways.

JLARC analyzed whether preferences have an effect on business growth. JLARC obtained data about businesses from SBSD, the Department of General Services, and the Virginia Employment Commission. Staff combined this data by business identifier to conduct longitudinal and comparative analyses.

See Appendix B for more detail on these analyses.

strategies to increase their spending with SWaM-certified businesses and make progress toward their goal. Moreover, agencies that are especially effective might be able to raise their goals over time.

SBSD is fulfilling its minimally required role in the SWaM plan process

SBSD's role in the SWaM plan process is relatively narrow. The Code of Virginia grants the governor authority to set a SWaM spending goal and requires each agency to develop a plan to meet the governor's goal (but does not specify the contents or format of the plan). The Code directs each agency to submit its plan to SBSD but gives no further authority or direction to SBSD regarding what to do with those plans. Executive Order 35 provides more direction to agencies about their SWaM plans and directs SBSD to provide training to agency heads and procurement staff related to "equity in procurement."

SBSD fulfills these responsibilities related to the SWaM plans and training. SBSD developed a template for agencies' annual SWaM plans and collects completed plans and spending data each year. SBSD maintains the state's interactive SWaM Dashboard website, which tracks spending with SWaM-certified businesses over time. SBSD also holds periodic meetings with groups of agencies to share information about SWaM procurement and provides training to agency SWaM representatives. For example, SBSD instructs agency staff on SWaM requirements and how to use the SWaM Dashboard to track their SWaM expenditures.

SWaM planning process should be more meaningful by focusing on effective strategies and more substantive role for SBSD

As required, SBSD collects agency SWaM plans but does not regularly review or provide feedback on them. SBSD has one staff person who helps agencies submit their SWaM expenditures and monitors agency progress toward meeting the goals. However, the agency does not have a dedicated full-time staff position to review SWaM plans. Consequently, none of the agencies that responded to a JLARC survey reported receiving feedback from SBSD on their SWaM plan. One agency said: "I have never gotten comments from any administration. You just send it in and get a confirmation it is received… I don't know if anyone really reads them."

Moreover, many agencies do not find the SWaM plans helpful or influential on their procurement activities. Less than half of state agencies that responded to a JLARC survey (41 percent) said the SWaM plan was helpful. The majority of agencies expressed either no opinion (42 percent) or disagreed (17 percent) that the plan helped them maintain or increase their SWaM expenditures. This may be partially explained by the SWaM plan template, which requires providing mostly descriptive information and focuses on prior activities and accomplishments rather than specific strategies to encourage SWaM procurement in upcoming years. Many agencies (59 percent) also reported spending more time on their SWaM plans in recent years.

A more meaningful SWaM planning process should be developed and implemented, which focuses more on strategies agencies can use to improve SWaM spending and has a more substantive role for SBSD. Current SWaM planning requirements are contained in Executive Order 35 (2019), which would need to be revised.

To improve the written SWaM plans, the template should focus more on strategies agencies will implement to procure goods and services from SWaM businesses and meet their SWaM goals. For example, an agency could try to identify certified businesses they have not purchased from previously or uncertified business that provide the goods and services they need. These businesses could then be targeted through specific outreach and marketing activities. Strategies should reflect an agency's ongoing and known upcoming procurements.

The SWaM plan could be made less burdensome for agencies by removing certain requirements or requiring the plan to be submitted less often. Descriptive information currently collected through the plan—particularly information on past activities—could be removed. Strategies for meeting SWaM goals may not change significantly each year (especially if there are no new upcoming procurements); therefore, agencies could be required to submit SWaM plans to SBSD less frequently, such as every two or three years.

SBSD could have more substantive interactions with agencies by reviewing their SWaM plans and providing specific feedback on their proposed strategies for SWaM spending. This feedback would include suggesting strategies that may be more effective or changing strategies that have not been effective. SBSD staff could also meet with agencies one-on-one to discuss their SWaM goals and strategies and advise them on effective strategies, which several agencies said would be beneficial.

To inform discussion of effective strategies, SBSD staff should research and compile information agencies can use to increase SWaM spending and develop guidance on how agencies can implement these strategies. California provides agencies with best practices for the implementation of its small business and disabled veteran procurement program (sidebar).

California has compiled best practices to support the inclusion of small businesses and disabled veteran-owned businesses in state procurement. The best practices are for several categories, including:

- Bids/contracts
- Executive/management support
- Business outreach
- Training

RECOMMENDATION 15

The governor should revise Executive Order 35 to direct the Department of Small Business and Supplier Diversity (SBSD) to develop and implement a more meaningful SWaM plan development and review process focusing on strategies and substantive SBSD feedback to agency staff.

RECOMMENDATION 16

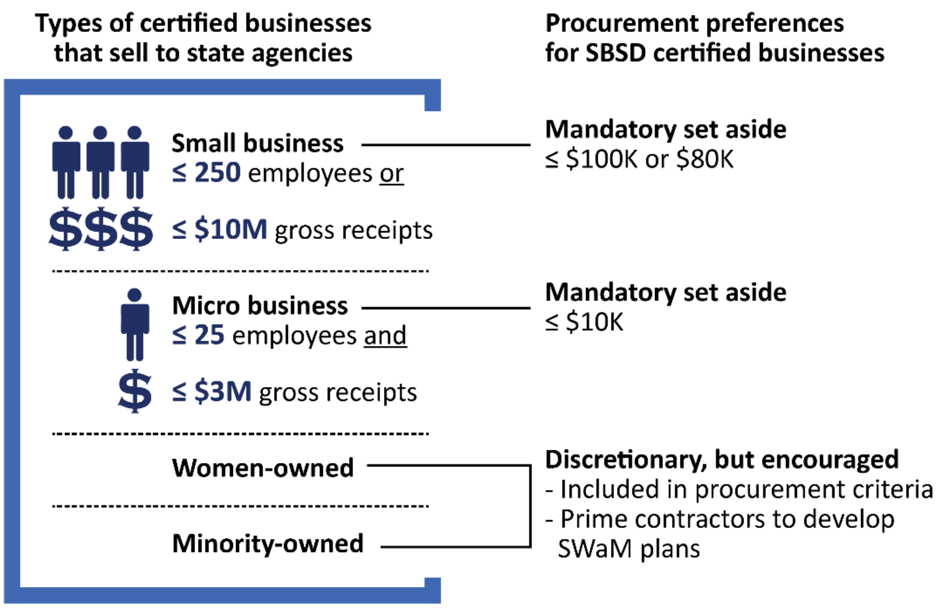
The Department of Small Business and Supplier Diversity should develop and maintain information about effective strategies agencies can use to increase their SWaM expenditures and provide agencies with guidance on how to implement the strategies.

Current SBSD staff can begin developing effective strategies to help agencies increase SWaM spending. SBSD may, though, need to hire additional staff to provide agencies with one-on-one assistance and feedback on their SWaM plans as funding becomes available. SBSD was scheduled to receive funding for three new business assistance staff positions and one data analyst that could have helped improve the SWaM planning process. Funding for these positions was removed from the budget in August 2020.

5 Virginia's Small Business Definition

As noted in Chapter 1, the state has a longstanding policy to give preference to businesses defined as small or micro when awarding state contracts. The last several governors have issued executive orders supporting small businesses. The current Executive Order 35 (2019) requires procurements under certain amounts to be "set aside" for small and micro businesses that are certified by the Department of Small Business and Supplier Diversity (SBSD). Businesses are eligible for these preferences if they meet the state's small or micro size requirements (Figure 5-1).

FIGURE 5-1
Certified small or micro businesses can benefit from procurement "set asides"



SOURCE: JLARC analysis of § 2.2-4310 and §2.2-1604 of the Code of Virginia and Executive Order 35 (2019).
NOTE: The state's definition for "small business" is established in § 2.2-4310 and §2.2-1604 of the Code of Virginia. The state's definition for "micro business," as well as the small and micro procurement preferences, are established in Executive Order 35 (2019). Businesses are required to submit a small business subcontracting plan for all purchases above $100,000. Several other types of certified businesses sell to state agencies but are not included in the figure (e.g., disadvantaged business enterprises).

Court cases that set standards for race- and gender-specific procurement preferences include: *Richmond v. Croson* (1983, U.S. Supreme Court) and *Coral Construction V. King County* (1991, Ninth Circuit). *Croson* established that race-conscience programs need firm evidence of past discrimination, and *Coral Construction* set a similar standard for gender-specific programs. (*Many additional cases have shaped the legal history of this topic.)*

State procurement set-asides have included only small/micro businesses because under current law the state may not have race- and gender-specific procurement preferences (sidebar). The current legal standard, which has been established through court opinions, requires states to have conclusive evidence that minority and women-owned businesses have faced discrimination in contracting to include them in procurement preferences. Virginia previously conducted two assessments (referred to as "disparity studies") of women- and minority-owned business participation in state contracting in 2002 and 2009. The assessments found that only a small portion of state contracts are awarded to women- and minority-owned businesses, but neither study found the necessary evidence of discrimination to create race- or gender-specific procurement preferences.

SBSD hired a consultant to conduct a new disparity study that is scheduled to be completed in late 2020. If this study finds substantial disparities in opportunities for women and minority-owned business, the state would have the ability to provide preferences specifically for these businesses.

Substantial number of procurements are set aside for small/micro businesses, many of which are very small

A substantial amount of the state's procurements go to small or micro businesses. Executive Order 35 requires agencies to use a micro business for purchases up to $10,000 and a small business for most purchases up to $100,000, unless there are no small or micro certified businesses that meet the purchase requirements. The vast majority of state purchases are small and fall within the set-aside parameters for micro businesses (87 percent) or small businesses (7 percent). Because large contracts fall outside the parameters of the set-aside program, only about 16 percent of state procurement *spending* occurs through these set-asides.

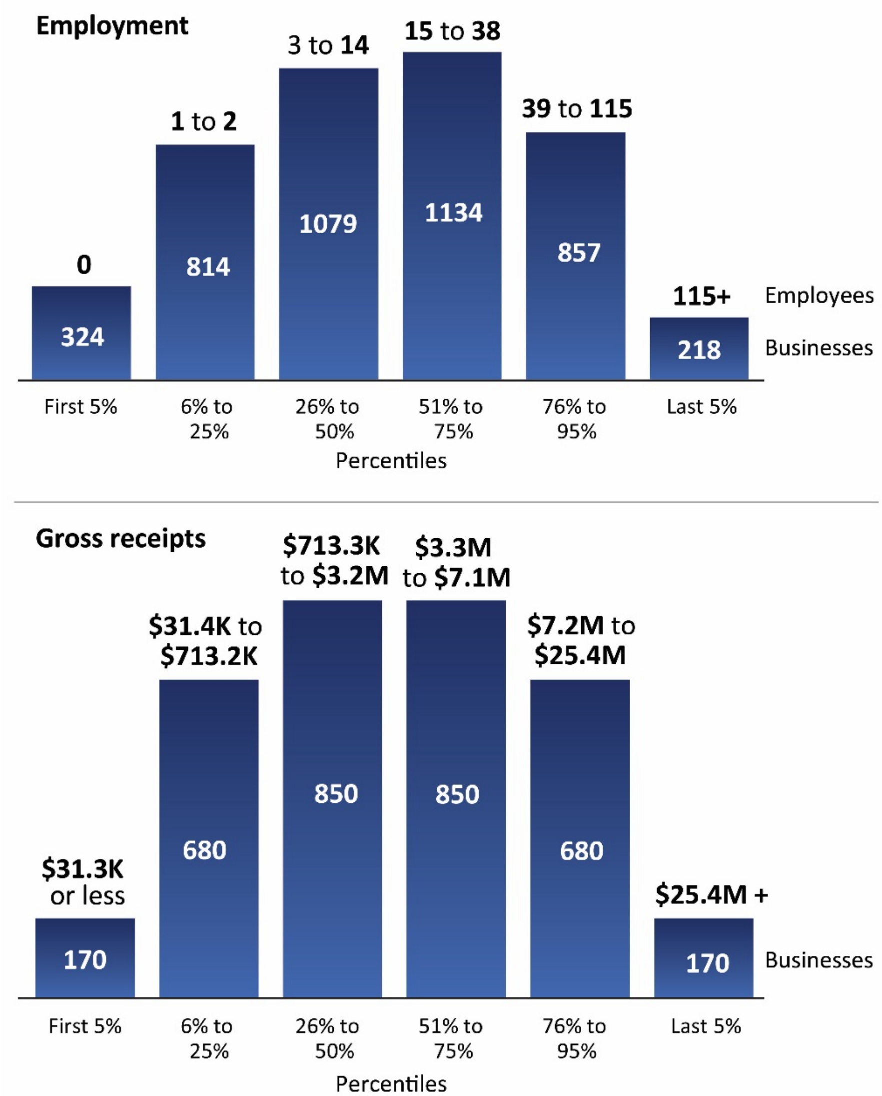
Much of the state's procurement activity is with small businesses that are much smaller than the maximum size allowed under Virginia's small business definition. For example, 50 percent of all certified small businesses employed 14 people or fewer, and reported $3.2 million or less in annual gross receipts (Figure 5-2). Seventy five percent employed 38 people or fewer and reported $7.1M or less in gross receipts. In fact, more than half (58 percent) of all the state's certified small businesses were actually micro businesses with a maximum of 25 employees and $3 million in annual gross receipts.

