Public Body Procurement Workgroup

Report of the Public Body Procurement Workgroup on the Small SWaM Business Procurement Enhancement Program and Reporting Requirements

December 2024

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I. Introduction

The third enactment clause of HB 1404, patroned by the Honorable Delegate Jeion A. Ward during the 2024 General Assembly Session, directs the Department of General Services (DGS), in coordination with other interested agencies, to convene a workgroup to review the issues presented by the first enactment clause of that legislation. Delegate Ward also wrote to the Honorable Governor Glenn Youngkin concerning HB 1404, which establishes the Small SWaM Business Procurement Enhancement Program, including a statewide goal of 42 percent of certified SWaM business utilization in all discretionary spending by executive branch agencies and covered institutions in procurement orders, prime contracts and subcontracts. In her letter to the governor, Delegate Ward identified stakeholders, whom the Workgroup staff reached out to about meetings.

Six Workgroup meetings were held at which HB 1404 was discussed. This report summarizes the information presented to the Workgroup by stakeholders and subject matter experts and the Workgroup's findings and recommendations.

II. Background

Overview of Public Body Procurement Workgroup Authority and Duties

Item 73 of the 2024 Appropriations Act directs DGS to lead, provide administrative support, and convene an annual public body procurement workgroup to review and study proposed changes to the Code of Virginia in the areas of non-technology goods and services, technology goods and services, construction, transportation, and professional services procurements. The Appropriations Act language specifies that that Workgroup's membership shall be composed of the following individuals or their designees:

- Director of the Department of Small Business and Supplier Diversity
- Director of the Department of General Services
- Chief Information Officer of the Virginia Information Technologies Agency
- Commissioner of the Virginia Department of Transportation
- Director of the Department of Planning and Budget
- President of the Virginia Association of State Colleges and University Purchasing Professionals
- President of the Virginia Association of Governmental Procurement

Additionally, the Appropriations Act language requires that a representative from each of the following provide technical assistance to the Workgroup:

- Office of the Attorney General's Government Operations and Transactions Division
- Staff of the House Appropriations Committee
- Staff of the Senate Committee on Finance and Appropriations
- Divisions of Legislative Services

The Appropriations Act language outlines a few avenues by which bills may be referred to the Workgroup for study. First, the Chairs of the House Committees on Rules, General Laws, and Appropriations, as well as the Senate Committees on Rules, General Laws and Technology, and Finance and Appropriations, can refer legislation by letter to the Workgroup for study. Second, the chairs of the House Committees on Rules and Appropriations, as well as the Senate Committees on Rules and Finance and Appropriations, can request that the Workgroup review procurement-related proposals in advance of an upcoming legislative session to assist in obtaining a better understanding of the legislation's potential impacts. Additionally, bills may also be referred to the Workgroup for study by the General Assembly, which can pass a bill that includes an enactment clause directing the Workgroup to study a particular topic. In this case, the Public Body Procurement Workgroup includes all of the agencies directed to participate in the study required by the third enactment clause of HB 1404.

Overview of HB 1404

As introduced, HB 1404 establishes the Small SWaM Business Procurement Enhancement Program, including a statewide goal of 42 percent of certified SWaM business utilization in all discretionary spending by executive branch agencies and covered institutions in procurement orders, prime contracts and subcontracts. Executive branch agencies and covered institutions are required to increase SWaM business utilization by three percent each year until they meet the 42 percent goal.

The bill also includes a target goal of 50 percent subcontracting to SWaM businesses in instances where the prime contractor is not a SWaM business for all new capital outlay construction solicitations issued. The bill also includes a set-aside of $100,000 for the purchase of goods, services and construction to certified SWaM businesses.

HB 1404 creates the Division of Procurement Enhancement with the Department of Small Business and Supplier Diversity (DSBSD) to help Virginia meet the goals established under the enhancement program and to enhance the development of SWaM and service-disabled, veteran-owned businesses.

Finally, the bill requires DSBSD to conduct a disparity study every five years, with the next one due January 1, 2026.

HB 1404, which was patroned by Delegate Ward, was referred to multiple subcommittees before passing the Virginia House of Delegates and moving to the Senate of Virginia. It passed the Senate of Virginia too and was sent to Governor Youngkin's desk for signature. Governor Youngkin made a recommendation, which both the Virginia House of Delegates and the Senate of Virginia adopted. The bill also contained a reenactment clause so that the first enactment of the bill would not take effect unless such first enactment was enacted by the 2025 General Assembly Session.

Study Participants/Stakeholders

The Workgroup's Appropriations Act language directs it to hear from stakeholders identified by the patron of referred legislation and other interested individuals. As such, the Workgroup's staff contacted the stakeholders listed in Delegate Ward's letter. The Workgroup's staff compiled the names of the stakeholders identified into a stakeholder email distribution list, which was used to communicate information about the Workgroup's study of HB 1404 and opportunities for public comment to the identified stakeholders. The Workgroup's staff also added any interested individual to the stakeholder email distribution list upon request by such individual.

The stakeholder email distribution list was composed of the following individuals:

- The Honorable Delegate Jeion A. Ward—Virginia House of Delegates
- Patrick Cushing, Fall Line Strategies, Principal
- William Bullock, Bullock Painting Contractors, Inc., Owner
- Christopher Chambers, Esquire, Virginia Minority Chambers, Inc.
- Gwendolyn Davis, M/WBE Advisory Committee, Administrator
- Michelle Deneke, M2B Enterprises, Owner
- Lorena Justin, Lorena's Boutique, Owner
- Gaylene Kanoyton, Virginia NAACP, Political Action Chair
- Kara N. Alley—Spotts Fain Consulting, Government Affairs Specialist
- reedas@verizon.net
- Bernice Travers
- James Allen, the James Allen Group, Principal Owner
- Phil Abraham, The Vectre Corporation, Owner
- Brandon Robinson, AGCVA, CEO and Staff Lobbyist
- Julia Ciarlo Hammond, Cozen O'Connor Public Strategies, Senior Principal
- Melissa Ball, Ball Office Products

III. Workgroup Meetings on HB 1404

The Workgroup held six meetings during which it discussed HB 1404. At the August 21, 2024, meeting Gwendolyn Davis, M/WBE Administrator with the Portsmouth Public Schools presented HB 1404 to the Workgroup and asked for support of the bill in its current form, stating that she requested the bill. After Davis presented, three stakeholders spoke in support of HB 1404: Tonya Poindexter with the Northern Virginia Black Chamber of Commerce, Samuel Wiggins with the Virginia Minority Business Chambers, and Loranna Justine.

There were two stakeholders who spoke in opposition to HB 1404: Chris Stone, past chairman for the Hampton Roads Chamber of Commerce, and Melissa Ball, a member of the Small Business Commission. The Workgroup did not discuss the bill at this meeting.

At the next meeting, held on September 4, 2024, there were no presentations or public comment on HB 1404. The Workgroup asked for additional information from the Department of Small Business and Supplier Diversity on SWaM spend, certification numbers, and the small business definition, as well as information on the 2020 JLARC report recommendations.

During the September 17, 2024, meeting Verniece Love, Deputy Director of the Department of Small Business and Supplier Diversity (DSBSD), presented on HB 1404, discussing the department's mission, small business data, challenges, and recommendations. There was no public comment in support or opposition of the bill, but Chris Stone did speak in general terms about HB 1404, bringing a study done in 2018 by VCU and DSBSD and the JLARC recommendations from the latest disparity study.

At the October 8 meeting, there were two presentations on HB 1404 by DSBSD and by JLARC, followed by public comments. Two people spoke in support of the bill—Gwendolyn Davis and William Bullock. Brandon Robinson spoke in neutrality to the bill and Julianne Hammond and Chris Stone spoke in opposition to the bill.

During the October 22 meeting, DSBSD presented again on HB 1404, this time on how the small business goal in Virginia compared to other states. Then the Workgroup began discussions on possible recommendations for the bill.

At the last meeting on November 6, 2024, there was a public comment period where Melissa Ball spoke the Workgroup and asked them to consider using federal small business standard in the Virginia bill. Then the Workgroup finalized and voted on recommendations for HB 1404. Afterward, Gwendolyn Davis spoke in opposition to the Workgroup's recommendations.

See Appendices B, C, D, E, F and G for the meeting materials, including meeting minutes for each of the five meetings.

IV. Summary of Information Presented to the Workgroup

The Public Body Procurement Workgroup (Workgroup) was tasked in a letter from the Honorable Delegate Jeion A. Ward to the Honorable Governor Glenn Youngkin with studying HB 1404, patroned by Delegate Ward during the 2024 General Assembly session. Over the course of six public meetings, the Workgroup members heard presentations and numerous stakeholder comments surrounding HB 1404.

August 21, 2024, presentation by Gwendolyn Davis on HB 1404

At the August 21, 2024, Workgroup meeting Gwendolyn Davis, M/WBE Administrator with Portsmouth Public Schools, presented **HB 1404** to the Workgroup, requesting support for the bill in its current form. She explained that she had initiated the bill and that it codifies executive orders first issued in 2014 by Governor McAuliffe. These orders significantly increased spending on women and minority businesses (MWBEs) from $75 million to $3.1 billion.

Davis highlighted key provisions of the bill:

- **Small Business Procurement Enhancement Program:** Establishes this program under the Department of Small Business and Supplier Diversity (DSBSD).

- **Addressing Disparity in Spending:** She noted MWBEs received only 1.26% of spending in 2004, while the 2020 disparity study indicated it should be 32%.
- **Prompt Action Required:** Citing studies, Davis emphasized the need for immediate action, particularly as the pandemic severely impacted businesses in the 757 area.
- **Concrete Spending Goals:** She described the bill as essential for progress, with realistic goals (42% spend) and a requirement for prompt payment to business owners, addressing current delays of 90–100 days.
- **Set-Asides for MWBEs:** Allows for purchases up to $100,000 for goods, services, and construction, excluding transportation due to lack of study.
- **Subcontracting Plans:** Ensures proper verification and inclusion of subcontractors in procurement processes.
- **Local Government Flexibility:** Permits local governments to establish non-competitive purchasing procedures for single-term contracts.
- **Regular Disparity Studies:** Mandates that DSBSD conduct a disparity study every five years to evaluate progress.

Davis emphasized that the bill has been vetted by multiple administrations and the Attorney General's office. She highlighted its importance to Virginia businesses, asserting it is well-crafted and achievable legislation that addresses long-standing disparities and systemic issues in MWBE procurement.

August 21, 2024, testimony in support of and opposition to HB 1404

Tonya Poindexter, representing the Northern Virginia Black Chamber of Commerce, expressed strong support for HB 1404. She shared her concerns about the difficulties her members face when navigating the state procurement process. She explained that many members struggle to get through the process and achieve their goals of securing state contracts. Poindexter expressed believing that the bill will provide her members with the resources they need to overcome these challenges and succeed in obtaining state contracts.

Samuel Wiggins, the CEO of Virginia Minority Chambers, also voiced his support for the bill. He pointed out that minority businesses often feel discouraged when their SWaM certification is treated as merely a bonus rather than a substantive factor in the state contract evaluation process. Wiggins highlighted another issue where prior state experience is frequently required for procurement, which limits opportunities for new entrants and drives businesses to seek contracts in the private sector or federal government, where programs are perceived to be more accessible and supportive.

Loranna Justine added her voice to the discussion by expressing her general support for the bill, agreeing with its intent to address disparities and improve the procurement process for minority and women-owned businesses.

Two stakeholders spoke in opposition to HB 1404, raising concerns while supporting its broader goals.Chris Stone, past chairman of the Hampton Roads Chamber of Commerce, noted that while the Chamber does not oppose the bill, it has two primary concerns. First, he cautioned against codifying the 42 percent spending goal, explaining that executive orders allow flexibility, whereas codification would require legislative action for adjustments. Second, he criticized the outdated definition of a small business, unchanged since 1960. He pointed out that the current definition allows businesses with up to 250 employees and unlimited revenue to qualify as small businesses, which is inconsistent with modern standards. Stone referenced studies by DSBSD (2018) and JLARC (2020) that recommended updating the definition to better align with today's business environment and urged the General Assembly to address this issue.

Melissa Ball, a Small Business Commission member and local small business owner, expressed support for initiatives to level the playing field for minority, women, and small businesses in procurement, emphasizing their importance to Virginia's economy. However, she criticized the codified micro business definition, arguing it unintentionally excluded many small businesses by relying solely on headcount. Ball shared that her business was negatively affected, placing it in the same category as large companies like Staples. She also highlighted inefficiencies in procurement caused by micro businesses acting as intermediaries, inflating costs for the Commonwealth on items like safety equipment, tools, and maintenance supplies. Ball recommended adopting the federal SBA approach to defining small businesses, which considers both size and revenue metrics, to address these issues.

September 17, 2024, Department of Small Business and Supplier Diversity presentation

Verniece Love, Deputy Director of the Department of Small Business and Supplier Diversity (DSBSD), presented on HB 1404, discussing the department's mission, small business data, challenges, and recommendations.

Love began with an overview of DSBSD's work to support small businesses in Virginia. She shared that as of June 2024, over 14,000 businesses were certified as SWAM (Small, Women-owned, and Minority-owned) businesses. She explained that businesses can be certified in multiple categories, which may lead to overlapping numbers. Among the certifications, over 13,000 are small businesses, more than 8,000 are micro-businesses, over 6,200 are minority-owned businesses, approximately 5,600 are women-owned businesses, 3,300 are disadvantaged business enterprises, and 810 are service-disabled, veteran-owned businesses.

She highlighted the department's electronic certification portal, launched in 2017, which processes certifications within 60 business days. Certification is valid for five years, with a streamlined recertification process using previously submitted documentation.

Love reviewed the three disparity studies conducted in 2002, 2009, and 2020, which showed significant growth in MWBE participation. In 2002, only 1.27% of businesses were MWBEs, increasing to 2.82% in 2009 and 13.3% in 2020. She also shared that in FY2023, Virginia spent $2.9 billion with SWAM businesses, including 6.06% spent with women-owned businesses and 6.77% with minority-owned businesses. Spending with SWAM businesses has increased over the past three years.

She addressed the Commonwealth's SWAM spending goal of 42%, which was established by Governor McAuliffe in 2014 and increased from 40%. Love noted that the highest percentage achieved was 36.9% in 2016, with other years hovering around the low 30% range. She mentioned DSBSD's recommendation to adjust SWAM goals by agency based on their specific contracting needs and spending patterns, rather than setting a uniform goal for the entire Commonwealth.

The definition of a small business in Virginia, as outlined in the Code of Virginia, was another topic Love discussed. The current definition allows businesses with up to 250 employees or $10 million in revenue to qualify. Love described this as an "either-or" approach, which allows some large businesses to qualify as small. She shared past recommendations to amend the definition by changing "or" to "and" or aligning it with federal definitions used by the Small Business Administration. However, these changes have not been implemented. Love cautioned that federal definitions may not suit Virginia's needs due to differences in industries and codes.

Love explained that DSBSD has implemented 15 of the 16 recommendations from the 2020 JLARC study. The one exception is the creation of a "Business One Stop" website, intended to streamline business registrations, licensing, and procurement processes. This initiative was deemed too expensive, with estimated costs of $1.2 million initially and $4.7 million for maintenance over four years. Instead, the current website directs businesses to relevant resources.

She noted that the next disparity study will begin in January 2025 and be completed by January 2026. Unlike previous studies, this one will evaluate spending by specific goods and services categories. Love also addressed concerns about reciprocity with other states, explaining that Virginia excludes businesses from states that do not allow Virginia businesses to participate in their programs. For example, D.C. businesses cannot participate in Virginia's SWAM program because Virginia businesses are excluded from theirs.

During the discussion, Love answered questions about the SWAM goal, clarifying that it applies to aggregate spending across all executive branch agencies. She acknowledged confusion over whether the goal applies to the Commonwealth of Virginia as a whole or to individual agencies. She agreed to research how neighboring states define and certify small businesses, including industry-specific limitations, and present this information at a future meeting.

In closing, Love emphasized the importance of refining SWAM goals, updating the small business definition, and tailoring programs to meet modern needs, reiterating the relevance of HB 1404 in achieving these objectives.

September 17, 2024, public comment on HB 1404

Chris Stone, the past chair of the Hampton Roads Chamber of Commerce, spoke to the Workgroup about HB 1404. He brought attention to a 2018 study conducted by the Department of Small Business and Supplier Diversity (DSBSD) and Virginia Commonwealth University

(VCU), along with a synopsis of recommendations from the Joint Legislative Audit and Review Commission (JLARC).

Stone pointed out specific sections in the study that address the definition of a small business, mentioning that the study also examines how other states define small businesses. He emphasized that Virginia's current definition is significantly out of alignment with neighboring states, especially regarding the size of a business. According to Stone, the existing definition allows companies with up to 250 employees and unlimited revenue to be classified as small businesses, which he believes is outdated.

He concluded by advocating for an updated definition that reflects the current business climate. Stone posed the question, "Why would a company of 250 people and unlimited revenue need special consideration for public procurement?" suggesting that the definition should be revised to better support genuinely small businesses in public contracting.

October 8, 2024, Department of Small Business and Supplier Diversity presentation

Verniece Love, Deputy Director of the Department of Small Business and Supplier Diversity (DSBSD), presented additional information to the Workgroup on HB 1404, focusing on how neighboring states define small businesses. She specifically analyzed states along the East Coast from Maryland to Florida, as requested during the previous meeting.

Love began by reiterating Virginia's small business definition, which is a business with 250 or fewer employees **or** an average of $10 million or less in gross receipts over three years. She then compared this to definitions and practices in other states:

- **Washington, D.C.**: Small businesses must meet one of four criteria tied to residency, assets, or gross receipts in the District. They have a Certified Business Enterprise (CBE) program with subcategories and size standards based on a five-year average, tailored by industry.
- **Maryland**: The state's Small Business Reserve Program requires businesses to be independently owned and meet size standards tied to either employee count or gross receipts, differentiated by industry.
- **Tennessee**: Businesses must have operated for at least two years and meet limits of $10 million in gross receipts (three-year average) or 99 full-time employees.
- **North Carolina**: Small businesses must be headquartered in the state, with no more than 100 employees and annual income not exceeding $1.5 million. North Carolina deducts the cost of goods sold when calculating gross revenue.
- **South Carolina**: Only women- or minority-owned businesses qualify for small business certification. South Carolina uses the federal SBA definition and requires owners to meet federal criteria for social and economic disadvantage.
- **Georgia**: Businesses self-certify as small, with a definition broader than Virginia's, allowing up to 300 employees and $30 million in gross receipts.

- **Florida**: Like South Carolina, Florida certifies only women-, minority-, or veteran-owned businesses. Certified businesses must be based in Florida, with 200 or fewer full-time employees.

Love concluded her presentation by noting differences in definitions and approaches across states. She highlighted how some states adopt federal standards, while others have unique criteria tailored to local contexts. There were no questions following the presentation.

October 8, 2024, Joint Legislative Audit and Review Commission presentation

The Joint Legislative Audit and Review Commission (JLARC) presented findings from its 2020 study on the Department of Small Business and Supplier Diversity (DSBSD) and provided policy options relevant to HB 1404.

The study highlighted that DSBSD's processes have become timelier, and appeal rights were limited. The Virginia Small Business Financing Authority (VSBFA) was not fully achieving its mission of helping small businesses access financing and lacked adequate lending policies. While state procurement spending with SWaM-certified businesses was substantial, the 42% goal was not met. Additionally, most state procurements went to businesses much smaller than Virginia's definition of a small business.

DSBSD has implemented or is in the process of implementing six of JLARC's seven recommendations. JLARC also proposed ten policy options in the report, including changes to the small business definition, expanding SWaM spending goals, and introducing a VSBFA pilot program for startup microloans.

Lauren Axselle provided additional analysis, noting that 94% of certified small businesses were significantly smaller than Virginia's definition, according to 2019 data. Policy options to narrow the small business definition included requiring businesses to meet both employment and revenue thresholds, which would cut 6% of certified businesses. Other options included lowering thresholds to the 95th or 75th percentile, reducing certified businesses by 3% or 13%, respectively, or adopting industry-specific thresholds similar to federal and other state approaches. The latter would require significant administrative work and fiscal investment.

Axselle also discussed SWaM program effectiveness. As of 2019, agencies procured over $2 billion through SWaM-certified businesses, with median sales increasing by 20% after certification. Businesses also cited non-monetary benefits such as improved reputation. However, only 40% of agencies met the 42% goal, and SWaM spending varied widely from 4% to 87% due to differing procurement needs and the availability of SWaM vendors for specific goods and services.

JLARC suggested that agencies set customized SWaM goals based on their procurement patterns and the availability of SWaM businesses, rather than adhering to a uniform 42% target.

During discussions, it was noted that the origin of the 42% goal is unclear, though it appears in various executive orders. Workgroup members debated whether the 42% target applies statewide or to individual agencies, emphasizing the need for clarity when reviewing HB 1404. Questions arose about how discretionary spend is measured and which categories are exempt, and DSBSD committed to providing a breakdown of exempt categories. Data on other states' goals was also requested, with Love confirming that most states focus on women- and minority-owned spending goals, which she will provide for comparison.

The presentation concluded with the Workgroup agreeing to consider these findings and options as they review HB 1404.

October 8, 2024, testimony in support of and opposition to HB 1404

Several stakeholders shared their views on HB 1404 during the discussion. Gwendolyn Davis of the Minority Women Business Advisory Committee expressed strong support for the bill. She read comments from the committee chair, Laquisha Atkinson, who emphasized the importance of promoting minority- and women-owned businesses. Atkinson thanked the bill's sponsor, the General Assembly, and past governors for their commitment to supporting small businesses.

Brandon Robinson, representing the Associated General Contractors of Virginia, maintained a neutral stance on the bill but raised key concerns. He questioned the feasibility of achieving the 42% goal, highlighting the availability of small, women, and minority-owned businesses as a critical factor. Robinson also noted the difficulties some businesses face in obtaining SWaM certification and said the bill does not address this process adequately. He further cautioned against disbarring contractors for failing to meet aspirational goals, suggesting that goals should be ambitious yet achievable, with support provided for small businesses.

William Bullock, a contractor from Richmond, voiced his support for the bill. He stressed the need for the state to increase spending with minority and African American contractors, particularly considering widespread poverty and economic struggles in Virginia. Bullock highlighted the challenges small businesses face in competing with larger companies on price for contracts.

Julianne Hammond, representing the National Federation of Independent Businesses (NFIB), opposed codifying the executive order, arguing that it removes flexibility. She expressed concern that some proposed solutions, like stricter limits, could hinder participation by small businesses. Hammond suggested streamlining the certification process by accepting federal certifications at the state level and focusing on discretionary fields to better assess availability within specific industries.

Chris Stone, past chair of the Hampton Roads Chamber of Commerce, opposed the bill and shared his personal experience with the 42% goal. Stone argued that the goal is not a one-size-fits-all approach. He pointed out systemic barriers, such as the lack of accredited four-year degree programs at Virginia's HBCUs in fields like architecture and engineering, which limits the pipeline for minorities to start businesses in these industries. Stone emphasized the need to create broader opportunities for minorities to establish small businesses.

Overall, the stakeholders presented a mix of support, concerns, and recommendations for improving the bill's implementation and effectiveness.

October 22, 2024, Department of Small Business and Supplier Diversity presentation

Verniece Love, Deputy Director of the Department of Small Business and Supplier Diversity (DSBSD), presented additional information on HB 1404, focusing on Virginia's small business spending goals, discretionary spending, and how other states manage similar programs. She provided handouts detailing discretionary spending and exemptions, as well as DOA reportable object codes, as requested in a previous meeting.

Love began by restating Virginia's goals for SWaM (Small, Women-owned, and Minority-owned) spending at 42% and an additional 3% goal for certified veteran-disabled businesses. She explained that Virginia's set-asides are gender-neutral and include micro-business set-asides for purchases under $10,000 and small business set-asides for purchases between $10,000 and $100,000. Micro and small businesses also receive a price preference, allowing their bids to exceed the lowest bid by up to 5% while still being competitive.

Love provided an overview of similar programs in other states:

- **Washington D.C.** has a Certified Business Enterprise (CBE) program with a 50% procurement goal for Small Business Enterprises (SBEs). Businesses earn points based on various categories within the program.
- **Maryland** operates a Small Business Reserve (SBR) program that allocates over 20% of open solicitations to certified small businesses, with spending categories segmented by procurement value. Maryland also has a Minority Business Enterprise program with a 29% aspirational goal and a 3% goal for veteran-owned businesses.
- **Tennessee** assigns agency-specific procurement goals for different categories, such as MBE, WBE, DSBE, SDVBE, and SBE. These goals are set and monitored by the Governor's Office of Diversity Business Enterprise.
- **Texas** runs the Historically Underutilized Business (HUB) program, which sets annual goals for women- and minority-owned businesses across various industries, based on state agency and university expenditures.
- **New Jersey** has two set-aside programs: one for 25% of contracts to certified Small Business Enterprises and another 3% for Disabled Veteran-Owned Business Enterprises. The state's goal is to award 25% of contracts to small businesses.
- **New York** leads in MWBE utilization with a rate of 32.3% and a state goal of 30%. The Office of Contractor and Supplier Diversity oversees and monitors MWBE and SDVOB project goals.

Love clarified questions from the Workgroup during the discussion. She explained that the cardinal categories and codes for discretionary spending come from the Department of Accounts website and are maintained on DSBSD's website. In response to a question about Texas's HUB program, she confirmed it is aimed at women- and minority-owned businesses. However, she did not have specific information on whether subcontracting goals were for prime awards or all-inclusive subcontracting.

Her presentation provided a detailed comparison of Virginia's approach to those of other states, offering insights into various procurement and goal-setting practices.

November 6, 2024, public comment on HB 1404

Local businesswoman Melissa Ball thanked the Workgroup for their efforts on HB 1404. She urged the Workgroup to consider using the federal small business standard in Virginia. She explained that the federal size standards are based on number of employees or revenue based on the category. She said in Virginia, her business is not able to participate under the Virginia categories. She thinks the federal standards will provide more economic development and inclusivity of the minority and women-owned businesses that have been excluded.

After the Workgroup voted on recommendations for HB 1404, Gwendolyn Davis spoke in opposition to the recommendations. She said these recommendations are asking women and minority-owned businesses to wait again. She explained that the state has already commissioned multiple disparity studies, and they all say the same thing. Davis said they don't think the recommendations are fair. She said that the 42% number was based on what agencies recommended and the disparity studies. She furthered that the definition of small business has nothing to do with the bill. She continued that women and minority-businesses should have the same opportunities as other businesses and these recommendations do not help them. She finished with saying she hoped the recommendations will be reconsidered.

V. Workgroup Findings and Recommendations

At the Workgroup's seventh meeting on October 22, 2024, the Workgroup began a discussion based on the input they had received regarding HB 1404. The Workgroup discussed potential recommendations for HB 1404, focusing on its goals, technical amendments, and implementation challenges. Chair Gill opened the discussion by summarizing key issues raised in presentations and testimony. She highlighted concerns about the definition of small business, questions about codifying the 42% SWaM goal, and whether it applies to the entire Commonwealth of Virginia or individual agencies. Gill noted the current disparity study is examining small and micro-businesses relative to the commodities the state procures, which is different from previous studies. She questioned whether codifying the bill in its current form might hinder implementation of future remedial plans for women and minorities based on disparity study findings.

Verniece Love agreed and presented two options: rely on data from the 2020 disparity study to implement programs or wait for the 2026 disparity study to inform recommendations. Rebecca

Schultz from DLS noted that the bill covers multiple initiatives, including a new enhancement program and division within DSBSD, and suggested clarifying the bill's primary goal. She raised questions about whether the division should focus specifically on women and minority-owned businesses or have a broader scope.

Love explained that the division would assist state agencies in setting goals and sourcing small, women-, and minority-owned businesses for procurement contracts. Gill added that her interpretation of the bill was that it would codify Executive Order 35 (EO35) and create a small business enhancement plan rather than focus exclusively on women- or minority-owned businesses. Schultz pointed out that the bill's definition of small business aligns with the current SWaM definition and suggested technical amendments to resolve potential conflicts in procurement codes.

Gill suggested a recommendation for the General Assembly to address these technical amendments if the bill is reintroduced, ensuring consistency between the Virginia Public Procurement Act (VPPA) and DSBSD terms. Heslinga emphasized the need for future legislation to consider differences in state agencies' procurement needs and recommended tailoring SWaM goals to the commodities each agency buys. Schultz agreed, suggesting that this could be incorporated into the new division's responsibilities outlined in the bill.

Patti Innocenti proposed altering the timing of recommendations required in enactment clause 3 to align with the completion of the disparity study, ensuring its findings influence the recommendations. Gill agreed, suggesting a similar approach to HB 1524. Kim Dulaney raised concerns about the bill's fiscal impact on higher education institutions, recommending that the Department of Planning and Budget (DPB) gather fiscal data from these institutions. Gill asked Dulaney to provide fiscal impact details to include in the recommendations.

The Workgroup's discussion concluded with a consensus on clarifying the bill's goals, addressing technical amendments, considering the fiscal impact on higher education, and tailoring SWaM goals to agency-specific procurement needs. These recommendations aim to refine the bill and ensure effective implementation.

At the eighth and last meeting on November 6, 2024, Chair Gill opened the discussion on finalizing the recommendations for HB 1404, noting that the Workgroup had been refining draft recommendations over the past two weeks via email. She invited further discussion and input. Dulaney relayed to the Workgroup that she did not have a readily available fiscal impact statement.

Josh Heslinga identified an unnecessary comma in the first recommendation, which staff resolved by removing it.

Lisa Pride asked whether the Workgroup should clarify the benefits outlined in Recommendation 2 for the General Assembly. Gill responded that additional information from Verniece Love, specifically regarding the Maryland study, would be incorporated to address this concern.

The discussion focused on ensuring the recommendations were precise and supported by relevant data for the General Assembly's consideration.

Staff member Killeen Wells then read each of the four recommendations aloud and the Workgroup members voted in support of each recommendation. Below are the four recommendations for HB 1404.

Recommendation 1: "The Workgroup recommends that the General Assembly consider not reenacting Chapter 834 enacting Clause 1 in the upcoming session and consider a section 1 bill to require the Virginia Department of Small Business and Supplier Diversity to report on December 1, 2026, on the outcome of the disparity study currently being performed as required by 2024 Acts of Assembly Chapter 834 enacting Clause 4. This disparity study differs from previous studies in that it expanded to study the availability and utilization of small and micro-owned businesses in addition to previously studied women-owned and minority-owned businesses. It also specifically looks at the utilization and differences between categories of state procurement, such as by the types of goods and services needed or procured by state agencies." The Workgroup voted in support of the recommendation, 6-0 with DPB absent.

Recommendation 2: "The Workgroup recommends that the General Assembly consider directing a study of the small business definition before codifying any enhancement plan. The Workgroup further suggests that the General Assembly direct the study to be based explicitly on Virginia business with the intent of benefiting Virginia businesses, similar to the policy the state of Maryland implemented. Additionally, the General Assembly, as part of the study, could consider directing Virginia Department of Small Business and Supplier Diversity, in collaboration with the Department of General Services, Virginia Information Technologies Agency and Virginia Department of Transportation, to review the DSBSD certification processes, including outreach practices. Finally, the Workgroup recommends that the General Assembly consider incorporating this recommendation into the disparity study report." The Workgroup voted in support of the recommendation, 6-0 with DPB absent.

Recommendation 3: "The Workgroup recommends that the General Assembly consider not codifying a goal for the utilization rate of small SWaM businesses. An accurate goal for utilization cannot be set until the current disparity study is complete. The study being performed should provide data by commodity, detailing availability, participation and utilization. This will enable the Commonwealth of Virginia to establish a more appropriate goal. Additionally, if the General Assembly studies and changes the definition of a small business, the goal will need to be reevaluated once it is implemented." The Workgroup voted in support of the recommendation, 6-0 with DPB absent.

Recommendation 4: "The Workgroup recommends that if the General Assembly intends to reenact Clause 1, then the General Assembly may consider technical amendments to address the concerns mentioned in the Workgroup meetings. Items discussed included confusion over terminology and conflicts with existing definitions found in the Virginia Public

Procurement Act." The Workgroup voted in support of the recommendation, 6-0 with DPB absent.

VI. Conclusion

The Workgroup would like to thank the stakeholders and interested parties for their participation, as well as the subject matter experts from various state agencies who provided presentations and technical expertise to assist the Workgroup in its deliberations.

Appendix A: Letter to Governor and Text of HB 1404

This appendix contains the letter from the Honorable Jeion A. Ward to Governor Glenn Youngkin regarding the Workgroup studying HB 1404 as well as the bill summary and language.

2024 SESSION

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.

COMMONWEALTH OF VIRGINIA
HOUSE OF DELEGATES
RICHMOND

JEION A. WARD
POST OFFICE BOX 7310
HAMPTON, VIRGINIA 23666

EIGHTY-SEVENTH DISTRICT

COMMITTEE ASSIGNMENTS:
LABOR AND COMMERCE (CHAIR)
TRANSPORTATION
COMMUNICATIONS, TECHNOLOGY
AND INNOVATION
RULES

May 14, 2024

The Honorable Glenn Youngkin
Governor's Office - Third Floor
Patrick Henry Building
1111 East Broad Street
Richmond, VA 23219

RE: Work Group to Review Issues Pertaining to First Enactment of HB 1404

Dear Governor Youngkin,

We want to thank you for working to ensure that HB 1404 - The Small, SWaM Procurement Enhancement Program is enacted into law in the Commonwealth of Virginia. This legislation ensures transparency and continues the progress made to date to eradicate the egregious disparity in the State's procurement contracting system.

We also want to suggest the following names of Stakeholders for your consideration to add to your Work Group, identified in your amendments to HB 1404 and HB 30 – Amendment 24, to facilitate an equitable discussion on issues that could impact any changes made to the existing legislation, before its second enactment in the 2025 General Assembly Session.

-William Bullock, Business Owner, Bullock Painting Contractors, Inc. – contracting@bullockpainting.com – (804) 232-4788

-Christopher Chambers, Esquire – Student Housing of America, Inc. and Virginia Minority Chambers, Inc. – info@nothernvirginia.org - (855) 843-8262

-Gwendolyn Davis, M/WBE Administrator, M/WBE Advisory Committee, Portsmouth Public Schools – gwendolyn.davis@portsk12.com – (757) 393-8261

-Michelle Deneke, Business Owner - M2B Enterprises – mdeneke@yahoo.com -(301) 529-0773

-Lorena Justin, Business Owner, Lorena's Boutique – lorenasboutique@hotmail.com - (757) 696-0141-

-Gaylene Kanoyton – Business Owner and Political Action Chair, Virginia NAACP – gaylenellc@gmail.com - (757) 287-0277

-Tonya Poindexter – Business Owner, The Write Touch, LLC and Member, Northern Virginia Black Chamber of Commerce – info@northernvirginiabcc.org – (703) 442-4472

-Anthony Reed – Equipping Businesses For Success Institute (EBFSI) – reedas@verizon.net - (757) 582-6421

-Bernice E. Travers, Business Owner – Travers Corporation – bernicetravers@yahoo.com - (804) 814-4434

-Dr. James Allen, Business Owner, The James Allen Group – thejamesallengroup.com – (757) 228-5635

Thank you in advance for your favorable consideration of our request.

Sincerely,

Jeion A Ward

Delegate Jeion A. Ward
Patron – HB 1404

cc: The Honorable Don Scott, Speaker of the House
The Honorable L. Louise Lucas, President Pro Tempore
The Honorable Lamont Bagby & Members of VLBC
Director Willis A. Morris, Department of Small Business & Supplier Diversity
Portsmouth School Board
Portsmouth Public Schools M/WBE Advisory Committee
Hampton Roads Clergy

Appendix B: August 21, 2024, Meeting Materials

This appendix contains the meeting materials from the August 21, 2024, Workgroup meeting.

1. Agenda
2. Meeting Materials
    a. Department of Planning and Budget 2024 Session Fiscal Impact Statement
    b. Executive Order 29 (2002)
    c. Executive Order 103 (2005)
    d. Executive Order 33 (2006)
    e. Executive Order 20 (2014)
    f. Executive Order 35 (2019)
    g. Virginia Minority Business Commission 2021 Annual Report
    h. JLARC Operations and Performance of the Department of Small Business and Supplier Diversity Report 2020
    i. Portsmouth Public Schools Fact Sheet on HB 1404
3. Approved Meeting Minutes

Public Body Procurement Workgroup

https://dgs.virginia.gov/dgs/directors-office/pwg/

Meeting # 3
Tuesday, August 21, 2024, 1:00 p.m.
House South Subcommittee Room, 2nd floor
General Assembly Building
201 North 9th Street, Richmond, Virginia 23219

AGENDA

I. **Call to Order; Remarks by Chair**

II. **Approval of Meeting Minutes from the August 6, 2024 Workgroup Meeting**

III. **Presentation on HB 1404**
Gwendolyn S. Davis, M/WBE Administrator Procurement Office
Portsmouth Public Schools

IV. **Public Comment on HB 1404**

V. **Presentations on HB 1355**
Nathan Moberley
Office of the Attorney General

VI. **Public Comment on HB 1355**

VII. **Discussion on HB 1355, Preliminary Findings and Recommendations**

VIII. **Public Comment on SB 492**

IX. **Discussion on SB 492**

X. **Discussion**

XI. **Adjournment**

Members

Department of General Services
Virginia Information Technologies Agency
Department of Planning and Budget
Virginia Association of State Colleges and University Purchasing Professionals
Department of Small Business and Supplier Diversity
Virginia Department of Transportation
Virginia Association of Government Purchasing

Representatives

Office of the Attorney General
Senate Finance Committee

House Appropriations Committee
Division of Legislative Services

Staff

Jessica Hendrickson, Director of Policy and Legislative Affairs, DGS
Kimberly Freiberger, Legislative Analyst, DGS

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.

<u>Reporting Requirements</u>

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

Joint Legislative Audit and Review Commission

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JLARC Report 537

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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.

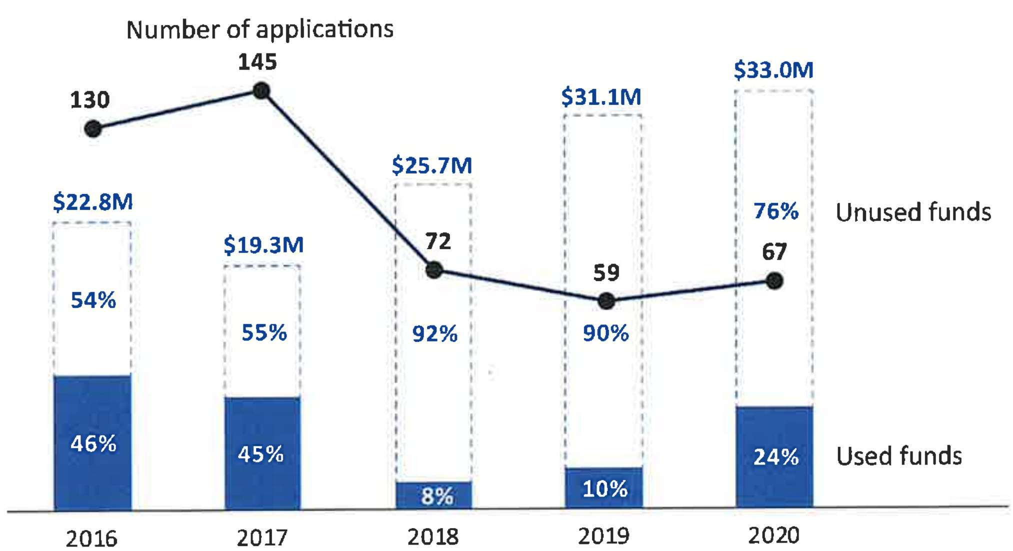
VSBFA also received $10M for a COVID **loan program**.

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

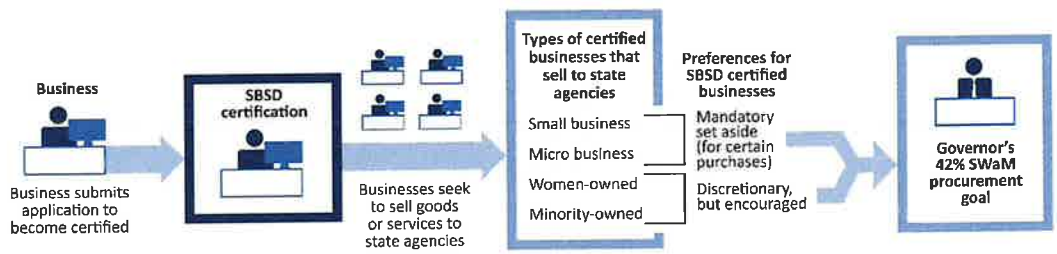
The legislature created SBSD in 2014 by merging the Department of Business Assistance and the Department of Minority Business Enterprise. The VSBFA was also merged into SBSD. VSBFA operates as a division within SBSD but works through a separate board to approve loan decisions.

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.