Virginia businesses more broadly (including non-certified businesses) are also relatively small, according to data collected by the Virginia Employment Commission. Consequently, the vast majority of businesses in the state would meet Virginia's small business definition based on the employment and revenue requirements (sidebar).

Vast majority of Virginia businesses would be considered small under Virginia's definition. Nearly all (99 percent) Virginia businesses meet the employment threshold, and 98 percent might qualify under the revenue threshold (using total wages as a proxy for gross receipts because of data limitations).

See Appendix B for more information.

FIGURE 5-2
Most certified businesses are well below the maximum size thresholds in state's small business definition



SOURCE: JLARC analysis of SBSD data on certified small businesses (as of April 2020).
NOTE: Categories may not sum due to rounding for graphical simplicity.

State could change small business definition but should consider potential impacts

The size at which a business is defined as "small" is ultimately a policy judgment for the General Assembly. This is underscored by the wide variation in how other states define small business. JLARC found that at least 25 other states have a small business definition. Though nearly all use measures of employment and revenue (as does Virginia), other states vary substantially in the number of employees and amount of revenue they use to define a business as small (see Appendix F for comparisons of Virginia's definition to other states and additional information about small business definitions.)

The remainder of this chapter presents a series of policy options for consideration if the General Assembly wishes to change the current small business definition. Each option includes a description of the potential impact on certified businesses, agencies' procurement activity, and SBSD's administration of the small business certification program.

State could change definition to exclude comparatively larger businesses from obtaining certification

Though many certified businesses are very small, some certified businesses generate substantially more gross receipts than most other certified businesses. Of the nearly 10,500 SBSD-certified small businesses, 610 businesses exceeded the gross receipts threshold but still were below the employment threshold (which is allowable because small businesses must have 250 or fewer employees OR $10 million or less in gross receipts).

Some of these businesses far exceed the $10 million threshold for gross receipts. The top 5 percent of certified small businesses exceeded $25 million in annual gross receipts—two-and-a-half times the revenue threshold of $10 million. One certified small business reported $397 million in annual gross receipts. Comparatively fewer businesses (12 business) exceeded the employment threshold.

Smaller businesses have asserted that it is unfair to be considered in the same size category as businesses that are much larger. Businesses in the smallest 25 percent of certified businesses (two or fewer employees and $713,200 or less in gross receipts) likely experience more difficulty competing for state contracts than businesses in the largest 5 percent of certified small businesses (115 or more employees and $25 million or more in gross receipts). One business commented to JLARC that "the small [definition] for number of employees…makes it very difficult for us to compete with the larger companies even though they are classified small."

If the General Assembly wants to narrow the small business definition, one approach would be requiring businesses to meet both the employee and revenue thresholds or lowering both thresholds. JLARC staff have presented two policy options for state legislators to consider that are more restrictive than the current small business definition. These options would narrow the definition to different degrees and have varying impacts on the state's ability to procure services through the set-aside program. Both options would have a relatively low administrative and fiscal impact on SBSD's certification operations.

Requiring small businesses to be under both the employment and gross receipts maximums would exclude comparatively large businesses

The least complex option is to require a business to be no larger than both the employment *AND* gross receipts maximum thresholds. This approach was proposed through HB 1134 during the 2020 General Assembly session (sidebar). Several other states require businesses to meet both employee and revenue thresholds, including Pennsylvania and Delaware. Changing Virginia's definition to require businesses to meet both thresholds would reduce the number of certified small businesses by 6 percent, making an estimated 622 currently certified businesses ineligible for small business certification. These are primarily businesses that exceed the gross receipts threshold but still fall below the employment threshold. More than one-third of the businesses (220 businesses) that would no longer qualify as small are in construction-related industries. While potentially disruptive for individual businesses, the procurement spending could potentially be shifted to other businesses. Agencies could likely also (at least in the near term) end up purchasing fewer of their goods and services from certified businesses.

HB 1134 (2020) proposed requiring small businesses to have 250 or fewer employees AND $10M or less in annual gross receipts.

Some of the businesses excluded under this option are women-owned or minority-owned. About one-quarter of the businesses (140 businesses) excluded through this option are businesses currently certified as women-owned and/or minority-owned. While these businesses could still be certified as women- or minority-owned, they would be removed from the pool of businesses that agencies could use for the set-aside program.

This option would exclude several businesses on the margin that are just above the definition threshold (which also occurs with the current definition). For example, one currently certified business has 255 employees and $3.4 million in gross receipts. Another business has five employees and $10.1 million in gross receipts. Both of these businesses would not be eligible for small business certification under this option.

SBSD could implement this approach with minimal administrative burden and no additional funding (Table 5-1), especially if this change would apply only to new or recertified businesses. Applying this change to all existing businesses as of a certain date would require a one-time effort by SBSD certification staff to review current certifications and communicate with affected businesses. SBSD would need to implement minor updates to the certification portal to reflect the new definition.

POLICY OPTION 5

The General Assembly could amend §2.2-4310 and §2.2-1604 of the Code of Virginia to change the small business definition to businesses that have no more than 250 employees and gross receipts of no more than $10 million.

Policy options for consideration. Staff typically propose policy options rather than make recommendations when (i) the action is a policy judgment best made by elected officials—especially the General Assembly, (ii) evidence suggests action could potentially be beneficial, or (iii) a report finding could be addressed in multiple ways.

Lowering current employee and gross receipts thresholds for small businesses would exclude comparatively large businesses

The General Assembly could exclude comparatively large businesses from small business certification by reducing the current employee and gross receipts thresholds. Ultimately, it is difficult to objectively determine the maximum employment and revenue thresholds that should be used to define the state's small businesses. States' small business definitions vary widely (see Appendix F), and there is no broadly established standard for what constitutes a small business or established methodology for developing a definition. Consequently, developing a new definition will inevitably involve an element of subjectivity along with any analytical framework used.

The lower employment and revenues thresholds are set, the greater the number of currently certified businesses that would be excluded. For example, the state could adopt employee and gross receipts thresholds that reflect *75 percent* of currently certified businesses. Presently, 75 percent of certified small businesses have 38 or fewer employees and $7.1 million or less in gross receipts. Lowering the small business definition to reflect these thresholds would remove 13 percent (1,329) of currently certified businesses. Construction-related industries would be the most heavily affected because these businesses make up approximately 31 percent of the businesses (410 businesses) that would no longer qualify as small. About one-third of the businesses (456 businesses) that would be removed are currently certified as women-owned and/or minority-owned and would no longer be part of the pool of businesses that agencies could use for the set-aside program.

Alternatively, if the state wished to exclude fewer businesses, it could adopt employee and gross receipts thresholds that reflect *95 percent* of currently certified businesses. Presently, 95 percent of certified small businesses have 115 or fewer employees and $25.4 million or less in gross receipts. Lowering the small business definition to reflect these thresholds would remove 3 percent (306) of currently certified businesses.

Ultimately, any modification to the current threshold should reflect how much the state wishes to narrow the current definition. (See Appendix F for more information on potential business size thresholds.) Narrowing it should put smaller businesses in a stronger position to compete for state business. However, lower thresholds could make it more challenging for state agencies to procure needed goods and services through the SWaM program or to find businesses that meet set-aside requirements. For example, at least 674 currently certified small businesses that won state procurements since the beginning of 2019 would no longer be eligible for certification if definition thresholds were set at 38 employees and $7.1 million in gross receipts. Some spending could temporarily be shifted to larger businesses in the near term though reallocation to new small businesses could potentially occur over the long term.

Regardless of the thresholds used, SBSD could implement this approach with relatively minimal administrative burden and no, or relatively little, additional cost (Table 5-1). However, the effect on SBSD operations would depend on how quickly the new requirements were implemented and how many businesses are affected. Phasing in the new thresholds over time as new businesses are certified would require comparatively little administrative effort. If currently certified businesses were removed at the same time, SBSD would likely need to temporarily hire additional staff to help decertify businesses. SBSD would need to implement minor updates to the certification portal to reflect the new definition.

POLICY OPTION 6

The General Assembly could amend §2.2-4310 and §2.2-1604 of the Code of Virginia to change the small business definition by reducing the number of employees and gross receipts that a business may have to qualify as a small business.

TABLE 5-1
Impact of options to reduce "outlier" businesses based on size

	Certified businesses removed	SBSD operations impact: *Administrative*	SBSD operations impact: *Fiscal* [a]
Require small businesses to meet both the employment AND gross receipts maximums	-622 (-6%)	Low	$0
Lower employee and gross receipts thresholds for small businesses (75th percentile) [b]	-1,329 (-13%)	Low	$0 to $50K (one time)
Lower employee and gross receipts thresholds for small businesses (95th percentile) [b]	-306 (-3%)	Low	$0 to $50K (one time)

SOURCE: JLARC analysis of SBSD data on certified small businesses (as of April 2020) and fiscal impact statements.
NOTE: [a] Table reflects potential fiscal impact to SBSD, but there may also be fiscal impacts to the Department of General Services, Department of Accounts, and other entities depending on how changes to the definition are structured. [b] Reflects reduction of current definition to the 75th and 95th percentiles for illustrative purposes, but sizes could be reduced to different thresholds.

State could develop and adopt size thresholds based on industry

The size of Virginia businesses varies significantly based on industry, according to data on Virginia's businesses. Although Virginia businesses have a median of 14 employees, there can be substantial differences in business size within and across industries (Table 5-2). For example, construction businesses report having between one and more than 8,100 employees. In contrast, florists report having between one and 135 employees. This means that all florists would qualify as a small business, but many construction businesses would not. Similarly, a construction business may employ hundreds of people and still be comparatively small in its industry, while a data processing company of the same size may be among the largest in that industry.

TABLE 5-2
Number of employees can vary substantially by Virginia industry

	Minimum	Median	Maximum
Construction (highway, street, & bridge)	1	15	8,106
Management consulting services	1	2	6,006
Data processing and hosting	1	2	1,535
Florist	1	4	135

SOURCE: JLARC analysis of Virginia Employment Commission data (2019).
NOTE: Employee data reflects fourth quarter of 2019. Data excludes part-time employees. Employee counts may be low if businesses misclassify employees an exclude them from full-time employee counts.

To compensate for the variation in employment among industries, the federal government and several other states vary their small business definition thresholds by industry. In contrast, Virginia's small business definition applies equally to all businesses regardless of their industry. A one-size-fits-all approach "is inappropriate to define the small business segment of each and every industry," according to the U.S. Small Business Administration (SBA). Consequently, the SBA has developed more than 1,000 individual industry-specific definitions based on employment levels or gross receipts. Depending on the industry, allowable employment levels range from 100 to 1,500 employees, and allowable gross receipts ranged from $1 million to $41.5 million.

Industries vs. goods and services procured. Adopting definitions for the hundreds of industries defined by SBA would in many cases have little practical effect because the state does not procure any goods or services from certain industries. Understanding how this would play out, though, is complicated by the fact that currently agencies only categorize the goods or services they procure by the National Institute of Government Purchases codes. These codes do not cleanly align with the national industry codes, primarily because businesses often sell many types of goods and services.

However, simply adopting SBA's small business definitions may not have the desired effect in Virginia. The vast majority of SBA's industry-specific size definitions allow more employees and gross receipts than Virginia's current definition. Under the SBA's definitions, 75 percent of the industries (778 industries) have employment or gross receipts maximums above Virginia's current definition. Applying these standards to Virginia businesses would allow substantially more businesses to qualify as small. SBA's definitions have high thresholds because national and global businesses compete for federal contracts and are included in the dataset SBA uses to set its employment and gross receipts thresholds.

Adopting SBA's industry-specific definitions and replacing state certifications with federal small business certifications could also be challenging. Multiple federal certifications have a small business requirement and use the SBA's definitions (e.g., 8(a) certification, women-owned small business certification, service-disabled veteran-owned small business certification). However, federal certifications also have ownership criteria, some of which are not race or gender neutral. Accepting federal certifications could raise the same legal issues that Virginia's ongoing disparity study is reviewing.

JLARC staff have identified three options that use industry-specific size standards but address these concerns. These options would replace Virginia's one-size-fits-all definition with thresholds that vary among industries (sidebar). They would have varying impacts on the state's ability to procure services through the set-aside program. Each option would have a relatively high administrative and fiscal impact on SBSD's certification operations, depending on how they are implemented. (These options may also have a fiscal impact on the Department of General Services, Department of Accounts, or other state entities, depending on how changes to the definition are structured.)