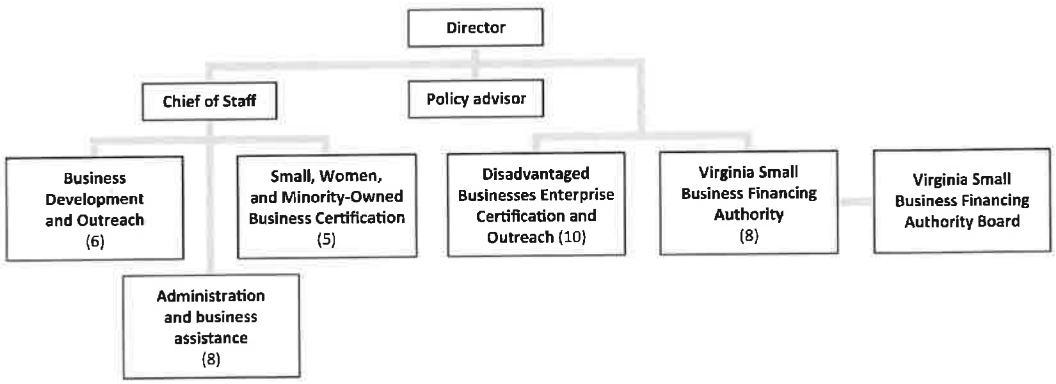
SBSD was scheduled to receive a budget increase in FY21 and FY22 ($370,000 and $740,000, respectively). This funding would have been used to fund seven new positions, including two SWaM certification officers, three business assistance staff, one marketing/public relations position, and one data analyst. 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 or $10M or less in gross receipts [c]	10,486	40%
Micro	25 or fewer employees and $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**	

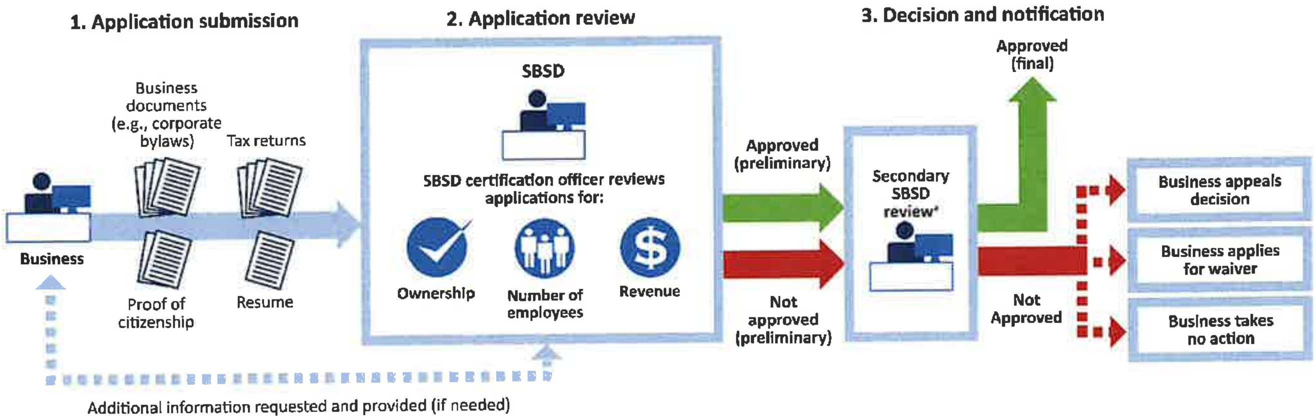
SOURCE: JLARC staff analysis of SBSD certification data (2019).
NOTE: [a] Businesses that hold multiple certifications are listed in each category. [b] Numbers do not sum because of rounding. [c] Annual gross receipts averaged over a three-year period. [d] Historically Black colleges and universities (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

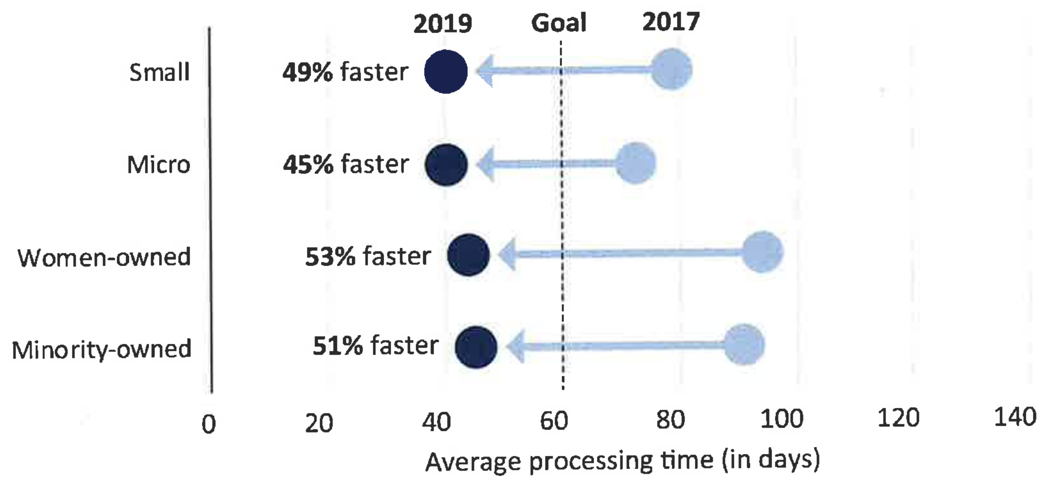


SOURCE: JLARC staff analysis of SBSD certification documents and interviews with SBSD staff.
NOTE: [a] For SWaM certifications, the SWaM director reviews all denials and a sample of approvals. The DBE division uses a process whereby each application is reviewed by another DBE staff member.

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.

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 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 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).

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.

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.

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.

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.

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.

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.)*

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).

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

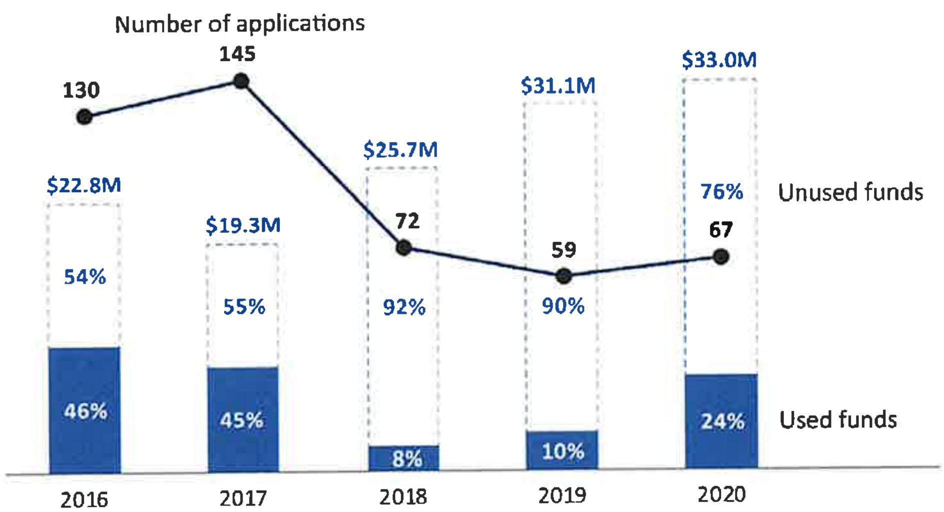
The Code of Virginia tasks VSBFA with providing financing, yet in 2018 and 2019 the authority used only a small amount of available funding. VSBFA's loan programs used only 10 percent of their available funds in FY19, leaving 90 percent of available funding unused (Figure 3-1). Similarly, VSBFA used 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.

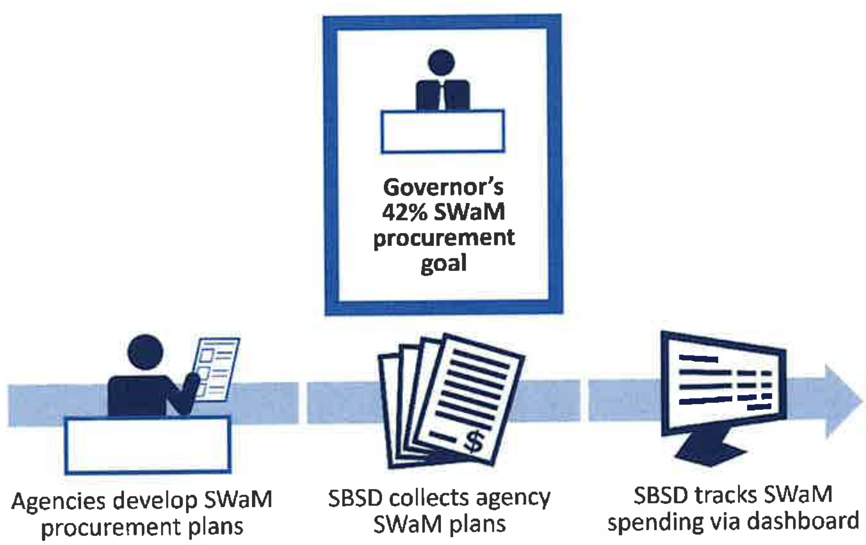
4 SWaM Goal and Plans

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.

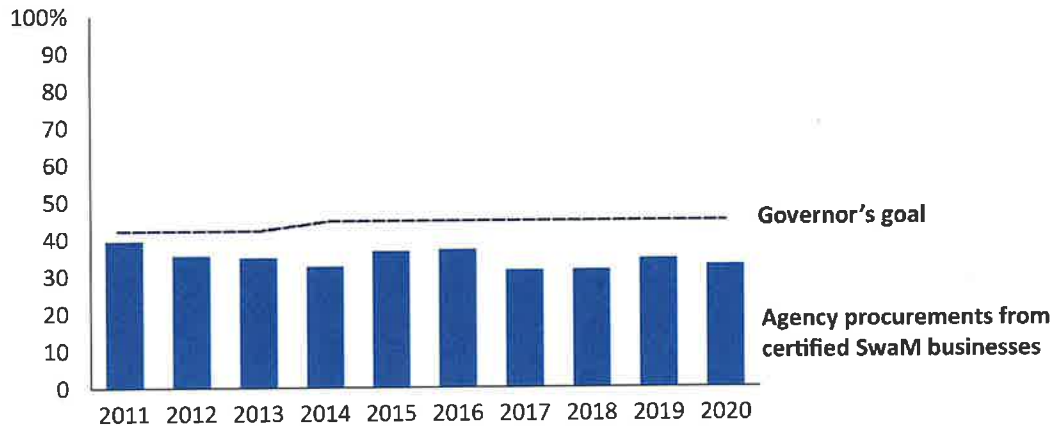
42 percent goal not based on analysis of achievable spending with SWaM businesses, and executive branch has not reached goal

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)



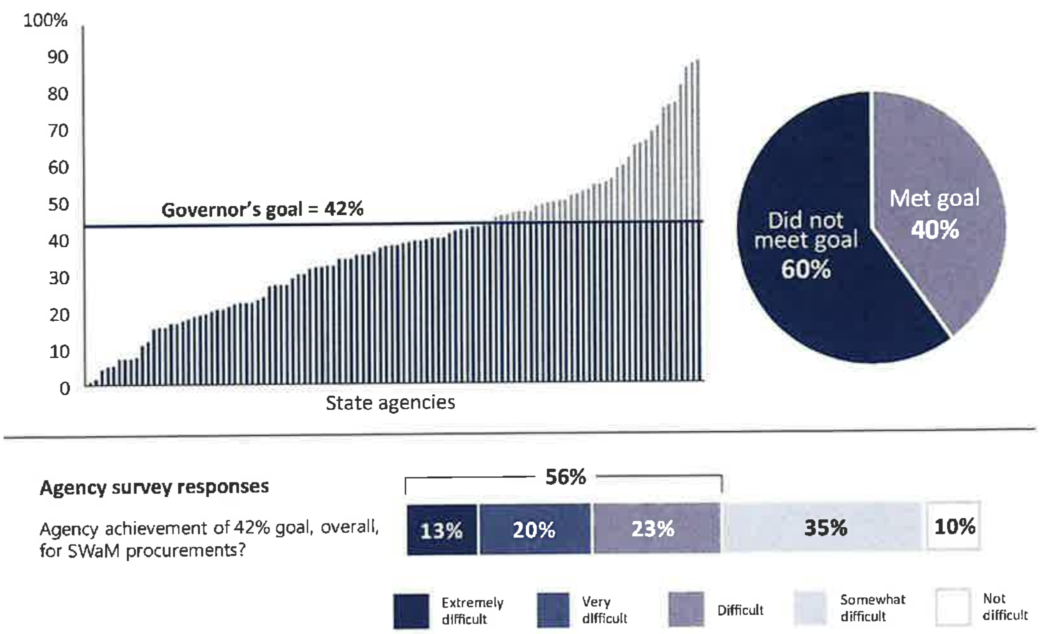
SOURCE: JLARC analysis of data from the Commonwealth Spend Report and SWaM spending dashboard.

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.

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.

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).

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.

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 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

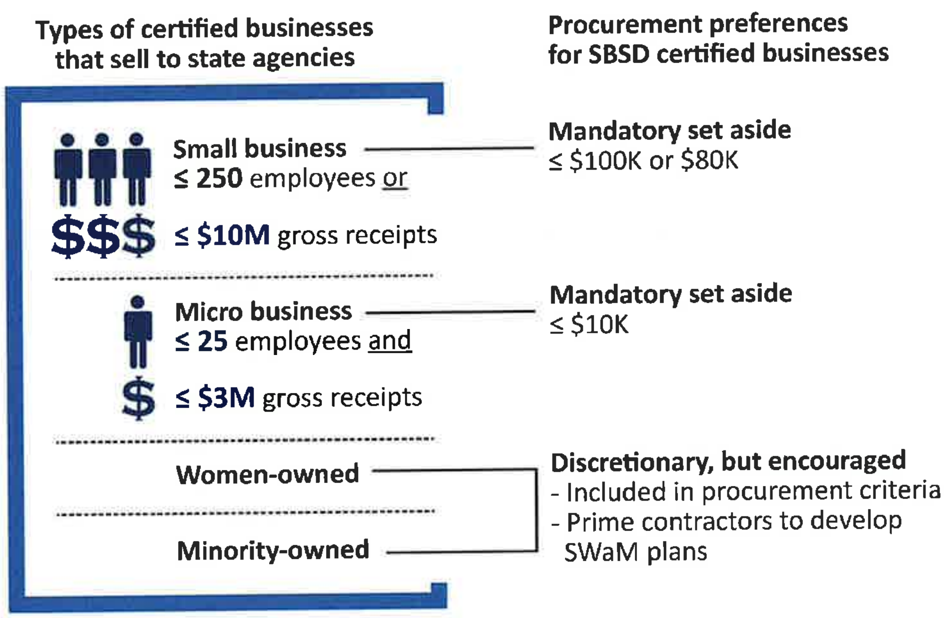
The Department of Small Business and Supplier Diversity should develop and maintain information about effective strategies agencies can use to increase their SWaM expenditures and provide agencies with guidance on how to implement the strategies.

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).

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

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.)*

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.

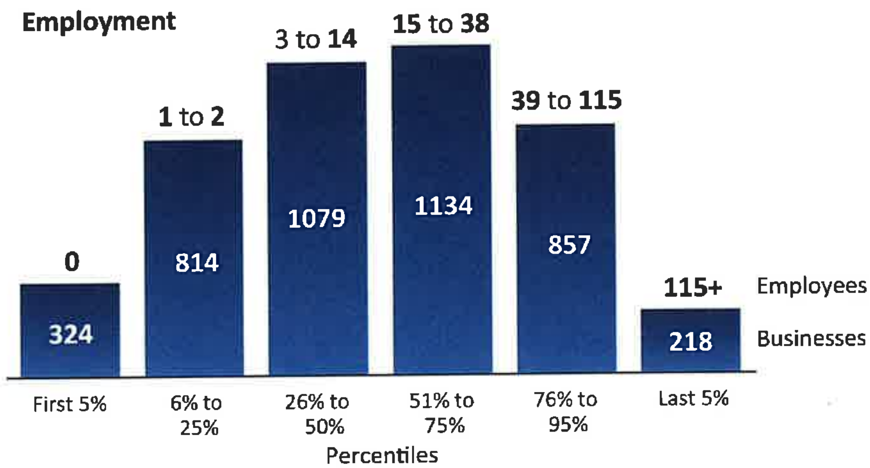
Vast majority of Virginia businesses would be considered small under Virginia's definition. Nearly all (99 percent) Virginia businesses meet the employment threshold, and 98 percent might qualify under the revenue threshold (using total wages as a proxy for gross receipts because of data limitations).

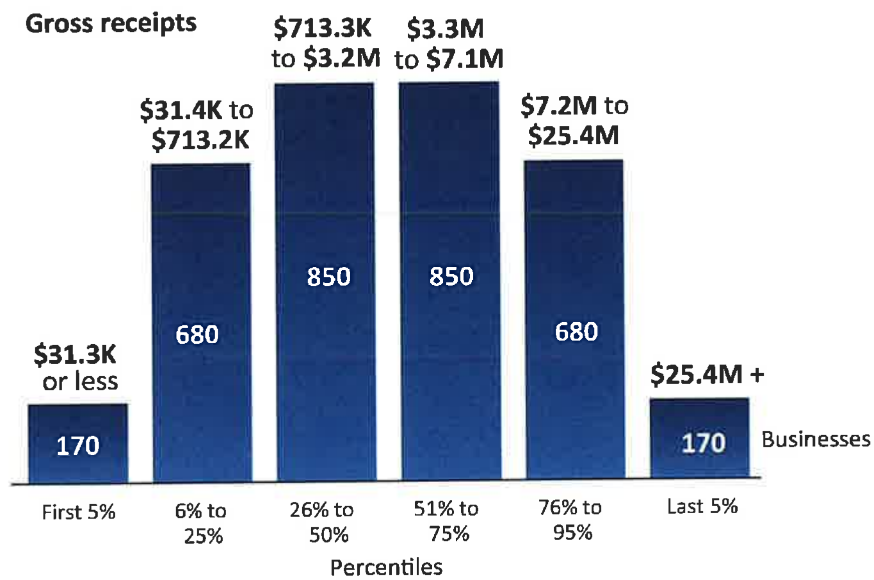
See Appendix B for more information.

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).

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 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 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.

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	*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 60th, 70th, 80th, and 90th 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 non-profit 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

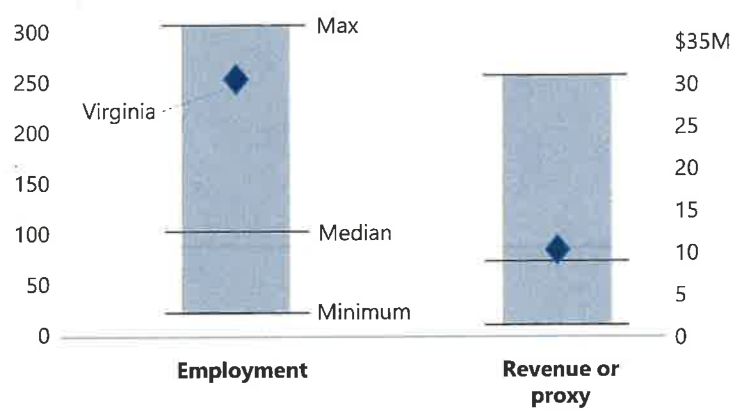
Like Virginia, all 25 states with small business definitions used the number of employees and/or some form of business revenue (e.g., gross receipts or gross sales) to define small businesses. States use widely varying employment or revenue thresholds to define small businesses. Georgia, for example, 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

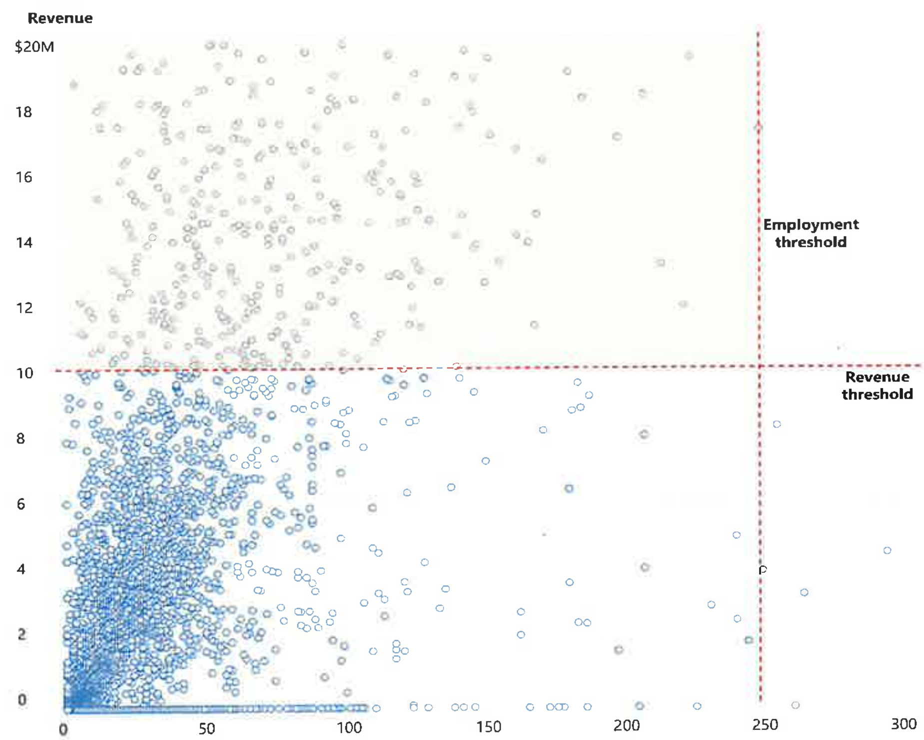
	Percentiles, by size						
	5th	10th	25th	50th	75th	90th	95th
Small certification							
Employees	0	1	2	14	38	77	115
Gross receipts ($)	31,383	110,744	713,207	3,236,540	7,140,396	16,341,692	25,453,499
Micro certification							
Employees	0	0	1	2	5	11	16
Gross receipts ($)	4,680	13,474	63,220	286,273	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 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

FACT SHEET - HOUSE BILL (HB) 1404 - 2024 SESSION

HB 1404 Department of Small Business and Supplier Diversity: Small Business Procurement Enhancement Program and Women-owned and Minority-owned Business Procurement Enhancement Program established:

- **HB 1404 – Introduced in the 2024 General Assembly by Delegate Jeion Ward (Chief Patron) and Delegate Luke Torian (Co-Patron), codifies Executive Order (EO) 20: Advancing Equity for Small, Women and Minority-owned Businesses, issued by former Governor Terence McAuliffe on 1/11/2014 and Executive Order (EO) 35: Advancing Equity for Small, Women, Minority and Service Disabled Veteran-owned Businesses in State Procurement, issued by former Governor Ralph Northam on 7/3/ 2019, to address the egregious disparity in the State procurement contracting program.**
- **The bill establishes the Small Business Procurement Enhancement Program within the Department of Small Business and Supplier Diversity (SBSD), with a statewide goal of 42% utilization in discretionary spending for all small businesses in procurement orders, prime contracts and subcontracts; and a target goal of 50% subcontracting to certified businesses, when the Prime Contractor is not a small business.**
- **The bill provides that executive branch agencies and covered institutions increase their SWaM business utilization rate by 3% per year until the target goal of 42% is reached or if they cannot do so, to implement achievable goals to increase their utilization rate.**
- **The bill contains a SWaM set-aside up to $100,000 for the purchase of goods, services and construction by executive branch agencies and covered institutions.**
- **The bill also requires SBSD to conduct a Disparity Study every 5 years with the next study due no later than January 1, 2026.**
- **The bill amends the Virginia Public Procurement Act to allow localities to establish purchase procedures not requiring competitive sealed bids or competitive negotiations for single or term contracts for the purchase or lease of goods, services, insurance or construction.**

BACKGROUND

- The egregious disparity in the State procurement contracting program has been documented by two (2) independent consulting firms, hired by the State Department of Minority Business Enterprise (DMBE) in 2004 (Warner Administration) and the State Department of Small Business and Supplier Diversity (SBSD) in 2010 (Kaine Administration), 2011 (McDonnell Administration) and 2020 (Northam Administration), to conduct studies to determine if inequities exist in the State procurement contracting program that adversely affects Disadvantaged Businesses, which includes, by Federal definition - White Women and Minority-owned Businesses (Blacks, Asians, Hispanics, Indians and other ethnic groups).

- **The 2004 Disparity Study revealed that Women and Minority-owned Businesses only received 1.27% or only $64 million statewide, of over $5 billion in contracts issued annually to the private sector by the State.**
- **The 2010 Disparity Study did not show any significant progress made by the State to correct the disparity in the procurement contracting program, with Women and Minority-owned Businesses only receiving 1.50% or $75 million of over $5 billion in contracts issued annually to the private sector by the State.**
- EO 20 and EO 35 are the only tools used by the State, to date, that have positively impacted the State's procurement contracting program for Women and Minority-owned Small Businesses, resulting in an increase from $75 million annually - statewide - to $3.1 billion out of $20 billion in contracts, issued by the State, in the 4 years after it was issued (2014-2018); and up to $8.7 billion out of $32 billion in contracts, issued by the State, over the last 4 years (2019-2022).
- While the State has not reached the recommended 32.8% goal for contracts issued to Women and Minority-owned businesses, based on availability and usage, contained in the 2020 Disparity Study, Virginia is heading in the right direction.
- **The problem is Executive Orders can be removed by an incoming Governor, which made codification of EO 35 essential to ensuring continued progress for all Small Businesses in the Commonwealth. HB 1404 eliminates this problem and ensures discrimination does not occur in State procurement contracting.**
- Businesses seeking to benefit from the program must be SWaM certified by the Virginia Department of Small Business and Supplier Diversity (SBSD).
- This new initiative is a race and gender neutral program.
- **House Bill 1404 will work for all small businesses in Virginia by increasing the aspirational goal for SWaM spend to 42% and enhancing set asides currently in place.**
- **We urge the members of the Public Body Procurement Work Group to recommend supporting HB 1404 as approved by the 2004 General Assembly.**

Sources: U.S. Census Bureau, U.S. Department of Commerce, 2018. Note: The 2020 Census data for each category is not available at this time. State Disparity Study Recommendations, 2004, 2010 and 2020; MGT of America, Inc., BBC Research; Virginia Department of Small Business and Supplier Diversity.

2020 COMMONWEALTH OF VIRGINIA DISPARITY STUDY

PREPARED BY BBC RESEARCH & CONSULTING – JANUARY 2021

FY 2014	MBE: $ 260,593,692.38	4.65%	Non-SWaM Spend $3,783,514,210.29
	WBE $ 267,279,755.57	4.77%	
	SBE $1.291,694,839.02	23.05%	
FY 2015	MBE $312,871,773.96	5.56%	Non-SWaM Spend $3,579,179,365.24
	WBE $327,851,671.96	5.82%	
	SBE $1,409,619,811.10	25.04%	
FY 2016	MBE $396,159,934.33	5.88%	Non-SWaM Spend $4,113,846,435.03
	WBE $396,934,901.80	6.09%	
	SBE $1,612,196,234.00	24.73%	
FY 2017	MBE $310,365,091.52	6.08%	Non-SWaM Spend $4,567,903,793.29
	WBE $287,605,725.41	4.35%	
	SBE $1,480366,966.40	22.37%	
FY 2018	MBE $385,696,383.60	5.88%	Non-SWaM Spend $4,491,311,518.45
	WBE $312,891,142.67	4.77%	
	SBE $1,372,237,305.30	20.91%	

TOTAL MBE SPEND $1,665,686,895.59	**5.4% of Total Spend**
TOTAL WBE SPEND $1,592,563,197.41	**5.1% of Total Spend**
TOTAL M/WBE SPEND $3,258,250,093.00	**10.5% of Total Spend**
TOTAL NON-SWaM SPEND $ 20,535,755,322.30	**66.4% of Total Spend**
TOTAL SBE SPEND $ 7,166,115,155.82	**23.2% of Total Spend**

Total SWaM and NON –SWaM spend $ 30,930,102,551.73

The recommended Goal, based on availability and utilization, according to BBC Research, for the Commonwealth for M/WBEs is 32.8% or $9,279,030,765.51 of the Total Spend for goods and services.

Note: Figures were taken from the Commonwealth of Virginia's web site (sbsd.virginia.gov) Quick Links; Expenditure Dashboard reports of the Commonwealth's spending for the fiscal years, 2014 through 2018.

APPROVED Meeting Minutes

Public Body Procurement Workgroup

Meeting # 3

Wednesday, August 21, 2024, 1:00 p.m.
House South Subcommittee Room, 2nd floor
General Assembly Building
201 North 9th Street, Richmond, Virginia 23219

http://dgs.virginia.gov/dgs/directors-office/pwg/

The Public Body Procurement Workgroup (the Workgroup) met in-person in the House South Subcommittee Room in the General Assembly Building in Richmond, Virginia, with Sandra Gill, Deputy Director of the Department of General Services (DGS), presiding. The meeting included with approval of the previous meeting minutes, presentation on HB 1404 by Gwendolyn S. Davis, public comment on HB 1404, Workgroup requested presentations on HB 1355, public comment on HB 1355, discussion of preliminary findings and recommendations on HB 1355, public comment and discussion on SB 492, and discussion by the Workgroup members. Materials presented at the meeting are available through the Workgroup's website.

Workgroup members and representatives present at the meeting included Sandra Gill (Department of General Services), Verniece Love (Department of Small Business and Supplier Diversity), Joshua Heslinga (Virginia Information Technologies Agency), Lisa Pride (Virginia Department of Transportation), Jason Saunders (Department of Planning and Budget), Patricia Innocenti (Virginia Association of Governmental Procurement), Kimberly Dulaney (Virginia Association of State Colleges and University Purchasing Professionals), Andrea Peeks (House Appropriations Committee), Mike Tweedy (Senate Finance and Appropriations Committee), Leslie Haley (Office of the Attorney General), and Rebecca Schultz (Division of Legislative Services).

I. Call to Order; Remarks by Chair

Gill called the meeting to order and moved into the second agenda item.

II. Approval of Meeting Minutes from the August 21, 2024 Workgroup Meeting

Heslinga made a motion to approve the meeting minutes from the August 21, 2024, meeting of the Workgroup. The motion was seconded by Love, and unanimously approved by the Workgroup.

III. Presentation on HB 1404

Gwendolyn Davis, M/WBE Administrator with the Portsmouth Public Schools presented HB 1404 to the Workgroup and asked for support of the bill in its current form, stating that she requested the bill. Davis explained that Senator Louise Lucas requested the first disparity study in 1997 and provided two handouts while informing the Workgroup that HB 1404 codifies executive orders that have been issued, noting the first executive order was issued in 2014 by Governor McAuliffe. Davis stated that with the executive orders, DGS and other agencies stepped up and the numbers went up for women and minority spend from $75 million to $3.1 billion spend.

Davis explained that the bill creates the small business procurement enhancement program within the Department of Small Business and Supplier Diversity (DSBSD). She stated that in 2004 MWBE's received only 1.26% of spend and the 2020 disparity study reported that spend should be at 32% instead of 11%, adding that the issue has been studied so much and now they want to see action. Davis explained that during the pandemic business owners in the 757 were impacted and have not recovered so the General Assembly needs to act, stating that the numbers don't lie. She explained that the disparity study is good for about five years and needs to be redone to determine progress.

Davis stated that the bill has been vetted by many administrations and the Office of the Attorney General for years and it is one of the best pieces of legislation, sharing that the numbers are not aspirational, that they are concrete, which is needed to make progress in Virginia. Davis shared that business owners have told her that they had to leave the state because they are not getting the help that they need. She shared that she believes the 42% is achievable. Davis continued her remarks pointing out that the bill assures prompt payment which is important because a lot of business owners say it takes 90-100 days before they receive payment. The bill also addresses the set asides for WM businesses up to 100K for the purchase of all goods, services, and construction but does not include transportation because that has not been studied. Davis stated that the bill requires subcontracting plans, sharing that in procurement when verifying a subcontracting plan a lot of times subcontractors do not know that their names are included on the plan, so that's why the plan is important. The bill allows local governments to establish purchase procedures that don't require competition for a single term contract. Lastly, the bill requires DSBSD to conduct a disparity study every five years because that's the only way we will know if we are doing business with all qualified businesses available.

IV. Public Comment on HB 1404

Public comments in support of HB 1404.

The first stakeholder to comment was Tonya Poindexter of the Northern Virginia Black Chamber of Commerce. Poindexter said that she wants to ensure that her members receive the resources they need and many members say that they go through the procurement process for state contracts and are unable to get through the process and unable to achieve their goals of getting a state contract. She concluded her remarks expressing support for this bill as it stands and says it will help her members achieve their goals of getting state contracts.

The second stakeholder to comment was Samuel Wiggins, the CEO of Virginia Minority Chambers. Wiggins shared his support for the bill and explained that when a minority business applies for a state contract and sees that their SWaM certification has been reduced to bonus points, that is disheartening. He shared that prior experience is asked for in procurements and if you don't have prior state experience then it drives you to the private sector or federal government because they have better programs.

The third stakeholder to comment was Loranna Justine who expressed support for the bill.

Public comments in opposition.

The first stakeholder to comment was Chris Stone, past chairman for the Hampton Roads Chamber of Commerce. Stone said that they are not against the bill but have concerns about two aspects. The first concern is about codifying the 42%, explaining that executive orders are flexible, and codifying will remove the flexibility requiring the General Assembly to make any adjustments. The second concern is the definition of small business, sharing that the definition has not been updated since 1960 and no one knows where it came from. Stone said the way the definition is written, it allows companies to have up to 250 employees with unlimited revenue while still being classified as a small business. Stone shared that in 2018 DSBSD conducted a study with the Virginia Commonwealth University (VCU) and concluded that the definition of what a small business needs to be updated and made consistent with today's business environment. He shared that in 2020 JLARC conducted a study recommending that the small business definition be changed as well and pointed to page 63 of the report. He concluded his remarks stating that the current definition does not help small businesses and asked for consideration on amending the small business definition.

The second stakeholder to comment was Melissa Ball, a member of the Small Business Commission and a local small business owner. Ball said she supports initiatives that promote and help level the playing field for minority owned, women owned, and small businesses allowing them to participate in the procurement process, adding that it is very important to health of Virginia's economy. Ball stated that the addition of the micro business definition did the opposite of what it was intended to do; by codifying the micro business definition, it removed many of the small businesses from the process and implements a one size fits all approach that only looks at businesses headcount. Ball said that small businesses that are transactional were impacted by the micro business definition, sharing that her business was impacted by the micro business definition which caused her company to be placed the same category as Staples. She added that micro businesses contact her to purchase products from her company then the micro business sells to the Commonwealth, which results in the Commonwealth paying double or triple the cost of the item. Ball shared other commodities that this occurs with, such as police safety items, wildlife trail cams, tools, and maintenance supplies. She concluded her remarks by agreeing with Davis that the federal government has a lot to offer on this subject and that we should consider the SBA approach to size and numbers for small businesses.

V. Presentations on HB 1355

The Workgroup received a presentation from Nathan Moberley of the Office of the Attorney General (OAG). Moberley shared that the primary concern is ambiguity with respect to the definition of accessibility. He explained that the bill defines accessibility as alignment with federal Section 508 Standards and Section 255 Guidelines adopted pursuant to 29 U.S.C. § 794d and 47 U.S.C. § 255. Moberley explained that the two statutes implement two different standards to accommodate disabilities and both are potentially in conflict with one another and referencing both could make it difficult for covered entities to interpret the standards that apply to them. *(Moberley provided his comments in writing after the meeting. They are available on the PWG website.)*

VI. Public Comment on HB 1355

Public comments in support of HB 1355.

The first stakeholder to comment was Barbara Sunder with the University of Virginia (UVA), representing VHEAP. Sunder shared with the Workgroup that she works with students with disabilities daily, and supports HB 1355. She stated that everyone will be impacted by the Title II ADA update and shared that the bill does two things that Title II does not. First, it addresses outdated state code that has not kept up with the changing technology world. Second, it provides structure and outlines a plan for how public entities can begin the uphill battle towards compliance. She explained that Title II sets the mandate but falls short on providing concrete guidance on how to achieve these goals. HB 1355 gives public entities a framework and allows pushback to vendors who fall short on accessibility.

The second stakeholder to comment was Teri Morgan with the Virginia Board for People with Disabilities. Morgan expressed support for HB 1355, adding that the new ADA rules go into effect April 2026 which gives the opportunity to create a framework for agencies and organizations to demonstrate that Virginia understands the importance of accessibility for all.

The third stakeholder to comment was Ann Flippin with the Autism Society of Central Virginia. Flippin shared that there are gaps and expressed the importance of the bill for their community and ensure that Virginia has accessible technology for all.

There were no comments in opposition, in part support/in part opposition, or neutral.

VII. Discussion on HB 1355, Preliminary Findings and Recommendations

The Workgroup began discussion on the information received regarding HB 1355. Saunders commented that a recommendation could be made to conform the state law to Title II of the ADA requirements for now, and after the implementation of Title II of the ADA in April 2026, the General Assembly can determine if additional changes are needed to Virginia's accessibility standards. Innocenti and Gill both expressed support for the recommendation. Peeks requested that the recommendation include the same entities that are required to adhere to the Title II of the ADA.

Innocenti stated that when bringing the state into compliance with the federal requirements, it would be helpful to determine the priority of compliance and if first the outward facing systems and applications should be addressed. Peeks sought clarification as to whether or not outward facing systems would include systems used by students, to which Innocenti confirmed that students would be included. Gill asked if the federal government defines outward facing systems or if that is a definition that would be new.

Gill asked the Workgroup to consider a recommendation to change the reporting requirements, which currently requires reporting to the Secretary of Administration (SOA), because stakeholders have indicated that the reporting is not being done. She recommended that reporting go to the General Assembly instead of the SOA and that the reporting requirements be expanded to include noncompliant websites and fiscal impact to obtain compliance. Heslinga added that expanding the reporting in that way will make it more impactful as the current reporting pertains only to instances where the accessibility clause is excluded. Dulaney asked who would be responsible for the reporting, to which Gill responded with an example for consideration that SCHEV could report for Higher Education, DOE for local public schools, etc. Saunders replied that it would be good to have an entity be responsible for facilitating the reporting instead of having each covered entity submit individual reports.

Innocenti recommended that lines 131-141 of the bill should be removed to not incorporate consequences as the procurement process provides the Commonwealth the authority to address any nonperformance issues that may arise. Peeks clarified that it is not being removed entirely as it exists elsewhere, it's being removed because the procurement process allows contractors to be held responsible, and, if in breach of contract, the Commonwealth can debar.

Heslinga recommended that the parts of the bill that designate an accessibility coordinator and the grievance procedure be addressed. He shared that most organizations have a designated person to handle ADA matters, and in the engrossed bill, it is not specific about making the accessibility coordinator contact information easily available and is permissive about designating an accessibility coordinator, then on lines 183 a grievance procedure is incorporated. Heslinga stated that the accessibility coordinator information should be easy to identify and readily available, however the surrounding language regarding the grievance procedure should be removed. Tweedy added that it would be helpful to clarify that when contacting the accessibility coordinator that the barrier to accessibility be provided.

Peeks added that once the general alignment with the federal regulations is made, it would be helpful to know the additional requirements in the bill that do not align with the federal requirements.

Innocenti pointed out to the Workgroup that OAG identified issues with the bill using acquisition and procurement interchangeably and the Workgroup may wish to address that.

Gill did a review of the recommendations the Workgroup offered and directed staff to compile into formal recommendations for review at the next meeting.

VIII. Public Comment on SB 492

No public comment.

IX. Discussion on SB 492

Gill asked the Workgroup if there is any additional information needed to help facilitate the discussion to develop preliminary recommendations for SB 492. Hearing none, Heslinga shared his understanding of the bill, explaining the desire to ensure that child labor and oppressive labor are not used in the production process for electric vehicles. Heslinga stated that there are also other areas in which child labor or oppressive labor may be used, so it should be a policy decision on narrowing it to electric vehicles or applying to all. Gill confirmed his understanding and pointed to existing terms and conditions utilized through the procurement process, such as the drug free workplace term and condition, as an example for ensuring contractors are not using child labor or oppressed labor. Gill directed staff to compile this into a formal recommendation for review at the next meeting.

X. Discussion

No additional discussion.

XI. Adjournment

Gill adjourned the meeting at 2:00 p.m. and noted that the Workgroup's next meeting is scheduled for September 4, 2024 at 10:00 a.m.

For more information, see the Workgroup's website or contact that Workgroup's staff at pwg@dgs.virginia.gov.

Appendix C: September 4, 2024, Meeting Materials

This appendix contains the meeting materials from the September 4, 2024, Workgroup meeting.