Setting industry-specific size standards as a percentage of Virginia business size would account for industry differences but be administratively burdensome

To account for variations in business size across industries, the state could adopt state-specific small business definitions for each of the 1,037 industry codes in the North American Industry Classification System. The state could use Virginia-specific data collected by the Virginia Employment Commission to assess the range of employment levels of Virginia businesses in each industry and set a definition that excludes the largest businesses in each industry. Similar to the federal government, the state may want to measure business size for some industries through *gross receipts*; however, the state does not currently collect this information for all businesses.

Similar to the previous policy option, setting a specific target percentage for the small business definition in each industry is subjective. For example, if all definitions were set at 75 percent of Virginia business *employees*, 96 percent (996 out of 1,037 industries) would have employment maximums that drop below the current 250-employee threshold. Only 41 industries (e.g., department stores, poultry processing, and carpet and rug mills) would have employment maximums increase above 250 employees. (See Appendix H online for more information on the potential impact of state-specific small business definitions by industry.) Given the anticipated drop in employment thresholds for many industries, a portion of businesses that are currently small/micro certified would no longer be eligible (sidebar).

Data inconsistencies and limitations. Because of a variety of data limitations and inconsistencies between state and federal datasets, counting the exact number of businesses that could be affected by these options is not possible. To provide some insight into the impact on businesses of certain options, JLARC merged VEC, SBSD, and federal data to estimate how many different industries could be affected.

See Appendix H (online only) for more information about how industries could be affected under each option.

This option could allow the state to better target its small business definition (and related procurement preference opportunities) to smaller businesses, but lowering the definition size for most industries could make it more difficult for agencies to procure goods and services from certified businesses and achieve their SWaM goals.

There would also be a high administrative burden on SBSD to implement this option. SBSD (and/or another state agency) would need to establish the initial definitions for each industry and verify that they accurately reflect Virginia businesses every few years. SBSD would need to program new definition categories into its certification software and train staff on the new definitions. SBSD would also experience an increase in questions and follow-up requests from businesses in the short term until businesses develop an understanding of the new definitions (Table 5-3).

POLICY OPTION 7

The General Assembly could amend §2.2-4310 and §2.2-1604 of the Code of Virginia to direct that a small business definition be developed for each industry, with thresholds for number of employees or gross receipts, or both, that are based on the size characteristics of Virginia businesses in that industry.

Setting industry-specific size standards at 50 percent of SBA size standards would account for industry differences but increase small business size thresholds for many industries

The state could also adopt state-specific small business definitions for each industry by applying a standard reduction factor (e.g., 50 percent) to current SBA size standards. A reduction factor would be necessary because many SBA size thresholds are larger than both Virginia's current definition and many size measures for Virginia specific businesses. Colorado has implemented this approach.

Analysis of adopting 50 percent of SBA size standards included only industries with employment thresholds. Some SBA definitions have gross receipts thresholds, but data on the gross receipts of Virginia businesses was not available.

Implementing small business definitions for each industry at 50 percent of the SBA definition would expand Virginia's current definition in most cases. In fact, Virginia's employee size threshold would increase above 250 employees for 310 of the 505 industries in which SBA uses employment size to define small businesses (sidebar). The size threshold would stay the same for 112 industries and decrease for 83 industries.

This option would account for differences in size across industries but ultimately allow more businesses to be certified as small, which may be inconsistent with the intent of having a small business program. It would, though, likely make it easier for agencies to procure goods and services from SWaM-certified businesses because more businesses would qualify (but still have to apply for certification).

There would be a high administrative burden on SBSD to implement this option. SBSD (and/or another state agency) would need to establish the initial definitions for each industry and verify every few years that this remains a reasonable basis for defining small business in Virginia. SBSD would need to program the new definition categories into its certification software and train staff on the new definitions. SBSD would also experience an increase in questions and follow-up requests from businesses in the short term until businesses develop an understanding of the new definitions (Table 5-3).

HB 1892 (2019) & HB 1650 (2020) proposed different small business employee and gross receipts maximums for six industries (wholesale, manufacturing, retail, service, construction, and architects/engineers). Employee maximums ranged from 30 to 100 employees; gross receipts maximums ranged from $2M to $15M. The bills also proposed disqualifying businesses dominant in their industry from procurement preferences.

POLICY OPTION 8

The General Assembly could amend §2.2-4310 and §2.2-1604 of the Code of Virginia to direct that a small business definition be developed that is set at 50 percent of the federal small business definition for each industry.

Developing cross-industry size standards for groups of industries would help to account for industry differences but may not fully account for size variation

The state could identify industry groups based on common size characteristics and types of goods and services sold to the state, and establish separate small business size standards for each group. This option is consistent with legislation proposed during the 2019 and 2020 General Assembly sessions (sidebar) and is less administratively complex than the two previous options to address variation in each industry. However, grouping industries can reduce the benefits of an industry-specific approach because there can be substantial differences in size between industries within a group.

Maryland uses this approach and sets different size definitions for six industry groups (wholesale, retail, manufacturing, service, construction, and architectural/engineering). According to staff from Maryland's Office of Small, Minority, & Women Business Affairs, these groups allow them to account for the different size of businesses in these industry categories and better target their procurement preference to businesses that need support. The size thresholds for each industry grouping were developed in partnership with business representatives rather than by using data reflecting the size of Maryland businesses.

Adopting cross-industry size standards similar to Maryland's would account, to some extent, for difference in business size across industries and would likely reduce the number of businesses that could be eligible for certification in Virginia. All Maryland size thresholds are smaller than those in Virginia's current small business definition, except for Maryland's revenue maximum for service industries ($10 million), which is the same as Virginia's. The number of currently certified businesses that would become ineligible is dependent on how the industries are grouped and the thresholds are set; therefore, the specific number is unknown. Assuming the size definitions adopted were similar to Maryland's, agencies would have fewer SWaM businesses from which to purchase goods and services, at least in the near term.

This option would be less administratively complex than the two previous industry-specific options but would still have an administrative and fiscal impact. SBSD (and/or another state agency) would need to establish the initial definitions for each industry grouping, potentially working in partnership with various industry groups. Depending on how many groupings are used and how much of what the state purchases is included, there could be considerably less effort associated with developing size definitions for groupings rather than all industries. Additionally, SBSD would still need to program new definition categories into their certification software, train staff on the new definitions, and respond to questions from businesses about the new definitions (Table 5-3).

POLICY OPTION 9

The General Assembly could amend §2.2-4310 and §2.2-1604 of the Code of Virginia to direct that a small business definition be developed for groupings of industries based on size and types of goods and services state agencies purchase.

TABLE 5-3
Impact of options to adopt industry-specific small business definitions

	Industries with definition lowered or raised	SBSD operations impact	
		Administrative	*Fiscal* [a]
Develop industry-specific size standards set at a percentage of Virginia business size	-996 industries [b] +41 industries	High	\$300K to \$500K (one-time)
Develop industry-specific size standards set at 50% of federal size standards [c]	-83 industries +310 industries	High	\$300K to \$500K (one-time)
Develop cross-industry size standards for several industry groups based on what agencies purchase	Unknown	Medium	\$50K (one-time)

SOURCE: JLARC analysis of Virginia Employment Commission data (2019) and U.S. Small Business Administration size standards for small businesses.
NOTE: [a] Table reflects potential fiscal impact to SBSD, but there may also be fiscal impacts to the Department of General Services, Department of Accounts, and other entities depending on how changes to the definition are structured. [b] If the 75th percentile of Virginia business was adopted as the employment maximum for all industries, at least 27 percent of certified small/micro businesses (2,865 businesses) would become ineligible for small/micro certification. This percentage would likely be higher, as industry data were unavailable for 40 percent of certified small/micro businesses (4,319 businesses). [c] 112 industries would have an employment threshold that remains at 250 employees.

Disparity study could inform consideration of small business definition and procurement preferences

The disparity study could have implications for state procurement policy if the results allow the state to consider female and minority ownership in its set-asides for state procurement. The state could choose to change its current set-aside program to add minority and/or female ownership to its procurement set-asides, which currently are based only on business size.

Although Virginia cannot currently designate procurement preferences based on female and minority ownership, the state still procures a substantial amount from these businesses. Currently, 55 percent of certified small or micro businesses are also owned by a minority or woman. Only 6 percent of certified businesses are certified as women or minority-owned only, potentially because the state's procurement set-asides are based on size instead of ownership.

To adequately consider potential changes, the General Assembly could create an executive branch workgroup after the disparity study is completed. There may be less value in creating such a workgroup, though, if the disparity study reaches the same conclusion as prior studies that the state cannot have preferences based on ownership.

The workgroup membership could consist of the:

- governor's chief of staff or designee;
- secretary of commerce and trade or designee;

- SBSD director or designee;
- Department of General Services director or designee;
- Virginia Information Technologies Agency chief information officer or designee;
- attorney general or designee;
- local government representatives; and
- interested small, women-owned, or minority-owned businesses from different industries.

The workgroup could be charged with considering the results of the disparity study along with the information and options included in this chapter. The workgroup could consider whether and how state procurement preferences and the state's small business definition should be changed. Staff from key state agencies including SBSD, the Department of General Services, and the Virginia Information Technologies Agency could identify the fiscal impact of proposed changes and draft a plan for implementing proposed changes. The Office of the Attorney General could assess the legality of proposed changes. The workgroup could submit proposed legislative changes to the General Assembly for consideration prior to the 2022 legislative session.

POLICY OPTION 10

The General Assembly could consider authorizing in the Appropriation Act an executive branch workgroup to consider whether and how to adjust the (i) state's procurement preferences for businesses (including women and minority ownership if the disparity study concludes doing so may be permissible), and (ii) state's definition of small business. The workgroup could be required to submit proposed legislative changes to the House General Laws Committee, Senate General Laws and Technology Committee, and Small Business Commission by November 1, 2021.

Appendix A: Study mandate

Review of the Department of Small Business and Supplier Diversity
Authorized by the Joint Legislative Audit and Review Commission on December 10, 2018

WHEREAS, the Virginia Department of Small Business and Supplier Diversity (SBSD) was created in 2014 by consolidating the powers and duties of the Department of Business Assistance and the Department of Minority Business Enterprise; and

WHEREAS, the mission of SBSD is to enhance growth opportunities for Virginia's small businesses to prosper through increased revenue and job creation thereby raising the standard of living for all Virginians; and

WHEREAS, SBSD was appropriated $7.3 million in FY19 and $6.8 million in FY20, of which approximately 60% is from general funds; and

WHEREAS, SBSD developed an agency workplan for 2018 establishing agency goals, objectives, and performance metrics; and

WHEREAS, SBSD administers the Commonwealth's business certification programs, including the Small-Woman-owned and Minority-owned Businesses (SWaM) program, which is designed to improve state procurement opportunities for SWaM businesses, and the Disadvantaged Business Enterprise program, which is designed to increase the participation of disadvantaged business enterprises in projects funded by the U.S. Department of Transportation; and

WHEREAS, SBSD's Virginia Small Business Finance Authority (VSBFA) promotes economic development by administering loan and loan assistance programs for small businesses, not-for-profits, and economic development authorities that may not be able to obtain financing from conventional private sources, such as commercial banks; and

WHEREAS, VSBFA administers two economic development grant programs, the Small Business Investment Grant Program and the Small Business Jobs Grant Program, which awarded over $1 million in grants in FY17 and which recent legislation sought to transfer to the Virginia Economic Development Partnership; and

WHEREAS, SBSD's Business Development and Outreach Services Division provides programs designed to assist entrepreneurs and business owners in obtaining the information and resources to establish and grow their businesses; now, therefore be it

RESOLVED by the Joint Legislative Audit and Review Commission (JLARC) that staff be directed to review the operations and performance of the Department of Small Business and Supplier Diversity. In conducting its study, staff shall (i) determine whether SBSD's operations are focused on the topics that will most effectively support and accomplish its mission; (ii) evaluate the staffing, performance, spending, and management of SBSD, including the VSBFA; (iii) assess whether SBSD's business certification programs and related processes are efficiently and effectively administered; (iv) determine whether SBSD is the most suitable state agency to administer the state's business certification programs and assist businesses with the state's procurement processes; (v) compare the definition of "small business" used by SBSD to federal and other state definitions; (vi) assess the effectiveness of SBSD's economic development and outreach programs in assisting applicable businesses; (vii) assess the need for SBSD programs and assistance to temporarily or permanently facilitate individual businesses; (viii) evaluate whether other state agencies could more effectively administer SBSD's economic development and outreach programs; and (ix) review the scope and scale of programs in other states designed to assist similar businesses. JLARC shall make recommendations as necessary and review other issues as warranted.

All agencies of the Commonwealth, including the Department of Small Business and Supplier Diversity, the Virginia Department of General Services, and the Virginia Economic Development Partnership shall provide assistance, information, and data to JLARC for this study, upon request. JLARC staff shall have access to all information in the possession of state agencies pursuant to § 30-59 and § 30-69 of the Code of Virginia including all documents related to proceedings or actions of the Virginia Small Business Financing Authority board of directors. No provision of the Code of Virginia shall be interpreted as limiting or restricting the access of JLARC staff to information pursuant to its statutory authority.

Appendix B: Research activities and methods

Key research activities performed by JLARC staff for this study included:

- interviews with SBSD and VSBFA staff, VSBFA board members, other Virginia and federal agencies, Virginia businesses and banks, subject-matter experts, and other states;
- observations of business counseling sessions and trainings;
- surveys of businesses that have participated in SBSD programs, SBSD staff, and state agency SWaM representatives;
- analysis of SBSD certification data, SBSD staff turnover data, VSBFA financial data, state agency spending and procurement data, Virginia business size data, and other state small business definitions;
- case file review of a sample of approved and denied VSBFA applications; and
- a review of documents and literature, including research literature on effective practices for assisting small businesses; past studies of SBSD; and SBSD documents, such as agency policies and procedures, staff position descriptions, and staff training schedules.

Structured interviews

Structured interviews were a key research method for this report. JLARC staff conducted over 100 interviews with individuals from a variety of agencies and organizations. Key interviewees included:

- SBSD/VSBFA staff and VSBFA board members;
- other Virginia state agency and federal agency staff;
- Virginia businesses, banks, and economic development organizations;
- subject-matter experts in Virginia and nationally; and
- staff from other states.

SBSD/VSBFA staff and VSBFA board members

JLARC staff conducted 37 interviews with 20 staff from SBSD and VSBFA, including the directors of all major divisions and several staff in each division. Staff conducted multiple interviews with the agency director and chief of staff, the VSBFA director and chief credit officer, and the directors of the SWaM Certification, DBE Certification and Outreach, and Business Development and Outreach divisions to understand the agency's programs and recent and planned improvements. Interviews were also conducted with staff in each division to understand the services provided by each division; the work processes used to carry out each division's primary responsibilities; and staff perspectives on SBSD's mission, challenges, and work culture. Interviews were also used to clarify the meaning of SBSD data.

JLARC staff also conducted interviews with four VSBFA board members, including the board chairman. These interviews were used to understand board member responsibilities and engagement, perspectives on VSBFA staff and programs, and loan and bond approval processes.

Other Virginia state agency and federal agency staff

JLARC staff conducted 25 interviews with staff at 18 Virginia state agencies. These interviews were conducted for a range of purposes:

- to obtain information on how other agencies work with SBSD on the certification program, JLARC staff interviewed the Virginia Department of Transportation, Department of Aging and Rehabilitative Services, and the State Council of Higher Education for Virginia;
- to obtain perspectives on the state's SWaM procurement program and other procurement-related issues, JLARC staff interviewed procurement staff at the Department of General Services and Virginia Information Technologies Agency, and SWaM representatives at the Board of Accountancy, Virginia Tech, and the Department of Treasury;
- to learn about the Business One Stop, JLARC staff interviewed staff at the Department of Professional and Occupational Regulation and the State Corporation Commission;
- to understand their role in, and perspectives on, VSBFA's loan and bond programs, JLARC staff interviewed staff at the Department of Treasury and Department of Social Services;
- to discuss agency data availability for potential JLARC analyses, JLARC staff interviewed staff at the Virginia Employment Commission, Department of General Services, and Department of Taxation;
- to discuss various aspects of SBSD operations, JLARC staff interviewed staff at the Auditor of Public Accounts and Department of Human Resource Management; and
- to learn about effective approaches for administering financing and business advisory programs, JLARC staff conducted interviews with the Virginia Economic Development Partnership, Department of General Services, Department of Housing and Community Development, and Virginia Resources Authority. Staff also interviewed the Center for Innovative Technology (a state-funded nonprofit) for the same purpose.

Staff also conducted interviews with the deputy secretary of commerce and trade to learn more about the administration's policy goals for assisting small businesses and perspectives on the state's small business definition.

JLARC staff conducted interviews with federal agency staff: three interviews with the Small Business Administration and one interview with the Economic Development Administration, which is part of the U.S. Department of Commerce. These interviews were conducted to learn about federal programs for small businesses, to get their perspectives on which programs and interventions are most effective for small and potentially disadvantaged businesses, and to understand how federal partners work with SBSD.

Virginia businesses, banks, and economic development organizations

JLARC staff interviewed four organizations that represent small, women-, or minority-owned businesses in Virginia: Metropolitan Business League, National Association of Women Business Owners (Richmond chapter), National Federation of Independent Business, and Virginia Chamber of Commerce. The purpose of these interviews was to obtain businesses' perspectives on SBSD programs and issues affecting small, women-, and minority-owned businesses. Staff also conducted a group interview with three business owners from the heavy construction industry to hear their perspectives on their interactions with SBSD and the effectiveness of SBSD programs.

Staff conducted five interviews with representatives from the financial industry, including five Virginia banks and the Virginia Bankers Association. The purpose of these interviews was to identify typical and best practices for small business lending programs and banks' perspectives on the value and administration of VSBFA's programs.

Finally, staff conducted a group interview with staff from the Virginia Economic Developers Association and seven local economic development staff to discuss local programs for small businesses and their perceptions of SBSD's programs.

Subject-matter experts in Virginia and nationally

JLARC staff conducted interviews with 16 subject-matter experts, including individuals from the Kauffman Foundation, Aspen Institute, Council of Development Finance Agencies, Milken Institute, Mason Enterprise Center, National Conference of State Legislatures, and the Capital Region Minority Supplier Diversity Council. These interviews covered many different topics based on the expertise of the individual, but most interviews addressed best practices for small business programs.

Other states

JLARC staff conducted interviews with staff from Kentucky, Maryland, North Carolina, and Tennessee to discuss their small business loan programs. Staff interviewed staff from Kentucky and North Carolina to discuss their small business advisory programs, and staff from Maryland to discuss their small business definition.

Observations of business assistance sessions and VSBFA board meetings

JLARC staff observed three one-on-one counseling sessions between SBSD staff and businesses. These sessions were conducted over the phone, and JLARC staff listened to the sessions with the permission of the businesses. The purpose of these observations was to learn about challenges experienced by small businesses and the types of assistance provided by BDOS staff. JLARC staff also observed one Scaling4Growth session and three BDOS webinars on eVA, entrepreneurship, and Scaling4Growth (information session).

JLARC staff also attended and observed five VSBFA board meetings to assess board members' level of engagement and to learn about the types of information provided by staff to the board and the approval process for loans and bonds. Three of these board meetings were held virtually because of the COVID-19 pandemic.

Surveys

Three surveys were conducted for this study: (1) a survey of businesses that participated in SBSD programs, (2) a survey of SBSD staff, and (3) a survey of state agency SWaM representatives.

Survey of businesses

JLARC administered an electronic survey to businesses that have participated in SBSD programs since 2015. (Participation was defined to include businesses that applied for SBSD programs, including those that were approved and denied.) If a business participated in the *same program* multiple times (e.g., applied for a new SWaM certification and recertifications), the survey asked about the business's most recent experience. If a business participated in multiple *different programs* (e.g., applied for SWaM certification and participated in business counseling) the survey only asked about one program to reduce the time burden on businesses during the COVID-19 pandemic. The team originally planned to administer the survey in March 2020, but postponed the administration to the April/May timeframe because of the COVID-19 pandemic, which negatively affected many of the businesses the survey was distributed to.

The survey covered the following topics:

- SWaM and DBE certification processes (including the documentation requirements, timeliness, fairness and accuracy, and usefulness of certification);
- appeal and waiver processes for denied SWaM applications;
- effectiveness of SBSD financing programs (including the documentation requirements, timeliness, fairness, accuracy, usefulness of financing, and use of other financing sources);
- effectiveness of SBSD business advisory programs (including satisfaction with advisory program, convenience, and usefulness of the program); and
- reasons for not participating in other SBSD programs (such as lack of knowledge of programs).

The survey was distributed electronically to approximately 23,000 business. JLARC received 918 responses, for an overall response rate of 4 percent. JLARC could not send the survey to businesses without email addresses in SBSD/VSBFA's records. Nearly all programs had emails for at least 98 percent of businesses, with the exception of counseling sessions (31 percent of businesses had missing emails) and VSBFA programs (44 percent of businesses had missing emails).

Survey of current SBSD staff

JLARC staff administered an electronic survey to all 37 full-time staff at SBSD. (SBSD's director, VSBFA's executive director, and SBSD's chief of staff were given copies of the survey to review but were not asked to complete it.) Survey topics included: staff's perspectives on their roles and responsibilities, satisfaction levels, workload, compensation, division operations and coordination, IT systems and security, and agency leadership and organizational structure. The survey also asked staff about the impact that the COVID-19 pandemic has had on their work and the businesses they serve. JLARC received responses from all SBSD staff members, for a response rate of 100 percent.

Survey of state agency SWaM representatives

An electronic survey was administered to the SWaM representatives in 132 Virginia state agencies. If an agency had multiple representatives, the survey was sent to one representative to ensure one response from each agency. Survey topics included: agency perspectives on their ability to meet the state's 42 percent SWaM procurement goal, usefulness of the agency SWaM plan, and adequacy of assistance provided by SBSD in completing the SWaM plan and helping agencies meet the 42 percent SWaM goal. Eighty-one agencies responded to the survey, for a response rate of 61 percent.

Data collection and analysis

Several types of data analyses were performed for this study, including analyses of:

- SBSD business certification data;
- SBSD staff turnover data;
- VSBFA financial data on loans and grants;
- the impacts of SWaM certification on state contracts and size of certified businesses;
- state agency spending and procurement data;
- Virginia business size data; and
- data on small businesses definition levels in the federal government and other states.

Certification data (Chapter 2)

SBSD provided JLARC staff with several data analyses in response to a data request submitted by the team, including total number of certifications by type; average time to process applications, by type; number of applications that exceeded SBSD's processing goal; and number of appeals and waivers. JLARC staff used this data to calculate basic statistics on SWaM and DBE certifications. JLARC staff also analyzed detailed data on each certification application since 2015. Analyses conducted with this data included: descriptive statistics on the number of certified businesses by size and number of applications that were approved and denied. Moreover, business-level certification data was used to assess whether currently certified micro and/or small businesses meet the employment and gross receipts size requirements and how changes in the small business definition could impact the population of currently certified micro and/or small businesses.

SBSB staff turnover data (Chapter 2)

JLARC staff calculated the rate of SBSD staff turnover between FY13 and FY20 using data from the Department of Human Resource Management. Two types of turnover rates were calculated: (1) all turnover and (2) voluntary turnover. The rate of *all* staff turnover included staff retirements, layoffs, removals, resignations, and transfers (e.g., out-of-state service or to an exempt agency). The rate of *voluntary* staff turnover included staff resignations and transfers. To benchmark SBSD's staff turnover rates, JLARC staff reviewed the statewide staff turnover rate across all state agencies (FY20) and compared SBSD's turnover rates with other similarly sized state agencies with between 15 and 100 employees.

VSBFA financial data on loans and grants (Chapter 3)

JLARC staff used VSBFA data on loans and grants to conduct several analyses. Staff analyzed the utilization ratios of VSBFA loan and grant programs (see Appendix E for program-level data by fiscal year); identified trends in loan application decisions; and calculated the amount of funds lost by VSBFA when businesses fail to repay their loans.

Loan utilization

JLARC staff developed a methodology for calculating utilization ratios because VSBFA does not regularly report this information. This methodology was informed by discussions with VSBFA staff, Auditor of Public Accounts staff, and a national expert on small business lending. JLARC's method focuses on the amount of new funds given to businesses each year. Each year's utilization ratio was calculated as follows:

$$Utilization\ ratio = \frac{Amount\ of\ new\ loans\ used\ by\ VSBFA}{Amount\ of\ funds\ available\ for\ new\ loans}$$

JLARC calculated loan utilization ratios for VSBFA's three direct loan programs (microloan, Economic Development Loan Fund, and Child Care Financing Program) and three support loan programs (Loan Guaranty, Cash Collateral, and Capital Access) for FY16 to FY20. Three programs—the microloan, state-funded Economic Development Loan, and Loan Guaranty—have a combined utilization ratio because they have the same funding source. JLARC requested FY20 data before the fiscal year had concluded, so the amount used in FY20 calculations excludes the last 18 days of the year.