1. Agenda
2. Meeting Materials
3. Approved Meeting Minutes

Public Body Procurement Workgroup

https://dgs.virginia.gov/dgs/directors-office/pwg/

Meeting # 4
Wednesday, September 4, 2024, 10:00 a.m.
House South Subcommittee Room, 2nd floor
General Assembly Building
201 North 9th Street, Richmond, Virginia 23219

AGENDA

I. **Call to Order; Remarks by Chair**

II. **Approval of Meeting Minutes from the August 21, 2024 Workgroup Meeting**

III. **Presentation on HB 1524**
The Honorable Alfonso H. Lopez
House of Delegates

IV. **Public Comment on HB 1524**

V. **Public Comment on Draft Recommendations on HB 1355**

VI. **Finalize Recommendations on HB 1355**

VII. **Public Comment on Draft Recommendations on SB 492**

VIII. **Finalize Recommendations on SB 492**

IX. **Public Comment on HB 1404**

X. **Discussion on HB 1404**

XI. **Discussion**

XII. **Adjournment**

Members

Department of General Services
Virginia Information Technologies Agency
Department of Planning and Budget
Virginia Association of State Colleges and University Purchasing Professionals
Department of Small Business and Supplier Diversity
Virginia Department of Transportation
Virginia Association of Government Purchasing

Representatives

Office of the Attorney General
Senate Finance Committee
House Appropriations Committee
Division of Legislative Services

Staff

Killeen Wells, Deputy Director of Communications
Jessica Hendrickson, Director of Policy and Legislative Affairs, DGS
Kimberly Freiberger, Legislative Analyst, DGS

APPROVED Meeting Minutes

Public Body Procurement Workgroup

Meeting # 4

Wednesday, September 4, 2024, 10:00 a.m.
House South Subcommittee Room, 2nd floor
General Assembly Building
201 North 9th Street, Richmond, Virginia 23219

http://dgs.virginia.gov/dgs/directors-office/pwg/

The Public Body Procurement Workgroup (the Workgroup) met in-person in the House South Subcommittee Room in the General Assembly Building in Richmond, Virginia, with Sandra Gill, Deputy Director of the Department of General Services (DGS), presiding. The meeting included with approval of the previous meeting minutes, presentation on HB 1524 by Delegate Alfonso H. Lopez, public comment on HB 1524, public comment on draft recommendations for HB1355, and public comment and finalization of draft recommendations for SB 492. Materials presented at the meeting are available through the Workgroup's website.

Workgroup members and representatives present at the meeting included Sandra Gill (Department of General Services), Verniece Love (Department of Small Business and Supplier Diversity), Joshua Heslinga (Virginia Information Technologies Agency), Lisa Pride (Virginia Department of Transportation), Jason Saunders (Department of Planning and Budget), Patricia Innocenti (Virginia Association of Governmental Procurement), Kimberly Dulaney (Virginia Association of State Colleges and University Purchasing Professionals), Andrea Peeks (House Appropriations Committee), Mike Tweedy (Senate Finance and Appropriations Committee), Leslie Allen (Office of the Attorney General), and Rebecca Schultz (Division of Legislative Services).

I. Call to Order; Remarks by Chair

Gill called the meeting to order and moved into the second agenda item.

II. Approval of Meeting Minutes from the August 21, 2024, Workgroup Meeting

Heslinga made a motion to approve the meeting minutes from the August 21, 2024, meeting of the Workgroup. The motion was seconded, and unanimously approved by the Workgroup.

III. Presentation on HB 1524

The Honorable Delegate Alfonso H. Lopez presented HB 1524 to the Workgroup. He began by giving some background, stating that in 1990 SB 101 enacted a tax credit for recycling equipment purchased for fixed facilities. That code was updated in 2015 to state that due to the move towards more economically and sustainable asphalt paving techniques used on the roadway, this expensive equipment was not eligible for tax credits under the current code. Lopez said he introduced HB 1524 during the 2024 Session to create a tax credit for such machinery to alleviate this issue. He explained that the issue goes beyond the machinery to the large stockpiles of Recycled Asphalt Pavement (RAP). Lopez explained these stockpiles keep growing, even though they could be used in asphalt mixes to make a quality product. Lopez said he requested the Workgroup and DEQ to work in conjunction to study his bill ahead and to expand the study to look at all of the challenges associated with using higher levels of RAP.

Lopez then described the issue in more detail, stating that as of August 2024, Virginia contractors have an excess of 5 million tons of RAP stockpiled at facilities. The most concentrated amount is in northern Virginia with 1.9 million tons. Fredericksburg has 358,000 tons, Richmond has 810,000, Hampton Roads has 612,000. He continued, saying that the recycling machinery in question aids in creating what is know as cold mix or CM asphalt, which is combined through a process that does not use heat. These CM mixes (called CIR and CCPR) are more sustainable than conventional mixes because they use fewer carbon emissions and allow for 100% use of RAP.

Lopez explained the limitations of using RAP—cost of machinery, availability of RAP, which is concentrated in mostly urban areas, and Virginia Department of Transportation (VDOT) project requirements. Lopez said VDOT does not allow for the use of CIR or CCPR on most construction/reconstruction projects.

In summary Lopez highlighted the problems: there are big stockpiles of RAP across the commonwealth; there are a lack of VDOT projects allowing the use of RAP in the form of cold mixes, which is inhibiting; and landfills across Virginia do not accept RAP due to the potential for burning. He then proposed some solutions to consider. He suggested new construction, reconstruction and rehabilitation projects must be bid with the option for a base mix asphalt produced at a conventional plant or a cold plant recycling (CCPR) and for rehabilitation and corrective maintenance, projects must be bid with the option for convenient deep mill or with cold in-place recycling (CIR). Lopez furthered there would be a cost savings for contractors and VDOT's procurement process. He also touched on environment benefits due to the reduced need for virgin materials, decreasing the carbon footprint, and the environmental benefit of reduced need for transporting materials to and from a project site.

Lopez pointed out the I-81 southbound project, stating that three sections of that project used recycled material, and it showed a 50%-70% energy reduction and a 40%-70% reductions of global warming potential when compared to conventional pavement. He said the I-64 project showed a 25%-40% energy reduction and a 15%- 40% reduction in global warming potential.

Lopez stated in Virginia we allow 30% to 35% RAP, and Virginia is using 27.8%, but there are a number of other states including Maryland, West Virginia, Tennessee, North Carolina, and Florida, that are allowing higher percentages like 40% in Florida and Georgia. He said Virginia could be catching up to these other states and taking advantage of the benefits. He briefly touched on how there were a significant number of international projects that were taking advantage as well in China, Japan and India.

Lopez said he has been in conversations with different environmental groups to flag issues, but they have not come up with any. He said that he has researched it himself and that the general consensus is that it is safe. The net emissions are less depending on how long the recycled road lasts. He divulged that there was less information on runoff. However, he said, several studies looked at using it unbound as gravel and that it is generally safe. He explained the Federal Highway Administration and most sources think in-place recycling is safe environmentally with possible upside of decreased carbon emissions, having been used since the 1970s. Lopez said he did not find during his research that the leaching of contaminants was a concern, and in fact most studies said that the runoff dissipates in the soil.

Lopez finished his presentation by posing a question; "what it comes down to is do we think it is beneficial enough for a tax credit or some other modification of the legislation from last year." He addressed the Workgroup saying he wants their help in determining what are the things that are not being thought about that should be.

IV. Public Comment on HB 1524

Below are the public comments in support of HB 1524.

The first stakeholder to comment was Trenton Clark, president of the Virginia Asphalt Association who was in support of the bill. Clark said that he and the association had been working with Delegate Lopez since last year to bring forth this bill. He explained that Virginia Asphalt Association is the nonprofit trade association for Virginia's paving industry, with over 130 members and over $3 billion in business a year. He underscored that the reason for this legislation is because the original bills only applied to fixed facilities. He went further saying while we do a lot of advanced recycling, none of that equipment is eligible for a tax credit because it has to be at a fixed facility. Clark said as Virginia is moving forward with a cleaner economy, in-place recycling will be a key part of that because it saves on money and has environmental savings through mixing on site, not having to transport it and the process of not having to use heat. Clark said that the Virginia Asphalt Association has been working with VDOT and the Virginia Transportation Research Council for a decade to increase the amount of RAP in mixes by doing thorough research and pilot projects to make sure a quality product can be provided. He further commented that contractors are drowning in RAP in the urban crescent, and that this bill will address that by letting the asphalt community increase the amount of RAP used in mixes. He said the bill will help Virginia move forward with quality, economical and environmentally friendly mixes.

The second stakeholder to comment was Buzz Powell, a retired professor from Auburn University with a long-standing research relationship with VDOT and technical director of the Asphalt Pavement Alliance. He was in support of the bill. Powell ran the NCAT Test Track at Auburn University which encompasses two thirds of U.S. states. They studied asphalt mixes that were composed of half recycled asphalt with positive results. That research led to many states allowing more recycled milling in their hot mix. Powell stressed that the key to the mix is the glue that binds it all together. He explained that in his research they tested a 30% VDOT mix to a 45% RAP version of that same mix with equivalent performance. From the southeast to as far north as Minnesota, the recycled mixes had positive performance results. He went on to say that there is potential to reduce carbon and cost by a third by using these techniques.

The third stakeholder to comment was Paul Tarsovich, the CEO and executive vice president of Slurry Pavers, who expressed support for the bill. He emphasized that using special recycling equipment increases efficiency and helps the environment. Tarsovich said that this bill is about being good stewards of the planet. He also touched on the economic benefits, explaining there would be more equipment purchases, more employees, more roads at a cheaper cost and a better use of tax dollars. He finished by urging the workgroup to support the bill because it will reduce waste, reduce the use of urgent materials, and it will provide a great product for the commonwealth.

The fourth stakeholder to comment was David Horton with Virginia Paving Company. He expressed that he was in support of HB 1524 because his company operates in Virginia urban areas (Hampton Roads, Fredericksburg and northern Virginia) and they have a substantial amount of RAP. He said it is a valuable product that ends up getting wasted and that we should be putting it back in the roadways. He further stated that his company is pressured and also wants to decrease their carbon footprint and that this bill would help them achieve those goals.

The fifth stakeholder to comment was Gordon Dixon with the Virginia Transportation Construction Alliance who expressed support of the bill as written. He emphasized the amount of research available and the need to have the right people at the table helping to guide and make decisions for this bill. He applauded VDOT for being one the leading users of RAP across the country.

There were no comments in opposition, in part support/in part opposition, or neutral.

V. Public Comment on Draft Recommendations on HB 1355

There were no public comments in support, opposition, in part support, in part opposition or neutral to HB 1355.

VI. Finalize Recommendations on HB 1355

Gill announced that Delegate Tran reached out to the Workgroup and asked that the Workgroup abstain from voting on finalizing the bill today, as Delegate Tran was not able to be in attendance. Gill said the Workgroup will finalize the recommendations and take vote at the next meeting.

Jessica Hendrickson, who is on the Workgroup staff, then read the draft Recommendation 1 of HB 1355 aloud to the Workgroup: "The Workgroup recommends that General Assembly consider amending Chapter 35 of Title 2.2 to require compliance with Title 2 of the American with Disabilities Act for all covered entities and that after the federal deadline of April 2026 to comply with the federal standards then the General Assembly should determine if additional requirements should be added to the code."

Saunders stated the regulations that have come out from the Department of Justice came through the federal registrar and are not specifically from Tittle 2. He then asked if the Workgroup needed to reference the CFR in the recommendation so that the bill is in compliance with the most recent regulations. Gill concurred.

Heslinga asked if the Workgroup wanted to reference specific regulations or if the Workgroup should use less specific language such as "in compliance with applicable law, including Title 2 of the American Disabilities Act and associated regulations."

Gill concurred but said they will come back to this point once the Legislative Services member returns.

Hendrickson read Recommendation 2, "The Workgroup recommends that the General Assembly consider amending Chapter 35 of 2.2 to add public schools to the definition of public entity."

Saunders asked a clarifying question of if the DOJ regulations include school divisions under those regulations as a covered entity. When hearing yes, he asked for confirmation that the Workgroup's recommendation would be consistent with amending state statute as we set in Recommendation 1." Gill replied that he was correct.

Hendrickson then read Recommendation 3, "The Workgroup recommends that General Assembly consider amending Chapter 35 of Title 2.2 to prioritize outward facing systems and applications."

Heslinga poised a question to Workgroup Chair Gill, asking if the recommendation should be more general and about guidance rather than a specific amendment to the statute because he does not think anyone is questioning that the biggest impacts would be prioritized first. He continued that consistency with federal law is important and asked if the Workgroup were to add a prioritization that is not consistent with federal law if that introduced an inconsistency. He suggested the recommendation say, "The General Assembly charge stakeholder agencies with providing guidance about how to prioritize systems and applications."

Peaks seconded Heslinga's suggested change, adding that it could be the General Assembly's preference and that she liked the idea of a creation of a policy.

Dulaney asked if the Workgroup should consider any type of an exemption or under $10,000 threshold for prioritizing in Recommendation 3.

Saunders asked if the federal law requires a dollar threshold.

Gill said that she did not think there was a threshold in the federal law and said she did not think they should include one in this recommendation but deferred to the Workgroup.

Heslinga suggested that a dollar amount could be dealt with in a policy.

Tweedy added that it could clarify in the recommendation that the policies would be consistent with federal law and regulations.

Gill pivoted, asking Shultz, with the Division of Legislative Services, to opine on Recommendation 1, asking if it would be appropriate for the recommendation to say not just being in compliance with Title 2 of the American Disabilities Act, but also including the Code of Federal Regulations and the Federal Rehabilitation Act as appropriate. Shultz confirmed that would be acceptable.

Hendrickson read Recommendation 4, "The Workgroup recommends that the General Assembly consider amending Chapter 35 of Title 2.2 to expand the reporting requirements by covered entities on non accessible technology to include 1. identifying non accessible technology, and 2. estimating the fiscal impact of bringing such technology into compliance. Additionally, the General Assembly should consider requiring covered entities to report to their appropriate executive branch agencies such information on an annual basis and that agencies report to the General Assembly rather than the Secretary of Administration. And it provides an example of local public schools to the Department of Education."

There were no comments to Recommendation 4.

Hendrickson read Recommendation 5, "The Workgroup recommends that the General Assembly consider amending Chapter 35 of Title 2.2 to require that covered entities publish in a clear, easily accessible area on their website who should be contacted when an accessibility barrier is identified.

Peaks asked if it were possible to have a policy where agencies were required to respond or have a process to respond to the contact. She shared drafted language for the recommendation, "And that agencies develop an internal process to expediently seek remedy to the identified concern."

Gill said it would be incorporated into the recommendation.

Hendrickson then read Recommendation 6, "The Workgroup recommends that when amending Chapter 35 Title 2.2, the General Assembly not include the following the grievance procedure language which is found in lines 183 to 189 that is found in the engrossed version of the bill because other federal and state laws already provide procedures for remedies or 2, specific contractual penalty or consequence language like found in lines 133-141 of the engrossed bill because public bodies already have the authority to address noncompliance with law or with contract provisions."

Heslinga asked the Workgroup if procedurally that recommendation should be separated into two recommendations. The Workgroup agreed to draft them into two recommendations.

VII. Public Comment on Draft Recommendations on SB 492

There were no public comments in support, opposition, in part support, in part opposition or neutral to SB 492.

VIII. Finalize Recommendations on SB 492

Hendrickson read the Recommendation 1 for SB 492, "The Workgroup recommends that the General Assembly consider amending Chapter 43 of Title 2.2 explicitly prohibit the use of forced labor and oppressive child labor by requiring that public bodies include in public contracts a provision requiring contractors to agree that the contractor and its subcontractors and suppliers shall not employ or use forced labor or oppressive child labor in the performance of their obligations under the contract."

Innocenti asked if the qualifier "oppressive" needed to be included. Gill said that it could stay in, and the General Assembly could make the decision to include it or not. Shultz agreed.

Heslinga brought to the Workgroup's attention if a $10,000 threshold should be included as part of this recommendation. Gill asked if instead of a dollar threshold, would it be appropriate to include language "in every written solicitation."

Dulaney pointed out that this is currently included in the general terms and conditions on any state contract.

Shultz added that the Workgroup needs to consider what level of knowledge for which the contractors should be responsible. She suggested language of "no known child labor."

Staff amended the Recommendation 1 to include Shultz's language. The final recommendation read as follows: "The Workgroup recommends that the General Assembly consider amending Chapter 43 of Title 2.2 to explicitly prohibit the use of forced labor and oppressive child labor by requiring that public bodies include in public contracts a provision requiring contractorscertify that the contractor and its subcontractors and suppliers have no knowledge of the use of forced labor or oppressive child labor in the performance of their obligations under the contract."

The Workgroup voted in support of SB 492, 7-0.

IX. Public Comment on HB 1404

There were no public comments in support, opposition, in part support, in part opposition or neutral to SB 1404.

X. Discussion on HB 1404

Gill asked the Workgroup members what additional information would be helpful as the group moves into final recommendations for the bill.

Dulaney asked for data on the percentage of SWAM spend per agency over the last 10 years, as well as data on the micro-certification, specifically how many micro businesses have lost certifications due to exceeding the defined threshold since that category was defined in 2014. She also asked for data on the SWAM population and numbers of micro and small businesses.

Heslinga expressed interest in the 2020 JLARC report recommendations and how many of those recommendations have been incorporated into law or are reflected in this bill or are outstanding.

Dulaney asked for a presentation on the current workflow of the small/micro business certification process.

Gill asked for the Department of Small Business and Supplier Diversity and staff to research the definitions of small business.

XI. Discussion

No additional discussion.

XII. Adjournment

Gill adjourned the meeting at 11:13 a.m. and noted that the Workgroup's next meeting is scheduled for September 17, 2024, at 1:00 p.m.

For more information, see the Workgroup's website or contact that Workgroup's staff at pwg@dgs.virginia.gov.

Appendix D: September 17, 2024, Meeting Materials

This appendix contains the meeting materials from the September 17, 2024, Workgroup meeting.

1. Agenda
2. Meeting Materials
3. Approved Meeting Minutes

Public Body Procurement Workgroup

https://dgs.virginia.gov/dgs/directors-office/pwg/

Meeting # 5
Tuesday, September 17, 2024, 1:00 p.m.
House South Subcommittee Room, 2nd floor
General Assembly Building
201 North 9th Street, Richmond, Virginia 23219

AGENDA

I. **Call to Order; Remarks by Chair**

II. **Approval of Meeting Minutes from the September 4, 2024, Workgroup Meeting**

III. **Public Comment on HB1355**

IV. **Finalize Recommendations on HB 1355**

V. **Presentation on HB 1524**
Brandon Bull, Director of Division of Policy
Department of Environmental Quality

VI. **Presentation on HB 1524**
Michael Fitch, Ph.D., Director, Virginia Transportation Research Council
Virginia Department of Transportation

VII. **Public Comment on HB 1524**

VIII. **Discussion on HB 1524**

IX. **Presentation on HB 1404**
Verniece Love, Deputy Director
Department of Small Business and Supplier Diversity

X. **Public Comment on 1404**

XI. **Discussion on HB 1404**

XII. **Discussion**

XIII. **Adjournment**

Members

Department of General Services
Virginia Information Technologies Agency
Department of Small Business and Supplier Diversity
Virginia Department of Transportation

Department of Planning and Budget
Virginia Association of State Colleges and University Purchasing Professionals
Virginia Association of Government Purchasing

Representatives

Office of the Attorney General
Senate Finance Committee
House Appropriations Committee
Division of Legislative Services

Staff

Killeen Wells, Deputy Director of Communications, DGS
Kimberly Freiberger, Legislative Analyst, DGS

DRAFT Meeting Minutes

Public Body Procurement Workgroup

Meeting # 5

Wednesday, September 17, 2024, 1:00 p.m.
House South Subcommittee Room, 2nd floor
General Assembly Building
201 North 9th Street, Richmond, Virginia 23219

http://dgs.virginia.gov/dgs/directors-office/pwg/

The Public Body Procurement Workgroup (the Workgroup) met in-person in the House South Subcommittee Room in the General Assembly Building in Richmond, Virginia, with Sandra Gill, Deputy Director of the Department of General Services (DGS), presiding. The meeting included with approval of the previous meeting minutes, public comment from the Honorable Delegate Kathy Tran on HB 1355, followed by the Workgroup voting in support of finalizing the seven recommendations to HB 1355, presentations by Virginia Department of Transportation (VDOT) and Virginia Department of Environmental Quality (DEQ) on HB 1524, public comment on HB 1524, discussion on HB 1524, a presentation by Virginia Department of Small Business and Supplier Diversity (DSBSD) on HB 1404 and discussion on HB 1404. Materials presented at the meeting are available through the Workgroup's website.