The definition of the *amount of new loans used* varies by loan program. For VSBFA's three direct loans, the amount spent equals the amount of money given to businesses once the loan is finalized. For VSBFA's three support loans, the amount used equals the amount of money temporarily reserved by VSBFA internally or at the banks once the loan has been approved, and not the total value of the loan provided by the bank. Specifically, the amount used for the Loan Guaranty program is the share of the loan that VSBFA guarantees. The amount used for the Cash Collateral and Capital Access programs is the amount of funds VSBFA deposits into banks' reserve accounts. JLARC staff defined the amount used as the amount of money reported "disbursed" by VSBFA, which can differ from the amount of money approved in a given year. The amount disbursed is not applicable to the Loan Guaranty Program; therefore, staff used the amount of loans reported as "closed" by VSBFA.

JLARC staff calculated the *amount of funds available for new loans* each year using two steps. First, JLARC staff identified the preliminary amount available on the last day of the prior fiscal year. For all programs except the Loan Guaranty Program, this amount equals the "subtotal cash & investments" on the balance sheet provided by VSBFA. For the Loan Guaranty Program, the amount available depends on a statutorily set formula. VSBFA provided annual Loan Guaranty Program reports that contained the net funds available for new loans each year. Second, the amount of securities lending funds (if any) was subtracted from those preliminary amounts to calculate the final "amount available." Securities lending funds are held by the Virginia Treasury (as part of a statewide program for agency funds exceeding the amount protected by federal deposit insurance) and not immediately available to VSBFA. Only the Capital Access and federal Economic Development Administration (EDA) programs had securities lending funds. JLARC's method did not include expected repayments as available funding. Repaid funds in one year would appear in the "cash and investments" for the next year, so the current method already accounts for repayments that actually occur. Also, repayments occur throughout the year so they are not available to VSBFA for the whole year.

While JLARC's method intentionally defined the amount used as the amount of money for finalized loans, an alternative method would be considering "committed funds" as well. Committed funds are loans approved and legally promised by VSBFA but not yet disbursed by the end of the fiscal year. For example, VSBFA may be waiting for mandatory closing documents from the business. JLARC's method excluded commitments because they sometimes reflect loans that are eventually cancelled before any money transfers, and commitments that were disbursed in another fiscal year would be captured in that year's utilization data. However, when VSBFA makes the commitment it believes that the loan will occur and reduce the amount of available funds, which is one reason to include committed funds in utilization rates for the year in which they occur.

To offer an alternative calculation, JLARC staff calculated utilization ratios in a manner that considers committed funds to be equivalent with actually used funds. In this method, the amount used each year is defined as the amount actually used *plus* the amount committed. For the amount of commitments per program per year, JLARC used data provided by VSBFA. (An exception is FY20, for which VSBFA only provided commitments for the federal EDA program. However, that program typically has a much larger amount of commitments compared to other programs.) The method for calculating the amount available per year does not change in this alternative method. This alternative method increases the utilization ratios somewhat compared to JLARC's primary method because it increases the amount that is loaned (Table B-1). However, VSBFA's loan utilization ratio remains below 40 percent in the last three years, regardless of the method.

TABLE B-1
Considering commitments to be loans increases VSBFA's loan utilization ratio

Method	2016	2017	2018	2019	2020
Primary (Ignores commitments)	46%	45%	8%	10%	24%
Alternative (Considers commitments equivalent to used loans)	52	66	37	29	33
Percentage point difference	6	20	29	20	9

SOURCE: JLARC analysis of VSBFA data.

Grant utilization

Grant utilization rates for FY15 to FY20 were calculated with data provided from the Department of Planning and Budget (DPB). Similar to loans, grant utilization was defined as the amount of grants provided in a given year divided by the amount of funds available for the grant. DPB's data for the amount of grants provided for a given year may reflect grants that were approved in that year or prior years, because businesses must provide documentation of meeting grant requirements before receiving the funds. The amount of funding available for each grant was calculated as the amount of funds at the beginning of the fiscal year (because the funds are non-reverting) *plus* additional funding from the annual budget *plus* interest accrued *minus* amounts given up by VSBFA due to statewide savings initiatives *plus*/*minus* transfers to or from other sources.

The amount of funds available to VSBFA can change throughout the year, depending on the timing of events such as receiving appropriations and transferring money between grant funds. Therefore, grant utilization rates should be considered an approximation.

Application decisions

JLARC staff calculated the number of loan applications, the frequency of application decision outcomes, and the reasons for withdrawals and denials using VSBFA's application data. VSBFA's data included 595 loan applications between July 2015 and June 2020. JLARC reviewed VSBFA's comments for each application to count the number of withdrawals, denials, or approvals. (JLARC was unable to categorize the decision type of four cases due to insufficient or missing information.) Next, JLARC staff counted the number of withdrawals and denials that contained a recorded reason for VSBFA's decision. This analysis was limited to FY19 and FY20 applications available in VSBFA's data. (It is possible that additional information about VSBFA's decision was available in the application's case file.) Finally, JLARC staff counted the number of recorded reasons that cited the creditworthiness of the applying business, such as insufficient cash flow to repay the loan or poor credit history.

VSBFA noted two reasons why analysis of its application data will not be fully accurate. First, the date provided does not have a consistent definition. For example, it might be the date that staff first spoke to an interested business or the date that the business submitted a loan application. Second, the spreadsheet is not limited to actual applications received by VSBFA. Sometimes, inquiries from businesses that don't result in an application are included on the spreadsheet.

Loss rates

The amount of money lost by VSBFA when a business fails to repay its loans depends on several factors. The amount lost by VSBFA depends on the time that has passed since the loan; the longer this time period, the lower the remaining amount owed by the business. For direct loans, the amount of money that a business does not repay equals the amount of money lost by VSBFA. For support loans, the amount of money lost by VSBFA depends on the details of the loan program and transaction. For example, in the Loan Guaranty Program, the bank and VSBFA agree on the share of the bank's loan amount that VSBFA will guarantee, and the maximum is 75 percent. The lower VSBFA's share for a particular loan, the lower the amount it will lose if the business defaults.

To calculate the amount of VSBFA losses, JLARC staff used an extract of VSBFA's disbursed loan database that included information on the timing and amount of losses. This extract included all loans for which losses occurred between FY15 through FY20, regardless of when the loan was made. (Data for FY20 is missing the last few weeks of the fiscal year, because of the timing of JLARC's data request.) This amount consists of charge-offs for VSBFA's direct loans and claims by banks for VSBFA's support loans. It is calculated net of recoveries collected from the businesses, such as collateral sales.

To calculate the share lost by VSBFA in FY19, JLARC staff followed the standard industry methodology of comparing the amount of losses occurring in a given time period with the amount of active outstanding loans at the end of that time period. The 0.25 percent loss rate reported by commercial banks derives from a survey by the Consumer Bankers Association and Small Business Financial Exchange about the third quarter of CY 2019.

Impacts of SWaM certification on state contracts and size of certified businesses (Chapter 4)

JLARC staff conducted analyses to estimate the effects of SWaM certification on firm sales and employment growth. Both analyses used a pre-post approach, comparing outcomes for firms before they became SWaM certified to outcomes for the same firms after certification. Regression models were used to control for other factors that could influence the outcomes, including time trends.

Impact of SWaM certification on sales to state agencies

Because Virginia governors have encouraged state agencies to purchase goods and services from SWaM-certified firms through a series of executive orders, certification could increase a business's likelihood of selling goods and services to state agencies. To test this hypothesis, JLARC staff obtained data from eVA, the state procurement information system used by all state agencies and maintained by the Department of General Services. The data included all purchase orders in eVA from 2010 through the first half of 2020, and included the date of purchase, the dollar amount, the type of good or service purchased, the agency purchasing the good or service, and an identifier uniquely identifying the selling firm.

The analysis was restricted to 6,700 firms that were SWaM certified, had sales in eVA, and had at least four quarters of data before certification and eight quarters of data after certification. The basic analysis compared a firm's sales per quarter before and after certification, to look for evidence that firms increased their sales to state agencies after they became certified. The sales data in eVA are very skewed: although most sales per firm per quarter were less than $5,000 (and many were less than $1,000), a small percentage of firms had sales of more than $1 million in a quarter. Further, most firms had some quarters with zero sales in eVA. To reduce these effects in the data, quantile regression was used to estimate impacts on median quarterly sales per firm (and on the 60^{th}, 70^{th}, 80^{th}, and 90^{th} percentiles). As a test of the robustness of results, a separate ordinary least squares regression model was estimated using the natural log of average quarterly sales per firm. Similar models were used to estimate impacts on the average number of purchase orders in eVA per quarter per firm, in part because this outcome was less skewed than sales data. The evidence consistently showed an increase in the dollar value of sales and the number of purchase orders to state agencies after firms became SWaM certified.

Impact of SWaM certification on firms' total employment

Even if SWaM certification increases a firm's sales to state agencies, it may not have a significant effect on the firm's total sales if state government sales make up a small proportion of the firm's total sales, and if SWaM certification does not increase sales to purchasers other than state agencies. To estimate the effect of certification on firms' growth, JLARC staff obtained data from the quarterly wage record system maintained by the Virginia Employment Commission (VEC). The data included the number of employees per quarter from 2010 to 2019, total wages paid, and a unique firm identifier. The total number of employees and total wages were used as a measure firm growth.

SWaM-certified firms in the VEC data were identified by matching to SBSD data. Of the 43,000 firms that were SWaM certified in the first quarter of 2010 and the first quarter of 2020, a little over half (about 22,000) were found in VEC quarterly data. The analysis was restricted to about 3,000 firms that first appeared in VEC data at least four quarters before they were SWaM certified and that could be followed in VEC data for at least eight quarters after certification. As with the eVA data, the basic analysis compared a firm's employment per quarter before and after certification, to look for evidence that firms increased their number of employees after they became certified. Like the data on sales in eVA, the number of employees in VEC data is skewed, with many firms having only one employee in some quarters and other firms having several hundred. To account for this skewness, quantile regression models were used (for the 50^{th}, 75^{th}, and 90^{th} percentiles). Similar models were used to estimate impacts on total wages paid. As tests of the robustness of results, a number of alternative models were estimated, including: estimates by industry; the natural log of employees; estimates by initial firm size; and ordinary least squares regression. The results were consistent across models and outcomes: the analysis found no evidence that SWaM certification increased either the number of employees or total wages paid.

Taken together, the results of the analyses of sales in eVA data and the number of employees in VEC data suggest that SWaM certification helps firms increase their sales to the state through eVA but does not have broader impacts on firms' employment. Other interpretations of the results are possible, however, because the two analyses were based on different samples of firms.

State agency spending and procurement data (Chapters 4 and 5)

JLARC staff analyzed data on total expenditures with SWaM businesses between FY10 and FY20. Data was accessed through SBSD's SWaM Expenditure Dashboard. Data was used to determine the portion of expenditures through SWaM and non-SWaM businesses statewide, by secretariat, and by state agency. Data was also used to assess whether the state met the governor's SWaM goal each fiscal year, both statewide and by state agency.

In addition, staff analyzed procurement data reflecting all state purchases between 2010 and the first half of 2020. Data was provided by the Department of General Services and included all purchases conducted through the state's electronic procurement system (eVA). JLARC staff used procurement data to estimate the proportion of purchases conducted through the state's small business and micro business set-aside procurement preferences. Staff also used the data to identify the types of good and services the state has purchased over time through SWaM and non-SWaM businesses.

Small business definitions in other states and the federal government (Chapter 5)

JLARC staff compiled a list of small business definitions in other states by reviewing the websites for all 50 states and the District of Columbia. The goal was to find a definition in each state that was comparable to SBSD's definition for the small business certification program. Staff were able to find comparable definitions for 25 states. Several states did not have a definition because they do not have procurement or certification programs for small businesses.

JLARC staff also reviewed the small business definitions used by the U.S. Small Business Administration, which include over 1,000 definitions for individual business industries. Business industries are represented by the North American Industry Classification System (NAICS) codes. Each industry has a small business definition that includes a maximum level of business employment or average annual receipts.

Case file reviews

JLARC staff reviewed the case files of 21 loans and two grants. The loan files were selected by JLARC to represent different loan programs, time periods, outcomes (approve, deny, withdraw), and involvement of VSBFA staff (Table B-2), while the grant files were selected randomly. Depending on the program, the case files included documentation of the business's application, bank's application and internal assessment, investor's application, VSBFA staff's memo, and communication between VSBFA, businesses, and banks. For approved applications, JLARC reviewed whether the business met program eligibility criteria. For denied applications, JLARC assessed if the reason for denial was justifiable. For all loan applications, JLARC reviewed VSBFA staffs' and/or the bank's assessment of business repayment risk.

TABLE B-2
JLARC reviewed a diverse sample of loan case files

Program	VSBFA decision	Application year	Staff
At least one file from 5 of 6 loan programs [a]	Approvals: 9 Denials: 5 Withdrawals: 7	2017: 1 2018: 4 2019: 12 2020: 4	7 distinct individuals

SOURCE: JLARC analysis of VSBFA application data.
NOTE: [a] Capital Access Program applications were not included by VSBFA on the spreadsheet used by JLARC to select samples.

Document reviews

JLARC staff reviewed a wide variety of documents to inform its study of SBSD, including:

- SBSD statutes and regulations;
- internal SBSD documents, including agency policies and procedures, program applications, employee work profiles, formal agreements between SBSD/VSBFA and other entities, letters and other outreach to businesses, and examples of weekly staff productivity reports;
- a sample of Virginia state agency SWaM plans;
- previous reviews of SBSD, including a 2016 JLARC review of state contracting and a 2018 JLARC economic analysis of small business grant and loan programs, Auditor of Public Accounts financial and procurement audits, and a review of SWaM certification by the Office of the State Inspector General;
- reports commissioned by SBSD, including *A Disparity Study for the Commonwealth of Virginia, 2011*, conducted by MGT Consulting, and *SWaM and DBE Certification Programs: Impacts and Policy, 2018*, conducted by Virginia Commonwealth University;

- federal agency program descriptions and policies, such as the Federal Deposit Insurance Corporation's examination manual, Small Business Administration standard operating procedures, and Economic Development Administration requirements;
- literature on best practices for small business financing and advisory services and compilations of existing programs published by organizations such as Council of Development Finance Agencies, Center for Regional Economic Competitiveness, Milken Institute, and RAND;
- descriptions of other states' small business programs;
- descriptions of certification processes and procedures used by outside certification entities; and
- research and program publications on the effectiveness of various small business intervention programs.

Appendix C: Summary of prior external reviews of SBSD

SBSD (including VSBFA) has been subject to 16 reviews by external entities since the agency was created in 2015 (Table C-1). Reviews have assessed various functions, including SBSD's business certification program, "small business" definition, and financing programs (incentive grants and loans). Over half of the reviews were financial, internal control, or procurement audits of SBSD and VSBFA conducted by the APA. No external entities have reviewed SBSD's technical assistance programs or bond programs, or conducted a comprehensive assessment of SBSD's organizational management.

TABLE C-1
SBSD has been the subject of multiple external reviews since FY15

Type of review	Year(s) conducted	Entity that performed review	Programs reviewed	Key recommendations
Internal Controls Review and Audit	FY19	APA	Internal controls for significant SBSD activities (such as payroll, HR, & information security)	• No findings/recommendations were issued for SBSD
Review of small business incentives at state agencies	FY18	JLARC	VSBFA loan and grant programs	• Add minimum wage requirement to Small Business Jobs Grant • Add scoring system for Small Business Investment Grant, collect performance metrics, strengthen recapture provision • Link program funding to regular review of market conditions • Establish job creation standards for loan programs and track employment outcomes
Sensitive Systems Audit	FY18	VITA	IT systems	• Provide role-based security training to appropriate personnel • Develop a continuous monitoring program for vulnerabilities • Develop IT security plans for each application • Have users acknowledge policy adherence
Virginia SWaM & DBE Certification Programs: Impacts & Policy	2018	VCU	SWaM and DBE certification programs and Virginia's small business definition	• SWaM certification application processing times are out of compliance with agency regulations • Virginia's small business definition may allow non-target businesses to realize program benefits

				• Using the SBA definition of small business for SWaM certification would (1) increase the pool of certified businesses by 10% (in-state would increase by 0.55%, out-of-state would increase by 99.6%), (2) increase the estimated economic impact of SWaM spending by just 0.2%, and (3) make the certification process more cumbersome for businesses and SBSD staff • Requiring SWaM businesses to meet both size and revenue requirements would decrease the pool of certified businesses by 18%.
VSBFA Federal Grants Audit	FY18	APA	VSBFA Economic Development Cluster federal program	• Create additional policies and procedures for Economic Development Federal Loan Program
Oversight Review	Oct. 2017 – Mar. 2018	Federal EDA	Economic Development Loan Fund program	• VSBFA's program scored a "B" overall, with A being the best and C being the worst possible scores. • Strengths included the amount of available funding compared with the starting amount available, default rate, formal plan, portion of income spent on administrative expenses, and cost per job. Weaknesses included the financial audit findings, timely and complete reporting, longevity of leadership, and fund deployment.
Procurement Review and Audit	FY17	APA	Procurement internal controls & operations	• No written management recommendations were issued for SBSD
ARMICS review to evaluate agency-wide and transactional internal controls	FY17	Third-party vendor	Agency risk management & internal control standards	• Update and develop additional agency policies and procedures • Address need for additional staff • Establish budget tracking for the agency
SWaM Certification Performance Audit	FY17	OSIG	Certification program	• Enhance reporting of SWaM compliance • Maintain historical SWaM vendor data • Perform a certification division compensation study • Research the feasibility of instituting a fee structure
Payroll Audit (Review Period FY16)	FY17	APA	Payroll program	• Improve controls over terminated employees • Update and develop additional agency policies and procedures • Perform post certification activities
Internal Controls Audit (Review Period FY16)	FY17	APA		• Update and develop additional agency policies and procedures • ARMICS not in compliance for FY16 • Monitor IT contractor performance using VITA form • Review user access for internal applications

Independent Assessment of VSBFA Audits & Transfers, and SBIG & SBJGF	FY17	Third-party vendor		• Evaluate the capital requirement for SBJGF • Market the SBJGF to differentiate from VJIP
Development and Management of State Contracts in Virginia [a]	2016	JLARC	SBSD certification and procurement programs	• Assist with determining if weighted criterion for SWaM needs adjustment • Prioritize small business certification over W/M • Send notifications to businesses ahead of expiration
VSBFA Financial Audit	FY15, FY16, & FY17	APA	VSBFA financial records & operations	• No recommendations in FY16 and FY17 • Improve controls over financial reporting process (FY15) • Strengthen controls over off-CARS disbursements (FY15)

SOURCE: JLARC analysis studies and reports of SBSD.
NOTE: [a] SBSD was part of a larger review of state contracts; 4 of the 30 recommendations pertained to SBSD.

Appendix D: Literature review of effectiveness of small business support programs

JLARC staff reviewed existing research literature on the effectiveness of programs that support small businesses. The purpose of this review was to identify: (1) whether programs that support small businesses have been shown to promote positive business outcomes (e.g., employment growth, revenue growth, and business sustainability); (2) what types of programs are most effective (e.g., business certification, financing programs, and business assistance); and (3) whether specific design elements improve program effectiveness (e.g., specific eligibility criteria, program staff training, and duration).

JLARC staff established several parameters to ensure that all research reviewed was relevant. Specifically, the review was limited to studies conducted after 2000 (with a focus on studies after 2010) and in geographic locations within or similar to the United States. The review was also limited to studies that assessed programs supporting *small* businesses, though the size of businesses considered "small" varied. Some studies focused on certain types of small businesses (e.g., small manufacturing businesses), while others assessed programs that helped various types of small businesses.

In total, JLARC staff identified and reviewed two meta-analyses and 20 academic studies on the effectiveness of programs that support small businesses. The majority of studies found evidence that providing assistance to small businesses has a positive effect on business outcomes (e.g., business employment, sales, survival, etc.). The citations for the studies reviewed are below.

Meta-analyses

"Evidence Review 2: Business Advice." June 2016. What Works Centre for Local Economic Growth.

"Small Business Assistance Programs in the U.S.: An Analysis of What They Are, How Well They Perform, and How We Can Learn More." September 2008. RAND Institute for Civil Justice working paper series.

Academic studies

Armstrong, Craig E., Craig, Ben R., Jackson III, William E., and Thomson, James B. 2010. **"The importance of financial market development on the relationship between loan guarantees for SMEs and local market employment rates."** Federal Reserve Bank of Cleveland, Working Paper No. 10-20.

Bertoni, Fabio, Martí, Jose, and Reverte, Carmelo. 2019. **"The impact of government-supported participative loans on the growth of entrepreneurial ventures."** *Research Policy*, Volume 48, Issue 1, pp. 371-384.

Brown, J.D. and Earle, J.S. 2017. **"Finance and Growth at the Firm Level - Evidence from SBA Loans."** *The Journal of Finance*, 72(3): 1039-1080.

Brown, J.D. and Earle, J.S. 2012. **"Do SBA loans Create Jobs? Estimates from Universal Panel Data and Longitudinal Matching Methods."**

Chandler, Vincent. July 2012. **"The economic impact of the Canada small business financing program."** *Small Business Economics*, Vol. 39 Issue 1, pp. 253-264.

Conroy, Tessa; Low, Sarah A.; Weiler, Stephan. Jul. 2017. **"Fueling Job Engines: Impacts of Small Business Loans on Establishment Births in Metropolitan and Nonmetro Counties."** *Contemporary Economic Policy*, Vol. 35 Issue 3, pp. 578-595.

Cortes, Bienvenido S. and Yao Ooi, Zheng. 2017. **"The Impact of SBA Lending Activity on Micropolitan Statistical Areas in the US Southeast."** *The International Journal of Business and Finance Research*, v. 11 (2) pp. 1-8.

Krishnan, Karthik; Nandy, Debarshi K.; and Puri, Manju. 2015. **"Does Financing Spur Small Business Productivity? Evidence from a Natural Experiment."** *Review of Financial Studies*, Society for Financial Studies, vol. 28(6), pp. 1768-1809.

Lee, Yong Suk. Jan. 2018. **"Government guaranteed small business loans and regional growth."** *Journal of Business Venturing,* Volume 33, Issue 1, pp. 70-83.

Lewis, Grant. Dec. 2017. **"Effects of federal socioeconomic contracting preferences."** *Small Business Economics*, Vol. 49 Issue 4, pp. 763-783.

Lipscomb, Clifford A.; Youtie, Jan; Shapira, Phillip; Arora, Sanjay; and Krause, Andy. 2017. **"Evaluating the Impact of Manufacturing Extension Services on Establishment Performance."**

McFarland, Christiana, and J. Katie McConnell. 2013. **"Small Business Growth During a Recession: Local Policy Implications."** *Economic Development Quarterly* 27.2: 102-113.

Mole, K. F. et al. Jan 2011. **"Broader or deeper? Exploring the most effective intervention profile for public small business support."** *Environment and Planning* A. volume 43, pp. 87-105.

Monnard, Alexandre; Leete, Laura; and Auer, Jennifer. 2014. **"The Evaluation of the U.S. Small Business Administration's Regional Innovation Cluster Initiative."**

Rupasingha, A., & Wang, K. 2017. **"Access to capital and small business growth: evidence from CRA loans data."** *Annals of Regional Science*, 59(1), 15–41.

Schwartz, Michael. December 2011. **"Incubating an Illusion? Long-Term Incubator Firm Performance after Graduation."** *Growth and Change*. Vol. 42 No. 4, pp. 491–516.

Simpson, Mike; Tuck, Nicki; and Bellamy, Sarah. 2004. **"Small Business Success Factors: The Role of Education and Training."** *Education Training* 46.8/9: 481-91. Web.

Solomon, George T.; Bryant, Andrew; May, Kevin; and Perry, Vanessa. 2013. **"Survival of the fittest: Technical assistance, survival and growth of small businesses and implications for public policy."** *Technovation*, Volume 33, Issues 8–9, pp. 292-301.

Tingvall, Patrik Gustavsson and Videnord, Josefin. Aug. 2018. **"Regional Differences in Effects of Publicly Sponsored R&D Grants on SME Performance."** *Small Business Economics,* pp 1–19.

Young, Andrew T.; Higgins, Matthew J.; Lacombe, Donald J.; and Sell, Briana. Oct. 2014. **"The Direct and Indirect Effects of Small Business Administration Lending on Growth: Evidence from U.S. County-Level Data."** National Bureau of Economic Research Working Paper No. 20543.

Appendix E: VSBFA Programs

VSBFA operates several loan programs. All programs primarily serve small businesses, but each program has a different purpose and design (Table E-1). For loans, "small business" is defined as meeting at least one of the following criteria: (1) less than or equal to $10 million revenue for each of the last three years, (2) less than 250 employees, or (3) less than or equal to $2 million net worth (unless otherwise stated).

VSBFA also administers one grant program (a previous grant program was eliminated in 2020) as well as a conduit bond program (Table E-1). The conduit bond program contains several legally distinct types of bonds (e.g., industrial development bonds) and primarily serves large businesses and nonprofit organizations.