Workgroup members and representatives present at the meeting included Sandra Gill (Department of General Services), Verniece Love (Department of Small Business and Supplier Diversity), Joshua Heslinga (Virginia Information Technologies Agency), Lisa Pride (Virginia Department of Transportation), Jason Saunders (Department of Planning and Budget), Patricia Innocenti (Virginia Association of Governmental Procurement), Kimberly Dulaney (Virginia Association of State Colleges and University Purchasing Professionals), Michael Jay (House Appropriations Committee), Mike Tweedy (Senate Finance and Appropriations Committee), Leslie Allen (Office of the Attorney General), and Rebecca Schultz (Division of Legislative Services).

I. Call to Order; Remarks by Chair

Gill called the meeting to order and moved into the second agenda item.

II. Approval of Meeting Minutes from the September 4, 2024, Workgroup Meeting

Saunders made a motion to approve the meeting minutes from the September 17, 2024, meeting of the Workgroup. The motion was seconded, and unanimously approved by the Workgroup.

III. Public Comment on HB 1355

The Honorable Delegate Kathy Tran spoke to her patron bill, HB 1355. She expressed her sincere appreciation to the Workgroup for the time and attention they have given HB 1355 and emphasized the importance of increasing access to government services and educational programs to all Virginia citizens. She stated she believes the recommendations the Workgroup have made will help make progress for individuals with disabilities, working towards the day when every Virginian is able to access resources and services available to them.

She then shared thoughts on the Workgroup's drafted recommendations. She said on Recommendation 1, the new WCAG version 2.1AA was not released until after the 2024 Legislative Session adjourned, so she very much appreciated the time that the Workgroup took to assess those new federal regulations and how they will affect Virginia. She stated that she agreed with the Workgroup that the new ADA Title 2 standards should be incorporated as well.

On Recommendation 2, she thanked the Workgroup for specifically recommending that the General Assembly add local school districts as a covered entity, because, she said, it will help ensure students with disabilities are able to fully participate in their classrooms. She added it will reduce the time teachers have to devote to making separate lesson plans for children with disabilities.

For Recommendation 6, Tran said she accepted it but focused her attention to the inclusion of Recommendation 5, which she said is important, as well as a feedback loop so that the public and covered entities can work together to address inaccessible technologies that remain. Tran added that Recommendation 5 would augment that collaboration.

Tran mentioned an Accessibility Conformance Report that was not in the Workgroup's recommendations, saying she hopes the General Assembly and the Workgroup will recognize this report is integral to the bill because it gives a roadmap to compliance.

Lastly, she suggested that higher education entities be included in the same implementation timeline as state governments. She said in her conversations with higher education, they relayed that's the timeline they were looking at nationally as well. She then thanked the Workgroup once more for their efforts.

IV. Finalize Recommendations on HB 1355

Gill asked Workgroup staff member Killeen Wells to read each recommendation aloud, after which the Workgroup would vote on each recommendation.

Wells read Recommendation 1 of HB 1355 aloud to the Workgroup: "The Workgroup recommends that the General Assembly consider amending Chapter 35 of Title 2.2 to require compliance with the Americans with Disabilities Act (ADA), the Code of Federal Regulations and the Federal Rehabilitation Act as appropriate for all covered entities and that, after the federal deadline of April 2026 to comply with the federal standards, then the General Assembly should determine if additional requirements should be added to the Code." The Workgroup voted in support of Recommendation 1 of HB 1355, 7-0.

Wells read Recommendation 2 of HB 1355 aloud: "The Workgroup recommends that the General Assembly consider amending Chapter 35 of Title 2.2 to add public schools to the definition of covered entity." The Workgroup voted in support of Recommendation 2 of HB 1355, 7-0.

Wells read Recommendation 3 of HB 1355 aloud: "The Workgroup recommends that the General Assembly charge stakeholder agencies with providing guidance on how to prioritize systems and applications." The Workgroup voted in support of Recommendation 3, 6-0, with DPB abstaining.

Wells read Recommendation 4 of HB 1355 aloud: "The Workgroup recommends that the General Assembly consider amending Chapter 35 of Title 2.2 to expanding the reporting requirements by covered entities on non-accessible technology to include: (i) identifying non-accessible technology, and (ii) estimating the fiscal impact to bring such technology into compliance. Additionally, the General Assembly should consider requiring covered entities to report to their appropriate executive branch agency, such information on an annual basis to, and that agency report to the General Assembly, rather than to the Secretary of Administration. (like Local Public Schools to the Department of Education)." Allen commented that there is an extra "to" in this language that was not in the minutes. Wells struck the "to" and the comma following. The Workgroup voted in support of Recommendation 4, 6-0, with DPB abstaining.

Wells read Recommendation 5 of HB 1355 aloud: "The Workgroup recommends that the General Assembly consider amending Chapter 35 of Title 2.2 to require that covered entities publish in a clear, easily accessible area on its website who should be contacted when an accessibility barrier is identified and that agencies are required to develop procedures to review the identified concern and respond to individual(s) submitting the concern." The Workgroup voted in support of Recommendation 5, 7-0.

Wells read Recommendation 6 of HB 1355 aloud: "The Workgroup recommends that, when amending Chapter 35 of Title 2.2, the General Assembly not include grievance procedure language (like that found in lines 183-189 of the engrossed version of HB 1355), because other applicable federal and state laws already provide procedures for remedies." Heslinga suggested, to align with Delegate Tran's comments, that the following language be added to the end of this recommendation: "and this is addressed in Recommendation 5." The final wording for Recommendation 6 was read as follows: The Workgroup recommends that, when amending Chapter 35 of Title 2.2, the General Assembly not include grievance procedure language (like that found in lines 183-189 of the engrossed version of HB 1355), because other applicable federal and state laws already provide procedures for remedies, and this is addressed by Recommendation 5." The Workgroup voted in support of Recommendation 6, 6-0, with DPB abstaining.

Wells read Recommendation 7 of HB 1355 as follows: "The Workgroup recommends that, when amending Chapter 35 of Title 2.2, the General Assembly not include specific contractual penalty or consequence language like that found in lines 133-141 of the engrossed version of HB 1355 because public bodies already have the authority to address noncompliance with law or with contract provisions." The Workgroup voted in support of Recommendation 7, 6-0, with DPB abstaining.

V. Presentation on HB 1524

Brandon Bull, the director of the Division of Policy at the Virginia Department of Environmental Quality presented on HB 1524. He stated that DEQ has no position on the bill since it is an executive branch agency, but said he was pleased to share some technical observations and feedback with the Workgroup.

Bull referenced Speaker Don Scott's letter asking the Workgroup, in consultation with DEQ, to look at HB 1524 and look at six specific questions. Bull said three of those questions are beyond the scope of DEQ's purview, but his presentation focuses on the other three questions.

He then listed the questions from Speaker Scott's letter, the first of which pertained to avenues to provide funding via tax credits/incentives to expedite the acquisition of asphalt recycling machinery and equipment on project sites by contractors. The fourth question was about the environmental impacts of increased Recycled Asphalt Pavement (RAP) percentages, and the sixth question was about the use of repurposed waste material, such as tires, in asphalt.

Bull addressed question one by explaining that DEQ is involved in existing programs that provide tax credits or tax-exempt status to encourage the use of recycling or using pollution control equipment. He talked about four programs that DEQ thought might be helpful in generating ideas about what to consider when looking at HB 1524. He said DEQ administers an income tax credit for recycling equipment, and that HB 1524 was modeled after this program. This existing program is pursuant to section 58.1-439.7 of the Code of Virginia, and it provides, "an income tax credit for the purchase of machinery or equipment used predominantly in or on the premises of manufacturing facilities or plant units which manufacture, process, compound or produce items of tangible personal property from recyclable materials within the commonwealth and for machinery and equipment used predominantly in or on the premises of facilities that are predominantly engaged in advanced recycling." Bull furthered that this existing exemption is focused on machinery and equipment that is located on site at the facilities, so it does not include the mobile equipment talked about in HB 1524. This income tax credit can be claimed by either an individual or corporate income tax and is set at 20% of the original total capitalized cost. Bull said DEQ's role in administering the program is to certify that the equipment is being used for what it is claimed.

The second program Bull talked about is a property tax exemption for recycling equipment facilities and devices. He said this program is pursuant to section 58.1-3661 of the Code of Virginia. In this program, local governments have the option to partially or fully exempt DEQ certified recycling facilities and equipment from property taxes. Bull explained that again, this exemption is focused on things at a fixed location. DEQ administers this program through a form to apply for certification, and once certified, then depending on their locality they could qualify for a local tax exemption, explained Bull.

The third program Bull mentioned is a tax credit for waste motor oil burning equipment. Pursuant to section 58.1-439.10 of the Code of Virginia, the tax credit is for 50% of the purchase price paid for equipment used exclusively for burning waste motor oil at a facility that accepts waste motor oil from the public. Bull went on to explain that unlike the other tax credit program he had mentioned, this credit must be used in the year the purchase was made. DEQ once again certifies that the equipment qualifies for the tax credit.

The fourth program that Bull shared with the Workgroup is a tax exemption for pollution control equipment in facilities. Pursuant to section 58.1-3660 of the Code of Virginia, pollution control equipment is a separate class of property and is exempt from state and local taxation and retail sales and use taxes also do not apply, he said.

He summarized DEQ administers four existing programs, some are for tax credits, and some are for tax exemptions, and in all of the programs, DEQ's role is to certify the equipment meets the definition or eligibility.

Bull then turned to Speaker Scott's fourth question in the letter about the environmental impacts of increased RAP percentages. He said he understands that much of the discussion at the previous Workgroup meeting was about increasing percentages of RAP. He went on to say that doing this would decrease the amount of RAP that is stockpiled throughout the commonwealth and put it to beneficial use. Bull said that without more information, DEQ could not quantify how much RAP would be reduced. He continued that based on DEQ's understanding of what is proposed, it would eliminate the need to transport RAP back to a plant, which would in turn reduce emissions. However, he said DEQ could not quantify that based on the information they have now. He addressed the discussion at the last meeting about using less heat to mix the RAP, saying again that less heat would lead to less energy and that would lead to environmental benefits, but without more detailed information, DEQ is not prepared to quantify that either.

He then turned to question six from Speaker Scott's letter, and stated DEQ currently manages a tire waste user reimbursement program. The purpose of the program, Bull said, is to provide incentives in the form of direct payments to people who beneficially reuse waste tires. He further stated that the program does include reimbursement for making a product such as rubberized asphalt using waste tires. Bull explained that the number of waste tires generated in the Commonwealth of Virginia per year is about 6.5 million, using data from the past five years. And of that number, 5.9 million have been reused over the past five years; however, that data is skewed. From the past two years, which is more accurate data, Virginia has been reusing only 3.8 million of the 6.5 million waste tires. So, there is a waste tire issue in the Commonwealth of Virginia, he concluded.

There were no questions, and with that Bull concluded his presentation.

VI. Presentation on HB 1524

The Workgroup then turned their attention to the next presentation on HB 1524. Dr. Michael Fitch, the director of Virginia Department of Transportation's Research Council, began his presentation stating he would not speak directly to the language in HB 1524, but he said he would address several points in the Speaker's letter regarding the bill.

Fitch presented four takeaway points:

- VDOT is a national leader in the use of high RAP.
- VDOT is a national leader in RAP research.
- VDOT is leading a study quantifying the environmental impacts of high RAP pavement.
- VDOT is evaluating the use of other recycled material (ground tire rubber, recycled plastics.)

Fitch spent some time on VDOT's current use of RAP. There are three different layers in the asphalt structure that are measured for RAP. For pavement year 2022, the average usage was 29% for the top layer (maximum possible was 30%), 29% for the second layer (maximum was 30%) and 33% for the bottom layer (maximum was 35%). So VDOT was just under the maximum amount they could use. To put it in perspective, Fitch said that the national average was at 22%, and VDOT was well above that percentage in usage. Fitch then showed where Virginia fell as far as usage between states.

According to VDOT data, the commonwealth came in fourth in terms of total RAP usage for 2022. The three states in front of Virginia were Florida, Idaho and Georgia. Fitch noted that VDOT is cautious to make changes to the RAP mix percentages because Virginia is the third largest state DOT in the country. The other two larger—North Carolina and Texas—have lower RAP usage than Virginia. Fitch divulged that VDOT spends $800 million a year in pavement maintenance, so the implications are large.

Fitch moved on to his next point explaining how VDOT is a leader in RAP research. He said VDOT has completed 25 recycling reports, and it has implemented 27 recommendations from those reports. Fitch continued that VDOT researchers have authored over 40 journal articles and received numerous grants for the continued research of recycling.

Fitch made a point to distinguish the difference between in-place RAP and mixing RAP at a fixed facility. He said they have done research on in-place recycling and those results have been positive, but they need to be separated out from the results of fixed facility recycling.

Fitch said there are 12 sites where VDOT is researching high RAP content (above 30%) for durability and performance. Three of those sites were paved in 2013/2014, and the rest were paved in 2019/2020. They expect to complete most of the research in 2026. He finished this point saying that to use higher percentages of RAP, VDOT must have developed a specification based on the performance of the mix.

Fitch touched on environmental impacts of RAP stating that there are significant environmental benefits. He added that it is not as clear what the benefits of a high RAP at a fixed facility would be due to the transportation involved. VDOT has received a national grant to begin documenting the environmental benefits from 30% RAP, said Fitch, and the reason VDOT was given that grant is because this information is not widely known. He said VDOT has put in for another federal grant where, if they received it, they could start benchmarking data on even higher percentages of RAP. He stressed the importance of the longevity of the higher RAP material, so as not to take away from the environmental benefits.

The last subject Fitch touched on was the use of other waste products (ground tire rubber and recycled plastics). VDOT is monitoring ground tire rubber in asphalt. Fitch said it is an expensive and difficult process, and so they are looking at a dry process that would be less expensive. VDOT has also recently put down test areas of recycled plastics and are monitoring those as an additive to asphalt pavement.

Fitch ended by saying VDOT is pushing the envelope in research and is leading a national study to quantify the impacts of high RAP.

Gill questioned if the 12 research sites were for in-place RAP or all happening at a facility. Fitch responded that they were all from a facility. He made the distinction that VDOT does have over 400 miles of in-place recycling projects that they have put down and are monitoring as well. Gill then asked when the results from the climate grant are due. Fitch said he believed in 2026. Heslinga asked for confirmation that VDOT is researching the ask for higher RAP and is doing so under agreed upon timelines and will have more data soon. Fitch confirmed that was correct.

VII. Public Comment on HB 1524

Charles Craddock, vice president of Superior Paving Central Division and president of the Old Dominion Highway Contractors Association, spoke in support of HB 1524. He said that incentives given to companies for equipment purchases for recycling would be well received. He continued that Virginia is behind the times in the percentages of RAP allowed in asphalt mixes. He stressed the research done by NCAT showed that increased percentages of RAP in asphalt mixes can be done without reducing the quality of the product. He went on to say that his company put down higher percentage RAP mixes for testing at Virginia Tech and that both the 40% RAP mix and the 60% RAP mix have performed well. He said the Old Dominion Highway Contractors Association openly welcomes a partnership with VDOT and other regulating agencies to do what is right for the taxpayer and most importantly for the environment.

Trenton Clarke, president of the Virginia Asphalt Association, spoke in support of HB 1524. He said that the Virginia percentage of RAP is pretty much in line with North Carolina. He said last week that six contractors were asked by VDOT about running 40-50% RAP, and he said the contractors had some concerns about the specification because it is different from what we have been working with. It will be a company-by-company basis on how they move forward. He said he applauds VDOT reaching out. He stressed that companies need the assurance that there will be continued need for higher RAP to invest in the time and equipment to produce it. Clarke said that the Virginia Asphalt Association is interested in both the monetary and environmental savings related to this bill. He said it was time to implement based on what we know, which has been studied for the past two decades.

No one spoke in opposition or took a neutral stance to the bill. This concluded public comment for HB 1524.

VIII. Discussion on HB 1524

Gill asked if there was any additional information that the Workgroup would like staff to gather for the next meeting in relation to HB 1524. The staff will talk about potential recommendations at the next meeting, she said.

Mike Tweedy noted the existing similar tax credit and asked if the Workgroup could get further details from the Virginia Department of Tax on if that credit was fully utilized.

IX. Presentation on HB 1404

Verniece Love, deputy director of the Department of Small Business and Supplier Diversity, presented on HB 1404. Love gave a quick overview of SBSD, including its mission to help small businesses start and grow in Virginia.

She then responded to a question asked in the last meeting, saying that as of June 30, 2024, over 14,000 businesses were certified SWAM businesses. She added that it is important to note that businesses can be certified in multiple categories, so the numbers may overlap, and the total number of businesses will not match exactly. She delved further, explaining that of those SWAM businesses, a little over 13,000 are small businesses, just over 8,000 are certified micro-businesses, just over 6,200 are minority-owned businesses, approximately 5,600 women-owned businesses, 3,300 disadvantaged business enterprises and 810 service disabled, veteran-owned businesses.

Love then walked the Workgroup through the DSBSD electronic certification portal for businesses, which was launched in 2017. The processing time can take up to 60 business days she said, and the certification is valid for five years. Recertification is a streamlined process where previous business documentation is saved for ease of recertification.

She then talked about the three disparity studies that have been done—in 2002, 2009 and 2020. DSBSD currently has an RFP out in eVA for another disparity study which will be completed in 2026. The three disparity studies show an increase in women and minority-owned businesses with only 1.27% percent of businesses falling into this category in the 2002 study, 2.82% in the 2009 study and 13.3% in the 2020 study.

Love gave an analysis of the dollar amounts spent, showing that in FY2023, the Commonwealth of Virginia spent over $2.9 billion with SWAM businesses. Of that $2.9 billion, she said, approximately 6.06% was spent with women-owned businesses and 6.77% was spent with minority-owned businesses. She drew attention to the chart that showed over the past three years, the spend with SWAM businesses has increased.

Next, Love provided information about the 42% goal, in which she is referring to the goal for the Commonwealth of Virginia to spend 42% of total annual spending with SWAM businesses that was increased from 40% in 2014 by Governor McAuliffe. In the past 10 years, the closest the Commonwealth of Virginia has gotten to the goal occurred in 2016, at 36.9%, and in 2015 at 36.42%. The other years, the percentage has fluctuated around the low 30th percentile range.

Love mentioned that she provided a copy of the JLARC study recommendations and pointed out DSBSD's response to recommendation four of that study, saying that the agency pointed out that it is hard for agencies to meet the 42% goal, based on contracting and spend. She said DSBSD recommended the SWAM goal be based on each specific agency based on each agency's spend and contracting habits, rather than an overall goal for the commonwealth.

Love relayed the small business definition as defined in the Code of Virginia: " '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 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."

Love noted that the current definition is an "either or" situation, allowing for multi-million-dollar businesses to be certified as small businesses because they have less than

250 employees. She noted that every year since she has been doing the work (since 2010) there has been a bill introduced to change the small business definition, but it has not happened yet. She highlighted a few past recommendations, including changing the "or" in the small business definition to an "and" which would require businesses to meet the gross receipts limit and the employee limit in order to qualify. She divulged another recommendation has been to go with the federal definition as defined by the Small Business Administration, but she said the SBA definition is industry-specific and is based on federal contracting. She urged that this might not be the best definition for Virginia to adopt because it is not Virginia-specific. Lastly, she said, the federal definition goes by a different set of codes than the ones used in Virginia. In the JLARC study it was recommended that Virginia research and come up with industry-specific limits, explained Love.

In conclusion, Love shared that DSBSD/VSBFA have implemented 15 of the 16 JLARC recommendations. The only one that has not been implemented is Recommendation 5, which is based on a website called Business One Stop. The point of that website was for a business to be able to go to it and register for every procurement, license, set up tax accounts, and all the things they need to do to operate in one place online. In order to set up that website system, it would cost $1.2 million up front and another $4.7 million over four years for maintenance and license renewals. So, it was deemed to expensive to do this recommendation and the website now has information on where to go for businesses.

Love asked if there were any questions. Heslinga said that the JLARC 2020 study talked about there being substantial variation in agency ability to make SWAM purchases based on the goods and services, and in the bill the General Assembly passed this past Session, it seems to respond to that by saying the disparity study currently being conducted by DSBSD evaluate the differences between categories of goods and services. He asked if any prior disparity studies went that in-depth about the differentiation of categories of goods and services. Love responded, no, that the prior studies have simply looked at the availability of SWAM vendors and the amount of state contracting.

Gill asked if Love could clarify that the results of the disparity study being done now won't be complete until 2026. Love said that is correct, the study will begin January 1, 2025, with the report being due January 1, 2026.

Gill followed up, stressing the confusion associated with the goal. She said she thinks there has been confusion for years as to whether it is a Commonwealth of Virginia goal or an agency goal. And she asked if this bill was silent to addressing that and asked if it may create some confusion to that point. Love agreed.