TABLE E-1
VSBFA has eight financing programs that primarily serve small businesses

Program	Description
Direct loans	*For direct loans, VSBFA determines the loan terms, provides the funds to the business, and receives repayments from the business.*
Microloan	• Provides small loan amounts. • Business must be small and operating at least two years. • Maximum amount of the loan is $10,000, but rises to $25,000 if the business provides a referral from an entity where it received business advisory services. • Interest rates are 6%. State-funded.
Economic Development Loan Fund	• Promotes economic development, particularly in economically distressed areas of the state. • Recipients must be one of the following: (1) Virginia economic development entities, (2) businesses engaged in specified industries (e.g., renewable energy, technology), (3) businesses that previously derived 15% or more of their revenues from defense-dependent activities and can demonstrate economic hardship related to defense downsizing. Businesses must be small and create or save full-time jobs through the loan. • Minimum amount is $50,000; maximum is the lesser of $500,000 or 40% of project cost (but higher for economically distressed localities). • Interest rate is 75% of the prevailing prime rate (the amount that commercial banks use for strongest business clients) when the locality is involved, but varies when the loan is directly to a business. Applications that don't meet federal Economic Development Administration requirements for federal funds can be approved by VSBFA using a state funding source.
Child Care Financing Program	• Finances health, safety, and educational improvements by child care centers and family home providers. Administered on behalf of the Virginia Department of Social Services, which funds the program through a federal grant. • Maximum is $150,000 for child care centers and $100,000 for family home providers. • Interest rate ranges between 0 and 4%, but temporarily reduced to 0% for all providers because of COVID.

Support loans	*Banks determine the loan terms (e.g., interest rates), provide the funds to the business, and receive repayments from the business. VSBFA's role is to commit financial assistance to the banks if the loans are not repaid. Bank and VSBFA must mutually approve loans.*	
Loan Guaranty	• Allows commercial bank to reduce lending risk to small businesses. • Recipient must be a nonprofit or a small business. • Maximum amount is lesser of $750,000 or 75% of bank's loan. VSBFA provides no funds to bank unless business defaults. State-funded.	
Cash Collateral	• Supplements a business's inadequate collateral, if business otherwise demonstrates sufficient cash flow. • When loan is approved, VSBFA places funding in loss reserve account at participating bank; the funding is reserved for that particular loan. • Initially funded by the U.S. Treasury's State Small Business Credit Initiative.	
Capital Access	• Mitigates banks' risk in lending to small businesses. Businesses must be small. • Maximum across all loans approved for a particular bank is $500,000. • VSBFA places funding in loss reserve account at the participating bank; the funding is available for all Capital Access loans by the bank. Banks put matching funds into the same account. • Initially funded by the U.S. Treasury's State Small Business Credit Initiative.	
Direct grants		
Small Business Investment Grant	• Encourages private capital investment in small businesses. Businesses must be small (i.e., no more than 50 employees in Virginia and $5 million annual gross revenues). • Cannot be a sole proprietorship or have obtained more than $5 million in aggregate gross cash proceeds from the issuance of its equity or debt investments. The investor cannot be a professional investor. • An eligible investment is cash equity or subordinated debt. • Grant amount is the lesser of 50% of the investment or $50,000, with a lifetime maximum per investor and annual maximum per business.	
Small Business Jobs Grant	• Offsets some costs of hiring new employees. • Eligible businesses must be small (i.e. no more than 50 employees and $3 million in average annual revenues), create at least 5 new jobs within two years of first hire, pay minimum entry wage at least 1.25 times the federal minimum wage (with exceptions of high unemployment areas), make a new capital investment of at least $50,000, be in specified industries, and have 35 percent of revenues from out-of-state. • Approved businesses can receive between $500 and $2,000 per new job. • Eliminated by the General Assembly in 2020.	
Conduit bonds	• VSBFA is the "conduit" between a business or nonprofit wanting a bond to finance a project and the tax-exempt bond market. Federal law defines projects that are eligible. • VSBFA assists with administrative tasks such as publishing notices about the bond, and hosts the mandatory public hearing at its regular board meetings. Bonds approved by VSBFA's board are also reviewed by the Office of the Attorney General, Virginia Treasury, and governor. • Business/nonprofit is fully responsible for repaying bondholders. VSBFA's involvement allows bondholders to avoid federal taxes on interest payments. • VSBFA charges a conduit bond application fee of $1,000 and an annual fee of 0.1% of outstanding principal amount.	

SOURCE: JLARC review of Code of Virginia; VSBFA policies and applications; and interviews with VSBFA staff.
NOTE: The table lists the primary eligibility requirements and program characteristics; it is not exhaustive.

VSBFA's utilization rate has varied across programs (Tables E-2 and E-3). The program utilization rate is the share of money used for a particular program out of the amount of money available. JLARC calculated annual utilization rates for each loan and grant program. (See Appendix B for detailed explanations of the calculation methodology and assumptions.)

TABLE E-2
Loan utilization by program and fiscal year

Program	2016	2017	2018	2019	2020[b]
State-funded programs [a]	80%	123%	15%	23%	21%
Child Care Financing Program	4%	6%	1%	1%	3%
Federal Economic Development Loan Fund	30%	5%	0%	2%	37%
Cash Collateral	71%	145%	83%	12%	5%
Capital Access	93%	21%	10%	4%	36%
Total	46%	45%	8%	10%	24%

SOURCE: JLARC analysis of VSBFA data.
NOTE: [a] State-funded programs consist of the Loan Guaranty Program, microloan, and state Economic Development Loan Fund. They are combined because VSBFA can transfer funds between programs. [b] 2020 data is limited to spending through June 12, 2020.

TABLE E-3
Grant utilization by program and fiscal year

Program	2015	2016	2017	2018	2019	2020[a]
Small Business Investment Grant	6%	17%	58%	100%	100%	54%
Small Business Jobs Grant	19%	14%	13%	9%	1%	100%
Total	14%	15%	32%	55%	52%	56%

SOURCE: JLARC analysis of Department of Planning and Budget data.
NOTE: [a] $712,002 was transferred from the SBJG to the SBIG in FY20. Without that transfer, the SBIG's deployment rate would have been 100% and the SBJG's deployment rate would have been 8%.

Appendix F: Supplemental small business definition analyses

Virginia currently defines a small business as having up to 250 employees *OR* up to $10 million in gross receipts averaged over the three previous years. Some certified small businesses are also eligible to be certified as micro businesses, which can have up to 25 employees *AND* up to $3 million in gross receipts averaged over the three previous years.

This appendix provides additional information to help inform discussions about Virginia's small business definition. The following topics are covered:

- Virginia's small business definition compared to definitions used by other states and the federal government and
- the size of Virginia businesses (including those that are currently certified as "small" or "micro" and Virginia businesses more broadly).

Compared with other states, Virginia's small business definition allows for more employees and does not vary by industry

JLARC identified 25 other states (including the District of Columbia) that have a small business definition. (Some of these states have multiple small business definitions for different industries.) JLARC compared Virginia's definition to the definitions used in these 25 states to benchmark current employment and gross receipts thresholds.

The U.S. Small Business Administration's (SBA) industry-specific small business definitions were also reviewed and used for benchmarking. The SBA has over 1,000 definitions for different industries (or sub-sectors), each with an employment or revenue component.

Virginia's small business definition compared to other states' definitions

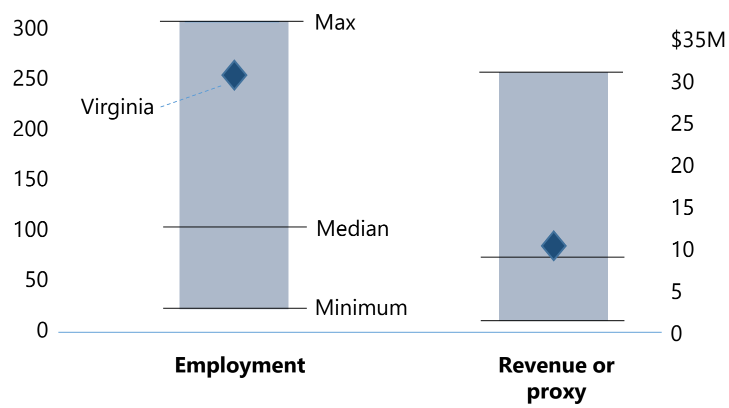
Like Virginia, all 25 states with small business definitions used the number of employees and/or some form of business revenue (e.g., gross receipts or gross sales) to define small businesses. States use widely varying employment or revenue thresholds to define small businesses. Georgia, for example, defines a small business as having 300 or fewer employees, while Wisconsin defines a small business as having 25 or fewer employees. The District of Columbia defines a business as small (in certain industries) if it has up to $300 million in revenue, while Louisiana defines a business as small if it has up to $1.5 million in revenue.

Some states require that business do not exceed both employment and revenue thresholds to be considered small, while others require that businesses do not exceed only one threshold. For example, Pennsylvania, Delaware, Florida, and California use "and" in their definitions and require a business to meet both employment and revenue thresholds. Other states including Maryland, West Virginia, Georgia, Alabama, Wisconsin, and Arizona, use "or" in their definition and require businesses to meet only one of the thresholds.

Virginia's small business definition has a higher employee threshold than many other states, but its revenue threshold is similar (Figure F-1). The median of other states with definitions is 100 employees; Virginia's definition allows 2.5 times as many employees. Virginia's revenue threshold of $10 million is more in line with the median revenue allowed by other states, which is $9 million.

In contrast with Virginia, several other states have small business definitions that differ by several industry groups. For example, Indiana, Maryland, the District of Columbia, New Jersey, Indiana, Oregon, and Nevada have varying definitions for several broad types of industries (e.g. retail, manufacturing, construction). Oregon, New Jersey, and Nevada have separate definitions only for the construction industry. Most of these states do not have as many industry definitions as the federal government, except Colorado, which defines small business at 50 percent of the federal SBA definitions for over 1,000 industries.

FIGURE F-1
Virginia's small business definition allows more employees than other states, but Virginia's revenue threshold is comparable



SOURCE: JLARC staff analysis of information collected from other state websites and documentation about small business programs and definitions.
NOTE: Includes the District of Columbia and 25 states, including Virginia. The District of Columbia allows up to $300 million in revenue for certain industries. This outlier data point is not shown for scaling purposes.

Virginia's small business definition compared to the federal SBA's industry-specific definitions

Virginia's small business definition does not differ by industry like the federal government's definition. Across industries, the Small Business Administration's allowable employment ranges from 100 employees to 1,500 employees, while allowable revenue ranges from $1 million to $41.5 million. Most of SBA's industry definitions exceed Virginia's current small business definition thresholds. Specifically, more than 75 percent of the SBA industry definitions (760 industries) have employment thresholds above 250 employees or gross receipts thresholds above $10 million.

Vast majority of Virginia businesses are substantially smaller than definition's maximum thresholds

JLARC staff compiled many data points about the size of Virginia businesses. Summary statistics were generated to show the size distribution of businesses that are currently certified as small by the Department of Small Business and Supplier Diversity (SBSD). As of April 2020, SBSD had about 10,500 certified small businesses, more than half (58 percent) of which were also certified as micro businesses.

Additionally, summary statistics were generated to show the size distribution of Virginia businesses more broadly (including certified and non-certified businesses). According to data collected by the Virginia Employment Commission, there were about 187,000 active businesses in the state at the end of 2019. (This excludes some businesses, including small sole proprietorships and other businesses that are outside the purview of the Virginia Employment Commission.)

These data points about certified small businesses and Virginia businesses more broadly can be used to determine the proportion of businesses that fall under certain size thresholds, as well as the proportion of businesses that significantly exceed size thresholds. This information can inform discussions about potential changes to the small business definition.

Size of certified small businesses in Virginia

Data shows that many certified small businesses in Virginia are fairly small in terms of employment and gross receipts (Table F-1). Fifty percent (the median) of certified small businesses had no more than 14 employees and $3.2 million in gross receipts. Seventy-five percent of certified small businesses had no more than 38 employees and $7.1 million in gross receipts.