Gill asked Love if she could gather information on what other states are doing, if they have industry-specific limitations like Maryland or how they are handling it. She asked specifically for bordering states. Love said of course she could present that information at the next meeting. Love added that it was also important to note that there are some states that have certification reciprocity, for example, in the Code of Virginia we have a clause that prohibits businesses from certain states that do not allow Virginia businesses to participate in their program from participating in the Virginia program. She used D.C. as an example because those businesses are not allowed to participate in the Virginia SWAM program because their program does not allow Virginia businesses to participate. And we do this, she explained, because we don't want to put Virginia businesses at a disadvantage.

Dulaney asked if the SWAM goal vs. actual numbers included all spend for all agencies across the state, and clarified by asking who is included. Love responded that yes, it is an aggregate number for all spend of all executive branch agencies across the Commonwealth of Virginia.

X. Public Comment on HB 1404

There was no public comment in support or opposition of HB 1404.

Chris Stone, the past chair for the Hampton Roads Chamber of Commerce, spoke in general terms about HB 1404. He brought a study to share with the Workgroup that was done in 2018 by DSBSD and VCU and a synopsis of the JLARC recommendations. He pointed out where in the study one could find information on the small business definition and said that the study also covered what other states were doing. He stated that the study says that Virginia is way out of alignment with our neighboring states on the definition of small business, especially as it pertains to the size of a business. He concluded by saying he would like to get the definition more aligned with the current business climate because, "the question before you is why would a company of 250 people and unlimited revenue need special consideration for public procurement?"

XI. Discussion on HB 1404

Gill asked if there was any additional discussion or any additional information the Workgroup members would like to see at the next meeting regarding HB 1404. She said that JLARC will be presenting at the next meeting, and she will ask them to speak to Appendix F in their report when they present.

Love followed up saying she has the VCU study in the electronic format and she would be happy to send that around electronically to the Workgroup. Gill thanked her and said that would be appreciated.

XII. Discussion

No additional discussion.

XIII. Adjournment

Gill adjourned the meeting at 2:27 p.m. and noted that the Workgroup's next meeting is scheduled for October 8, 2024, at 1:00 p.m.

For more information, see the Workgroup's website or contact that Workgroup's staff at pwg@dgs.virginia.gov.

Appendix E: October 8, 2024, Meeting Materials

This appendix contains the meeting materials from the October 8, 2024, Workgroup meeting.

1. Agenda
2. Meeting Materials
    a. Department of Small Business and Supplier Diversity Presentation on HB 1404
    b. Joint Legislative Audit and Review Commission Presentation on HB 1404
    c. Virginia Commonwealth University Virginia SWAM & DBE Certification Programs: Impacts & Policy Report
3. Approved Meeting Minutes

Public Body Procurement Workgroup

https://dgs.virginia.gov/dgs/directors-office/pwg/

Meeting # 6
Tuesday, October 8, 2024, 1:00 p.m.
House South Subcommittee Room, 2nd floor
General Assembly Building
201 North 9th Street, Richmond, Virginia 23219

AGENDA

I. **Call to Order; Remarks by Chair**

II. **Approval of Meeting Minutes from the September 17, 2024, Workgroup Meeting**

III. **Public Comment on HB 1524**

IV. **Discussion on HB 1524, Preliminary Findings and Recommendations**

V. **Presentation on HB 1404**
Verniece Love, Deputy Director
Department of Small Business and Supplier Diversity

VI. **Presentation on HB 1404**
Justin Brown, Senior Associate Director
Joint Legislative Audit and Review Commission

VII. **Public Comment on HB 1404**

VIII. **Discussion on HB 1404**

IX. **Discussion**

X. **Adjournment**

Members

Department of General Services
Virginia Information Technologies Agency
Department of Planning and Budget
Virginia Association of State Colleges and University Purchasing Professionals
Department of Small Business and Supplier Diversity
Virginia Department of Transportation
Virginia Association of Government Purchasing

Representatives

Office of the Attorney General
Senate Finance Committee
House Appropriations Committee
Division of Legislative Services

Staff

Killeen Wells, Deputy Director of Communications, DGS
Kimberly Freiberger, Legislative Analyst, DGS

The Virginia Department of Small Business and Supplier Diversity

VIRGINIA DEPARTMENT OF
SBSD
SMALL BUSINESS & SUPPLIER DIVERSITY

Small Business Definition

Current definition as defined in the Code of Virginia, § 2.2-1604:

- "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.

DC.gov

Department of Small and
Local Business Development

Washington, DC

A Certified Business Enterprise (CBE) is a business headquartered in the District of Columbia and certified by the Department of Small and Local Business Development (DSLBD). Businesses with CBE certification receive preferred procurement and contracting opportunities.

•The principal office of the business must be **physically located in the District of Columbia**
•Chief Executive Officer and highest-level managerial employees of the business enterprise must perform their managerial functions in their principal office located in the District;

•Meets one of the four following standards:

- More than 50% of the employees of the business are residents of the District; or
- The owners of more than 50% of the business enterprise are residents of the District; or
- More than 50% of the assets of the business, excluding bank accounts, are in the District; or
- More than 50% of the business gross receipts are District gross receipts.

An SBE is a subcategory within the CBE program. A business must be certified as a local business enterprise to be considered for this subcategory. The Department of Small and Local Business Development (DSLBD) determines eligibility based on the applicant's averaged annualized gross receipts for the 5 years preceding certification. DSLBD uses the SBA's size standards and DSLBD's limits to determine eligibility. In addition to the SBA standards, the chart below signifies the industry limits used by DSLBD to determine eligibility. Please visit D.C. Code § 2–218.32 for more information about the SBE category.

DC.gov
Department of Small and
Local Business Development

Washington, DC

SBE Industry	Limit
Construction, Heavy (Streets and Highways, Bridges, etc.)	$23M
Construction, Building (General Construction, etc.)	$21M
Construction, Specialty Trades	$13M
Goods & Equipment	$20M
General Services	$19M
Professional Services, Personal Services	$5M
(Hotel, Beauty, Laundry, etc.)	
Professional Services, Business Services	$10M
Professional Services, Health & Legal Services	$10M
Professional Services, Health Facilities Management	$19M
Manufacturing Services	$10M
Transportation & Hauling Services	$13M
Financial Institutions	$300M

https://dslbd.dc.gov/page/cbe-certification-frequently-asked-questions-faqs

GOVERNOR'S OFFICE OF **SMALL, MINORITY & WOMEN BUSINESS AFFAIRS**

Maryland

SBR Program Eligibility Standards (COMAR 21.11.01.06)

For the purposes of a Small Business Reserve Procurement, a small business is a for-profit business, other than a broker, that meets the following criteria:

A. It is independently owned and operated;
B. It is not a subsidiary of another business;
C. It is not dominant in its field of operation; and
D. Either:

GOVERNOR'S OFFICE OF **SMALL, MINORITY & WOMEN BUSINESS AFFAIRS**

Maryland

(1) **With respect to employees**:
(a) Its **wholesale** operations did not employ more than 50 persons in its most recently completed 3 fiscal years;
(b) Its **retail** operations did not employ more than 25 persons in its most recently completed 3 fiscal years;
(c) Its **manufacturing** operations did not employ more than 100 persons in its most recently completed 3 fiscal years;
(d) Its **service** operations did not employ more than 100 persons in its most recently completed 3 fiscal years;
(e) Its **construction** operations did not employ more than 50 persons in its most recently completed 3 fiscal years; and
(f) The **architectural and engineering** services of the business did not employ more than 100 persons in its most recently completed 3 fiscal years; **or**

GOVERNOR'S OFFICE OF **SMALL, MINORITY & WOMEN BUSINESS AFFAIRS** **Maryland**

(2) **With respect to gross sales**:

(a) The gross sales of its **wholesale** operations did not exceed an average of $4,000,000 in its most recently completed 3 fiscal years;

(b) The gross sales of its **retail** operations did not exceed an average of $3,000,000 in its most recently completed 3 fiscal years;

(c) The gross sales of its **manufacturing** operations did not exceed an average of $2,000,000 in its most recently completed 3 fiscal years

(d) The gross sales of its **service** operations did not exceed an average of $10,000,000 in its most recently completed 3 fiscal years;

(e) The gross sales of its **construction** operations did not exceed an average of $7,000,000 in its most recently completed 3 fiscal years; and

(f) The gross sales of its **architectural and engineering** operations did not exceed an average of $4,500,000 in its most recently completed 3 fiscal years.

Note: If a business has not existed for 3 years, the employment and gross sales average or averages shall be the average for each year or part of a year during which the business has been in existence.

https://gomdsmallbiz.maryland.gov/Pages/sbr-Program.aspx

TN Department of General Services

Tennessee

Governor's Office of Diversity Business Enterprise (Go-DBE)

Eligibility guidelines for all diversity categories:

- Business must be independently owned and operated.
- Must be a for-profit business that serves a commercially useful function.
- Business must be in operation for a minimum of two (2) years to qualify for certification.

Small Business Enterprise (SBE)

A business that is a continuing, independent, for-profit business which performs a commercially useful function and has total gross receipts of no more than ten million dollars ($10,000,000) averaged over a three-year period or employs no more than 99 persons on a full-time basis.

https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/go-dbe/go-dbe-certification.html

NORTH CAROLINA SBE SMALL BUSINESS ENTERPRISE PROGRAM

North Carolina

NCSBE Certification

The NCSBE Program was developed to provide access to contract opportunities that allow small businesses to compete against others that are comparably positioned in their industries and markets; as well as participate in department contracts if they meet the eligibility standards.

NCSBE Program Eligibility: Any small business meeting the Program standards outlined below is eligible to participate in the NCSBE Program. The standards are as follows:

- The business must be headquartered in North Carolina.
- The business' annual net income does not exceed $1,500,000, after cost of goods sold is deducted.
- The business must have 100 or fewer employees.
- The business must be organized for profit.

https://www.doa.nc.gov/divisions/historically-underutilized-businesses-hub/certifications/ncsbe-certification

South Carolina SMBCC
Division of Small and Minority Business Contracting and Certification

South Carolina

Eligibility requirements for certification as a MBE are per 19-445-2160 of the South Carolina Procurement Code Regulations and Title 49, Part 26 of the Code of Federal Regulations (CFR). In order for a firm to be certified, it must be found to be a small independent business owned and controlled by a person or persons who are socially and economically disadvantaged. The following factors will be considered in determining whether the applicant is eligible for certification:

Small Business
The applicant firm must be an existing “for profit” business. It must also meet the federal definition of a small business based on its primary SIC/NAICS code, as described by the US SBA, and must not exceed the small business size standard established for it’s particular line of work.

Disadvantaged owners must be US citizens and meet the federal definition of socially and economically disadvantaged as defined by 49 CFR 26.67. Presumptive groups include “women, Black Americans, Hispanic Americans, Native Americans (including American Indians, Eskimos, Aleuts and Native Hawaiians), and Asian Pacific Americans. Personal net worth of a disadvantaged owner cannot exceed $1.32 million.

https://smbcc.sc.gov/applications.html

Georgia USA

Georgia

Georgia defines a small business as one which is independently owned and operated and must have either fewer than 300 employees or less than $30 million in gross receipts per year. Georgia does not have a Small Business Enterprise (SBE) designation or certification requirement. Companies may ‘self-report’ to designate themselves as a small business through the GA Department of Administrative Services (**DOAS**) through the Supplier Registration / Team Georgia Marketplace where you can select your organization’s classifications.

https://georgia.org/small-business/start/certification

Department of MANAGEMENT SERVICES

Florida

The Office of Supplier Development (OSD) issues applicable state certification and recertification for Florida-based woman-, veteran-, and minority-owned small businesses.

Your business must meet the following eligibility requirements:

- Be legally registered to do business in Florida as a for-profit organization (registration through the Department of State).
- Be based in Florida.
- Be owned and managed by a resident(s) of Florida.
- Be 51% owned and managed by a woman, veteran, or minority who is a U.S. citizen or permanent resident alien.
- Be currently engaged in commercial transactions.
- Be registered in MyFloridaMarketPlace (MFMP).
- Have a net worth of less than $5 million.
- Have 200 or fewer full-time permanent employees.
- Have a professional license, if required by the industry, in the name of the woman, veteran, or minority business owner.

https://www.dms.myflorida.com/business_operations/state_purchasing/office_of_supplier_development_osd/get_certified

VIRGINIA DEPARTMENT OF SBSD SMALL BUSINESS & SUPPLIER DIVERSITY

Thank you!

Willis Morris, Agency Director
Verniece Love, Deputy Director

Department of Small Business and Supplier Diversity
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Richmond, VA 23219
(804) 786-6585
sbsd@sbsd.virginia.gov
www.sbsd.virginia.gov

JLARC
JOINT LEGISLATIVE AUDIT
AND REVIEW COMMISSION

December 1, 2021

JLARC review (September 2020): Department of Small Business & Supplier Diversity

Small Business Commission

JLARC reviewed SBSD* and released report in September 2020

- SBSD's business certification process had become more timely and determinations were accurate, but appeal right was limited
- VSBFA was not fully achieving mission of helping small businesses access financing and lacked lending policies that set appropriate risk standards
- State agency procurement spending with SWaM-certified businesses was substantial, but majority of agencies did not achieve governor's 42% goal
- Most of the state's procurements went to businesses much smaller than size allowed under Virginia's definition, but some relatively large businesses were also eligible

*SBSD = Department of Small Business & Supplier Diversity

Status – Business certification & assistance

Certification	Post precertification webinars or videos on its website that describe the application process	Implementation *in progress*
Certification	Provide a right of appeal to small, women-owned, and minority-owned businesses denied a new certification if SBSD made a mistake	Implemented
Certification	Revising denial letters and add information to website to more clearly describe appeals process and req'ts	Implemented
Business assistance	Improve business awareness of and accessibility to its business assistance events and counseling sessions	Implementation *in progress*
Business One Stop	Develop and submit a detailed improvement plan for the Business One Stop	Implemented

*As of spring 2021 (JLARC tracks legislative implementation each Session and asks agencies implementation status annually)

Status – SWaM planning

Develop and implement a more meaningful SWaM plan development and review process	Not implemented
Develop and maintain information about strategies agencies can use to increase their SWaM expenditures	Implemented

*As of spring 2021 (JLARC tracks legislative implementation each Session and asks agencies implementation status annually)

JLARC also proposed 10 policy options for consideration

- 5 options related to changing the state's small business definition used to determine procurement preferences
- 1 option for VSBFA to develop a pilot program to test expanding the microloan program to include startup businesses
- 2 options related to SWaM spending & goals

In this presentation

Small business definition

SWaM goal & plans

Certified small and micro businesses can benefit from procurement "set asides"

Types of certified businesses that sell to state agencies	Procurement preferences for SBSD certified businesses
Small business ≤ 250 employees <u>or</u> ≤ $10M gross receipts	**Mandatory set aside** ≤ $100K or $80K
Micro business ≤ 25 employees <u>and</u> ≤ $3M gross receipts	**Mandatory set aside** ≤ $10K

SBSD certifies businesses, most of which were small, micro, minority-owned, or women-owned

Certification	# certifications (2019)	% certifications (2019)*
Small	10,486	40%
Micro	6,058	23%
Minority-owned	3,843	15%
Women-owned	3,616	14%
Other**	2,493	10%

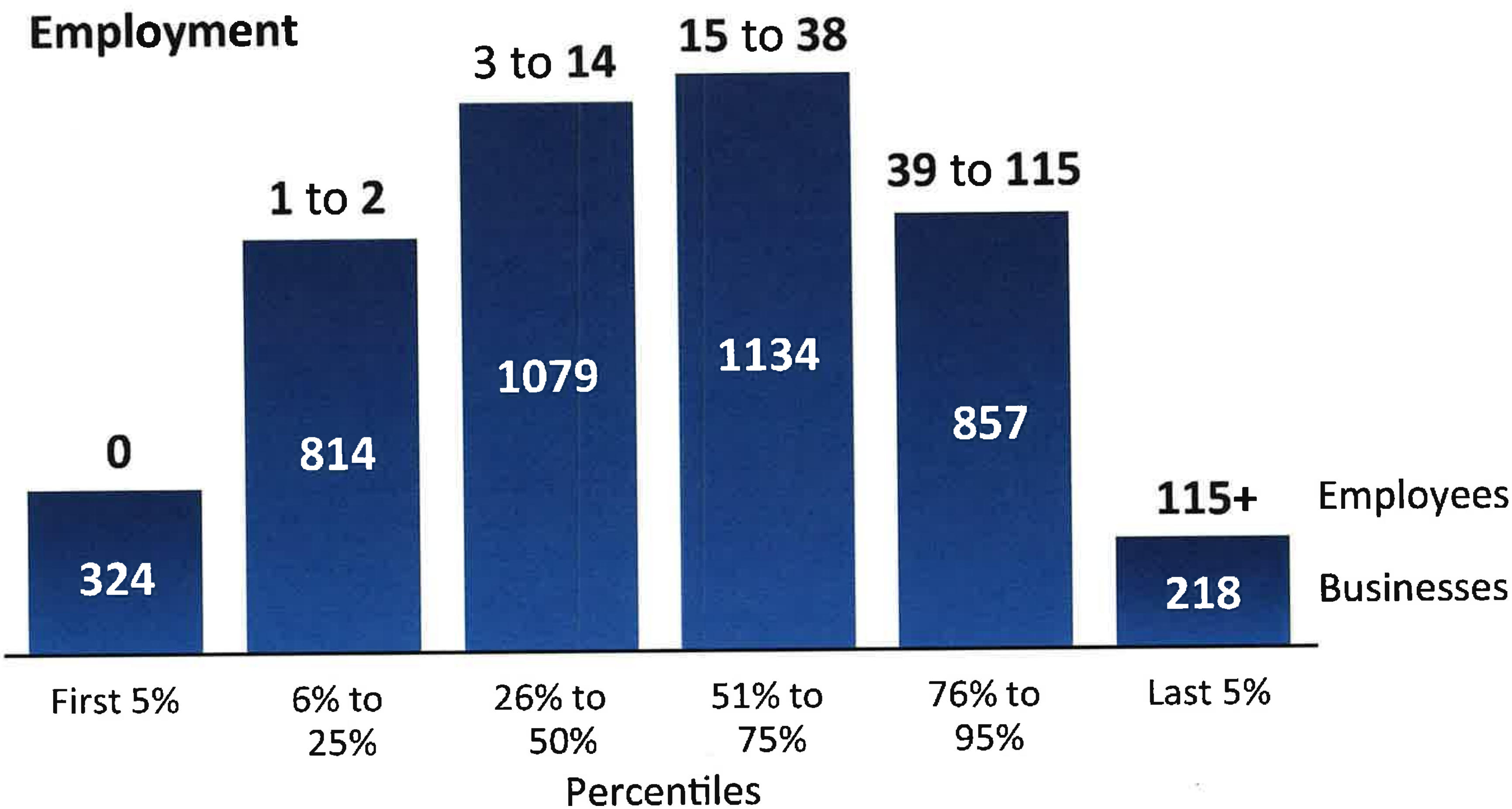
*Numbers do not sum because of rounding.