TABLE F-1
Most certified small businesses have low employment and gross receipts

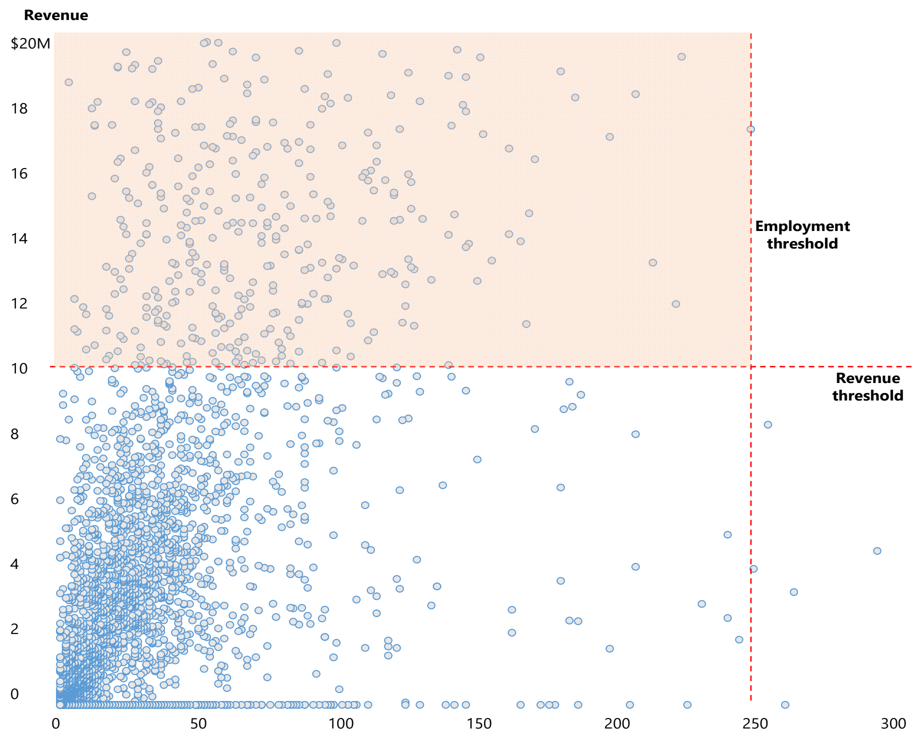
	Percentiles, by size						
	5th	10th	25th	50th	75th	90th	95th
Small certification							
Employees	0	1	2	14	38	77	115
Gross receipts ($)	31,383	110,744	713,207	3,236,540	7,140,396	16,341,692	25,453,499
Micro certification							
Employees	0	0	1	2	5	11	16
Gross receipts ($)	4,680	13,474	63,220	286,273	843,224	1,672,591	2,179,480

SOURCE: JLARC analysis of SBSD business certification data (as of April 2020).

The vast majority of certified small businesses (94 percent) are below Virginia's small business definition thresholds for both employment and revenue. The remaining 6 percent of businesses qualify as "small" because they are below the maximum threshold for employment or revenue—but not both. Of these businesses, the vast majority are below the employment threshold but considerably above the revenue threshold (Figure F-2).

Although most certified small businesses are very small, because businesses must be below only one threshold, a small subset of businesses are certified but have substantially more revenue or employees than most other certified businesses. For example, one certified small business has fewer than 250 employees but $397 million in annual gross receipts. Similarly, a certified small business has less than $10 million in revenue but 1,900 employees.

FIGURE F-2
Some certified small businesses exceed the revenue threshold but still qualify under the employment threshold



SOURCE: JLARC analysis of SBSD certification data (as of April 2020).
NOTE: Out of 10,488 certified small businesses, 12 businesses exceeded the employment threshold, and 610 businesses exceeded the revenue threshold. For scaling purposes, extreme outliers have not been shown in this graph. There are 247 businesses with more than $20M in revenue and 9 businesses with more than 300 employees not shown in the graph.

Size of all Virginia businesses

Most Virginia businesses are small when measured by employment and total wages (Table F-2). Fifty percent (the median) of Virginia businesses had no more than three employees and $100,422 in total wages (a proxy for gross receipts, due to data limitations). Seventy-five percent of Virginia businesses had no more than nine employees and $336,605 in total wages.

Most businesses in Virginia would likely meet the size parameters of Virginia's current definition of small business if they sought certification. Nearly all (99 percent) Virginia businesses would meet the employment threshold of Virginia's current small business definition (250 employees), and 98 percent might qualify under Virginia current gross receipts threshold ($10 million) using total wages as a proxy for gross receipts.

According to businesses that responded to JLARC surveys in 2016 and 2020, many businesses that are eligible do not pursue small and/or micro certification because of lack of awareness, the administrative burden of applying, and uncertainty that it will help them compete for contracts.

TABLE F-2
Most Virginia businesses have low employment and total wages

	Percentiles, by size						
	5th	**10th**	**25th**	**50th**	**75th**	**90th**	**95th**
Virginia businesses							
Employees	1	1	1	3	9	28	59
Total wages ($)	7,200	12,997	30,000	100,422	336,605	1,162,303	2,742,321

SOURCE: JLARC analysis of Virginia Employment Commission data on Virginia businesses (as of 2019).

Appendix G: Agency response

As part of an extensive validation process, the state agencies and other entities that are subject to a JLARC assessment are given the opportunity to comment on an exposure draft of the report. JLARC staff sent an exposure draft of the full report to the Department of Small Business and Supplier Diversity and the Secretary of Commerce and Trade. JLARC staff also sent relevant sections of the report to the Department of General Services.

Appropriate corrections resulting from technical and substantive comments are incorporated in this version of the report. This appendix includes a response letter from the Department of Small Business and Supplier Diversity.

Ralph S. Northam
Governor

R. Brian Ball
Secretary of Commerce & Trade

COMMONWEALTH of VIRGINIA

Department of Small Business and Supplier Diversity

Tracey G. Wiley
Director

September 4, 2020

Mr. Hal Greer
Director
Joint Legislative Audit and Review Commission
919 East Main Street
Suite 2101
Richmond, Virginia 23219

RE: Virginia Department of Small Business Supplier Diversity and Virginia Small Business Financing Authority Response to JLARC Report – *Operations and Performance*

Dear Mr. Greer:

We appreciate the opportunity to provide written response to the draft JLARC report regarding *Operations and Performance* and want to thank the JLARC team that conducted the study for their work. Having reviewed the report we have the following comments on the recommendations affecting programs administered by the Virginia Department of Small Business and Supplier Diversity (SBSD) and Virginia Small Business Financing Authority (VSBFA):

Recommendation #1 –

Response: The agency recognizes the benefit of precertification webinars and has recorded and posted a new webinar on its website that describes the SWaM certification process, the documents required and their purpose, and the information required in the documents.

Recommendation #2 –

Response: The agency agrees that businesses applying for certification initially who may have been denied erroneously should have the right to appeal. Therefore, the agency will implement a policy that allows businesses denied initial certification the opportunity to appeal if the company believes the denial was made in error.

Recommendation #3 –

Response: While denial letters already include information that outlines the (i) circumstances and grounds for businesses to appeal the decision or seek a waiver; (ii) processes a business must follow for filing an appeal or seeking a waiver; and (iii) the documentation businesses should provide when filing an appeal or seeking a waiver, the agency has added more information to the denial letters in an attempt to more clearly describe these points.

While this information is already included in the denial letters sent to businesses, the agency has also added this information to its website to inform businesses of the right to file an appeal or seek a waiver. The information generally describes the circumstances in which appeals and waivers are available remedies and the process for seeking each.

Recommendation #4 –

Response: While the agency uses a variety of means to market and promote the assistance and development programs offered we agree, a written marketing plan would add value to that process. The agency also sees the value in recording and posting program materials so businesses can view that information at their convenience.

Recommendation #5 –

Response: The Business One Stop application has never met the statutory requirements outlined in Code. To meet the statutory requirements the system and the agency would need to be resourced differently. The system as intended would need to share data and financial information between a number of local and state entities requiring cooperation, security protocols, and advanced system functionality. True one stop applications, as documented in the study, require a great deal of funding and coordination to be successful. The agency agrees a study should be conducted

101 N. 14th Street, 11th Floor • Richmond, Virginia 23219 • (804) 786-6585 • Fax (804) 786-9736

and presented to the General Assembly to determine if the scope of the one stop should be scaled back or if additional funding should be appropriated to ensure the one stop meets its statutory requirements.

Recommendation #6–

Response: The Authority sets annual goals for loan volume, private sector leverage (the amount of bank debt closed with our credit enhancement programs and bond program), and job creation and retention, which are all mission essential. Although informal, fund utilization and market conditions are always planning considerations for setting these goals. Therefore, a formal loan to fund utilization ratio/goal shall be established, monitored and reported to the Board.

Recommendation #7–

Response: The Authority shall create a "Dashboard" to report meaningful performance and mission metrics to the Board at least annually. The percentage of loan and grant program funds that are utilized or awarded shall be included in the Dashboard.

Recommendation #8–

Response: In accordance with the direction and approval of the Board a Loan Policy Manual (Manual) shall be developed to establish standardized lending guidelines and to document acceptable credit risks, terms and conditions, and generally accepted practices for the primary purpose of making direct loans to small businesses and economic development authorities and provide credit enhancement programs to encourage community financial institutions to make loans to small businesses.

Recommendation #9 -

Response: Risk assessment shall be governed by the Loan Policy Manual. The Manual shall reflect the level of risk that is acceptable to the Board of Directors and should provide clear and measurable underwriting standards that enable the Authority's lending staff to evaluate all relevant credit and risk factors.

Recommendation #10 -

Response: A Risk Classification System shall be a component of the Loan Policy Manual. VSBFA recognizes that lending involves varying degrees of risk, which must be identified, managed and monitored through established risk rating standards. The ability to accurately risk rate the loan portfolio will enable the Authority to identify and monitor high-risk credits and ensure appropriate risk management in order to make informed portfolio decisions and provide risk profiles to the Board.

Recommendation #11 –

Response: The Authority agrees that banks should report high-risk loans and will add that to the participation agreement.

Recommendation #12 -

Response: The Authority shall establish timeframe guidelines for processing loan applications for each type of loan, and shall monitor the loan process time for each loan category and credit enhancement program that it offers. However, the timeframe that is subject to measurement shall begin at the point where the lender has received all of the required and requested documentation to assess the loan request, author the credit memorandum, and present it to management for approval. This timeframe is likely to vary widely due to the different size and nature of the opportunities offered in each loan or credit enhancement category.

Recommendation #13 -

Response: The Authority's Board represents the constituency that we serve, which are small business owners across the Commonwealth. They are invaluable proponents of programs, such as ours, that provide equitable distribution of capital to the small businesses that are often unsuccessful in garnering support from public sector financing. We also believe the Board should have social, ethnic and gender diversity, which it strives to balance when considering candidates presented by the Office of the Governor (OG) the final board appointment decision maker. Given that this recommendation is outside of the control of the Authority or the Agency, we recommend this be a policy consideration not a recommendation.

Recommendation #14 -

Response: The Authority recognizes the benefits of developing a program improvement plan that addresses the deficiencies outlined in this report and shall present such plan as directed by June 30, 2021.

Recommendation #15 –

Response: While the agency agrees there is value in working with each agency in the Commonwealth individually to establish agency specific SWaM spend goals this would be difficult with the staffing and resources currently available. There are over 200 agencies that would need support to develop and execute these plans. This change in strategy would also need to be approved and implemented by the Governor.

Recommendation #16 –

Response: As noted in Recommendation 15, the Agency agrees there is value in assisting other agencies with the development of strategies that would increase SWaM spend but this would require additional staff and resources than is currently available within the agency.

Option #1 –

Response: The Agency's Business Development and Outreach Services team already refers small businesses to appropriate business resource partners whose niche is in areas not covered by our agency. As noted in the study, the majority of business counseling sessions conducted by the outreach team is related to SWaM Certification, eVA registration, or technical assistance in finding a targeted market within state government.

Option #2 -

Response: The Agency agrees that offering the program statewide has been extremely successful and will continue with that model. The current licensing agreement for the program limits participation to ensure adequate support. The agency would have to purchase additional licenses to offer the program to additional participants, which could be cost prohibitive unless additional resources are allocated to the program.

Option #3 -

Response: The Authority agrees that expanding the microloan program to start-up firms using a pilot model has merit. However, lending to start-up firms increases risk exponentially and could result in program losses that impede the Authority's ability to lend in that program. A grant program could be more impactful for small business startups and an option that could be confidently supported and implemented.

Option #4 –

Response: Although a consistent statewide aspirational goal of 42% for all agencies seems fair at first glance, it may not be realistic for each agency. Some agencies are constricted in their discretionary spend because of dynamics beyond their control. It may be more effective if each agency has its own aspirational, but achievable, SWaM goal. This however, would require additional staff and resources for the Agency to implement.

Options #5, 6, 7, 8 and 9–

Response: These options all relate to the proposed change of the small business definition. The Agency would like to highlight that some of these options introduce complexities into the certification process that will lengthen the certification processing timeframe and introduce confusion for businesses applying for certification. Some of these policy options would need to be evaluated to determine their impact on the small business community as well as the actual program parameters to be used. While some have less impact than others each will require retraining of staff, changes to Agency technology, and rebranding to the business community. Lastly, it is worth noting that any change to the certification process or small business definition without subsequent changes to the application within the procurement process may not have the intended effect.

Option #10 –

Response: The Agency agrees that developing a workgroup to evaluate the results of the Disparity Study, being conducted currently, could help to determine if changes in procurement policy, specifically set-asides for SWaM businesses, are warranted and how those changes, if necessary, would be implemented.

Sincerely,

Tracey Wiley
DSBSD Director

JLARC.VIRGINIA.GOV
919 East Main Street   Suite 2101   Richmond, VA   23219