**Other includes = disadvantaged business enterprises (DBE); service-disabled veteran-owned businesses, and employment service organization

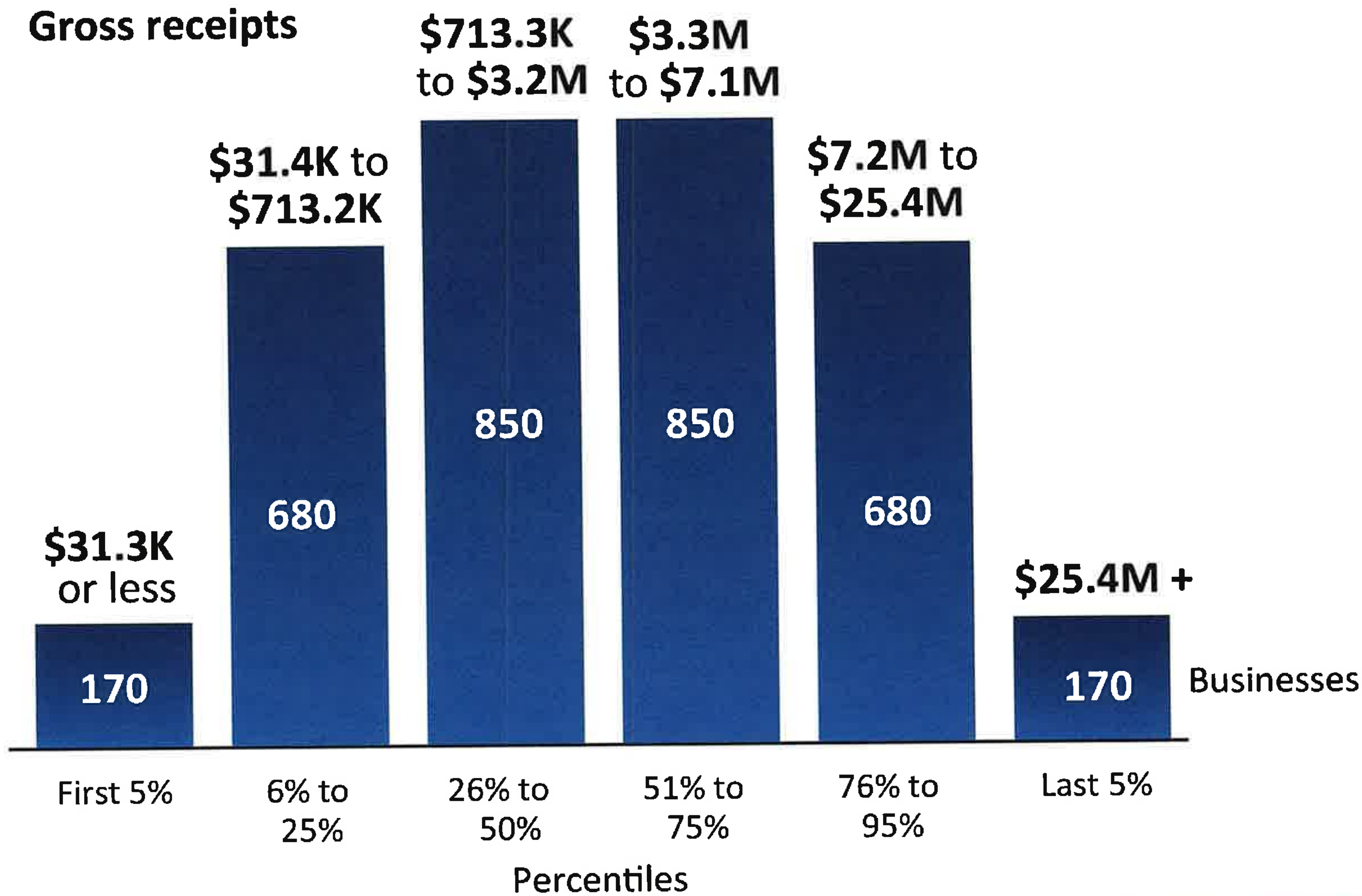
Most certified small business are very small, except for several "outlier" large businesses

- Median size of certified small business =
  - 14 employees
  - $3.2 million in annual gross receipts
- 94% of certified small/micro businesses have $\leq$ 250 employees and $\leq$ $10M gross receipts
- 6% (623) were "outliers" that exceed either the maximum employee or gross receipt thresholds
  - Maximum # employees = 1,900
  - Maximum gross receipts = $397M

All but 5% of certified businesses had fewer than 115 employees



75% of certified businesses reported less than $7.2M in gross receipts



Policy options: State could exclude comparatively larger "outlier" businesses from certification

Policy option	Certified businesses removed	SBSD admin impact	SBSD fiscal impact
Require small businesses to meet both the employment AND gross receipts thresholds*	-623 (-6%)	Low	$0
Lower employee and gross receipts thresholds for small businesses (Example: 95th percentile)	-306 (-3%)	Low	$0 - $50k (one time)
Lower employee and gross receipts thresholds for small businesses (Example: 75th percentile)	-1,329 (-13%)	Low	$0 - $50k (one time)

* HB 1134 (2020) proposed this approach to Virginia's small business definition.

Business size can vary substantially depending on industry

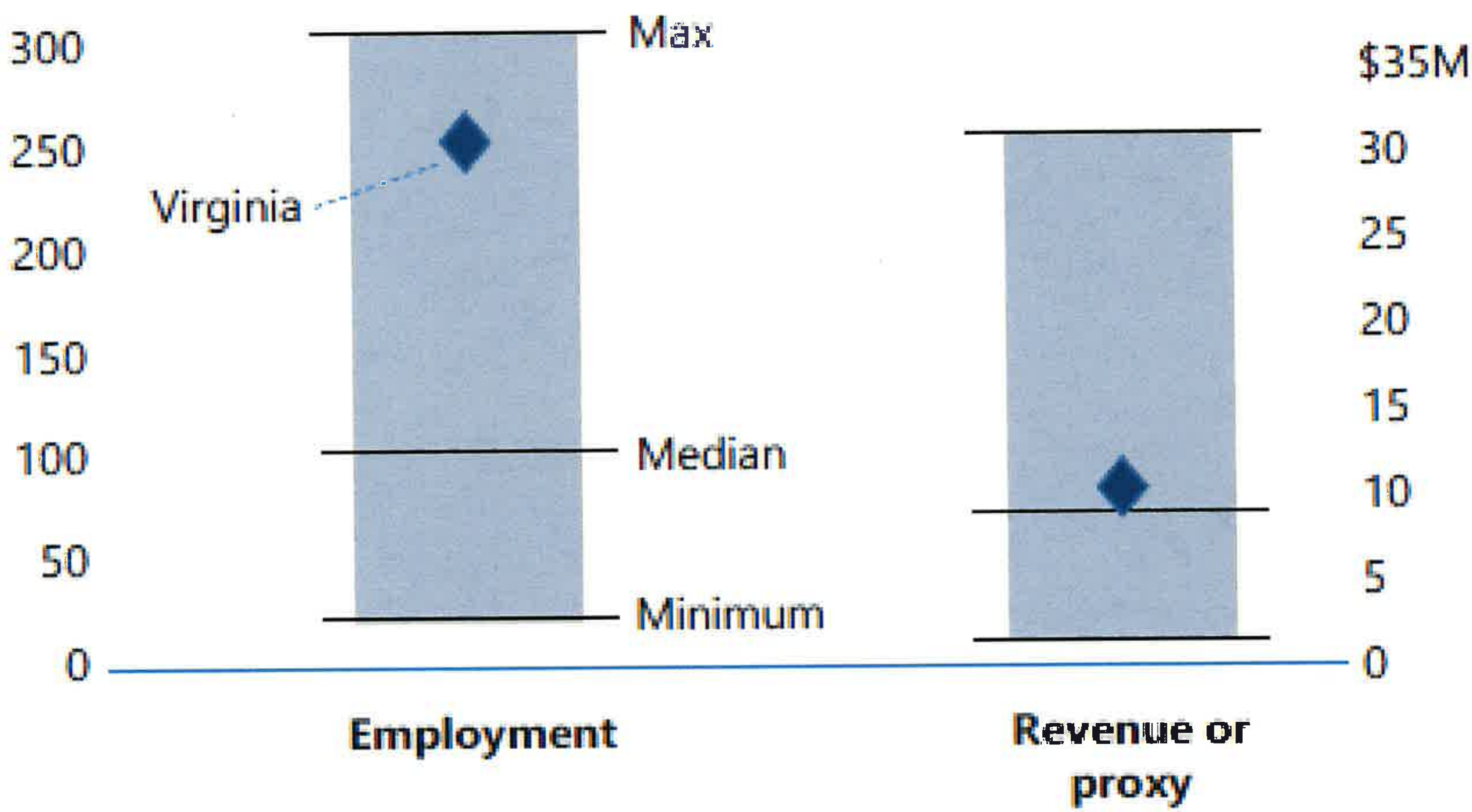
Industry	# Employees		
	Min	Median	Max
Construction (highway, street, & bridge)	1	15	8,106
Management consulting services	1	2	6,006
Data processing and hosting	1	2	1,535
Florist	1	4	135

Source: Virginia Employment Commission data (2019).

Federal government and several other states have industry-specific small business definitions

- U.S. SBA has 1,000+ industry-specific definitions
  - Employment thresholds between 100 and 1,500
  - Gross receipts thresholds between $1M and $41.5M
  - 75% (778) industries larger than VA's definition
- CO sets size at 50% of U.S. SBA definitions
- MD, NJ, IN, OR, NV, and DC use industry group-specific definitions

Virginia's definition allows more employees than other states, but revenue threshold comparable



Note: Includes D.C. and 25 states, including Virginia.

Policy options: State could develop and adopt size thresholds based on industry

Policy option	Employee threshold (+/-)	SBSD admin impact	SBSD fiscal impact
Develop industry-specific size standards set at percentage (75%) of VA business size	-996 industries +41 industries	High	\$300K - \$500K (one-time)
Develop industry-specific size standards set at 50% of SBA size standards	-83 industries +310 industries	High	\$300K - \$500K (one-time)
Develop cross-industry size standards for several industry groupings	Unknown	Medium	\$50K (one-time)

“Disparity study” results could inform potential changes to definition or procurement preferences

“…minority- and woman-owned businesses considered together exhibited a disparity index of 41 for contracts and procurements that the Commonwealth awarded during the study period, indicated ***substantial underutilization.***

Moreover, all individual racial/ethnic and gender groups showed ***substantial disparities*** *on that work.”*

Source: BBC Research & Consulting, study released January 2021

Policy option: Consider broadening preferences to include more than business size

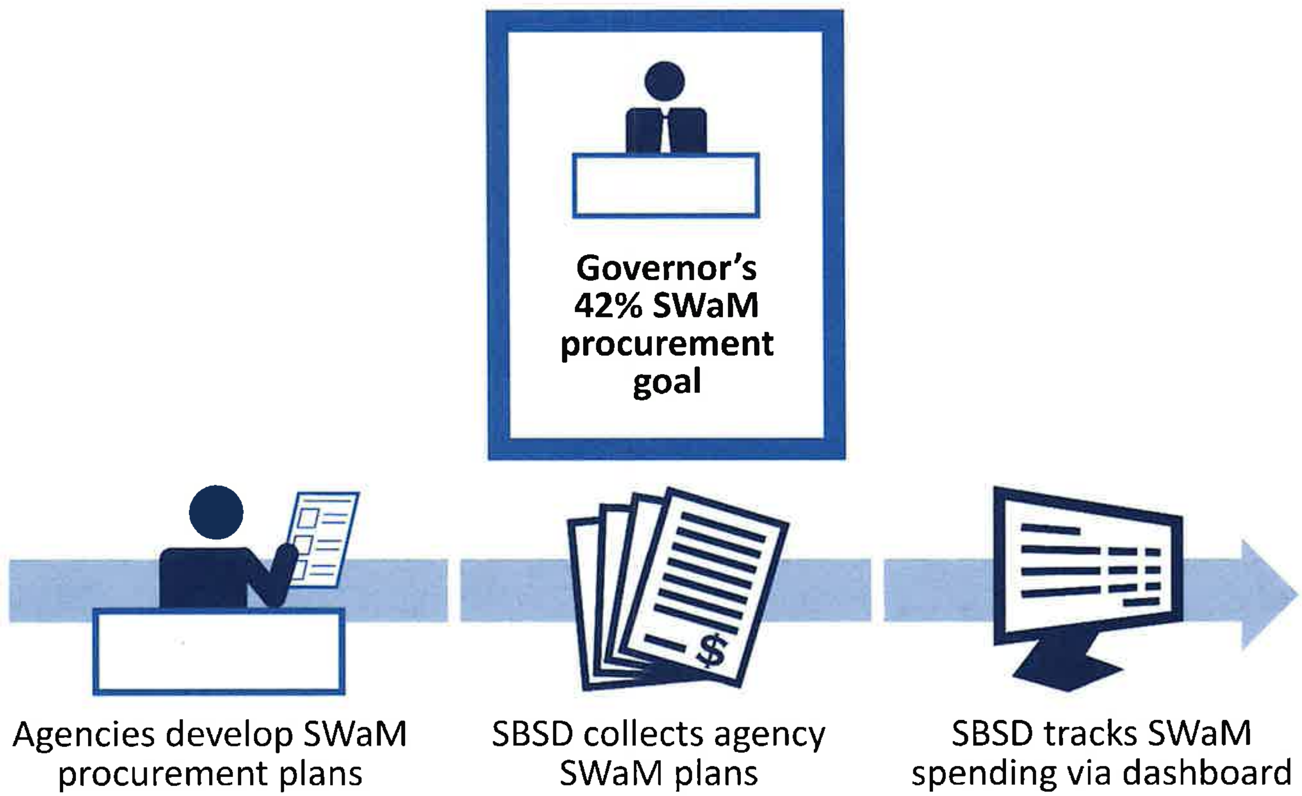
- The General Assembly could consider authorizing an executive branch workgroup to consider whether and how to adjust the
  - (i) state's procurement preferences for businesses (including women and minority ownership based on the findings of the 2020 SBSD disparity study)
  - (ii) state's definition 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

In this presentation

Small business definition

SWaM goal & plans

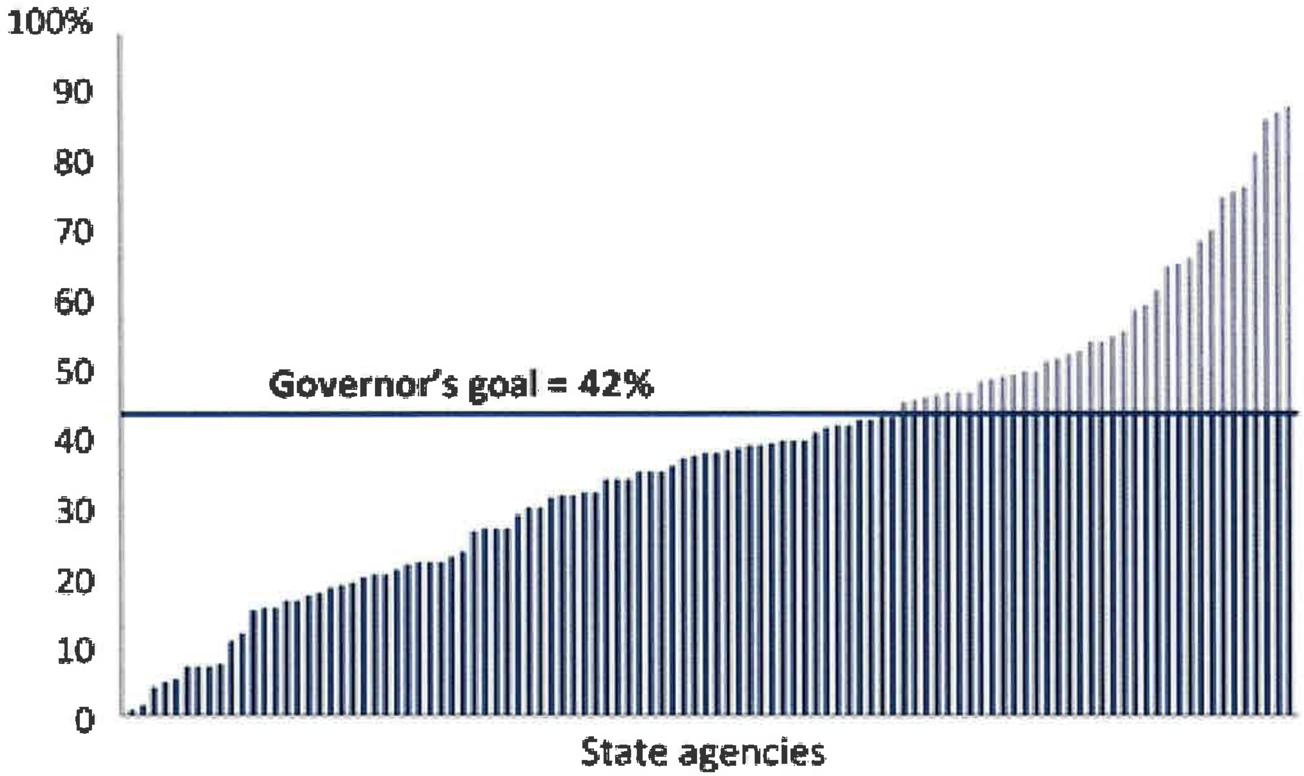
Governor, agencies, and SBSD each play a role in state's SWaM initiatives

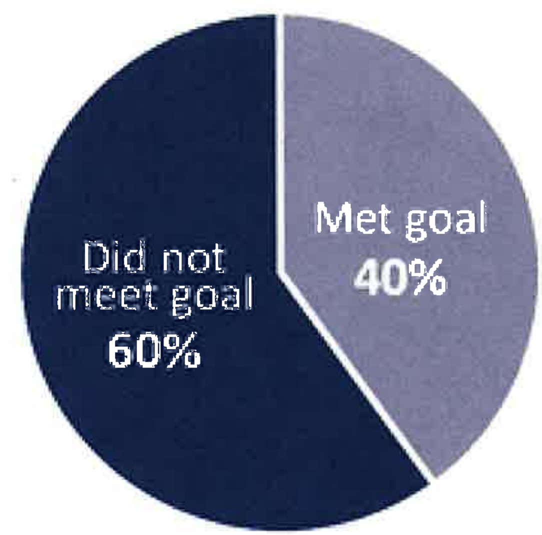


SWaM program helped certified businesses win state contracts

- Agencies procured over $2 billion through SWaM-certified businesses (FY19)
  - Purchases with SWaM-certified businesses increased ~15% over last five years
- Median sales increased ~20% for businesses after SWaM certification
- Businesses reported non-monetary benefits of SWaM certification (e.g., improved image)

State agencies' SWaM spending ranged from 4 to 87 percent; majority did not meet the goal





Each agency's SWaM goal achievement affected strongly by unique procurement needs

- Asking each agency to meet the same 42% SWaM goal does not account for key factors
- Some goods/services agencies purchase generally not offered by many SWaM-certified businesses
  - *Example: specialized research materials*
- Number and size of procurements highly variable for some agencies

SWaM planning process had not historically helped agencies find workable strategies to meet SWaM goal

- SBSD held meetings with different group of agencies each month to discuss SWaM performance
- SBSD collected agency SWaM plans but did not regularly review plans or provide feedback
- Majority of agencies surveyed disagreed (or had no opinion) that SWaM plan was helpful

Policy option: Agency-specific goals

- Direct each state agency to set an ambitious, but achievable, SWaM goal that accounts for the
  - (i) availability of SWaM-certified businesses that sell goods or services the agency procures and
  - (ii) agency's ongoing and upcoming procurements

Questions? / Comments?

Justin Brown, Associate Director

Lauren Axselle, Project Leader

VIRGINIA SWAM & DBE CERTIFICATION PROGRAMS: IMPACTS & POLICY

AUGUST 2018

VCU Center for Urban and Regional Analysis
L. Douglas Wilder School of Government and Public Affairs

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VIRGINIA SWAM & DBE CERTIFICATION PROGRAMS:
IMPACTS & POLICY

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AUGUST 2018

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ACKNOWLEDGMENTS

The Wilder School's Center for Urban and Regional Analysis is grateful to Tracey Wiley and Jennifer Mayton at the Virginia Department of Small Business and Suplier Diversity (DSBSD) for their leadership and support throughout this project. Thanks also to DSBSD Staff for their help in providing the data and information needed for this study.

ABOUT THE WILDER SCHOOL

The L. Douglas Wilder School of Government and Public Affairs at Virginia Commonwealth University informs public policy through cutting-edge research and community engagement while preparing students to be tomorrow's leaders. The Wilder School's Center for Public Policy conducts research, translates VCU faculty research into policy briefs for state and local leaders, and provides leadership development, education and training for state and local governments, nonprofit organizations and businesses across Virginia and beyond.

ABOUT CURA

The Center for Urban and Regional Analysis (CURA) is the economic and policy research center of the L. Douglas Wilder School of Government & Public Affairs at Virginia Commonwealth University. The Center serves stakeholders and organizations at all levels of focus, providing information systems support, program impact analysis, public policy evaluation, targeted investment models, and strategic plans to state agencies, regional and metropolitan organizations, planning districts, cities, counties and towns, as well as businesses and non-profit organizations.

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EXECUTIVE SUMMARY

The Commonwealth of Virginia has sought to level the playing field for small businesses bidding on state contracts through a certification program for Small, Women-owned, and Minority-owned businesses (SWaM). In addition to set asides for goods and services up to $100,000 that require state agencies to accept fair bids from SWaM-certified businesses, the Commonwealth has set a target of 42 percent of all state discretionary procurement spending to go towards SWaM-certified businesses.

Virginia's Department of Small Business and Supplier Diversity administers SWaM certification by determining whether applicants meet the program's requirements:

1. A small business may have no more than 250 employees or annual gross receipts greater than $10 million.

2. A women-owned business must be at least 51 percent owned and controlled by one or more women.

3. A minority-owned business must be at least 51 percent owned and controlled by one or more minority individuals.

A similar certification program for federally-funded contracts—rather than state-funded—follows similar but slightly different requirements. The Disadvantaged Business Enterprises (DBE) program allows small businesses and businesses owned by historically disadvantaged groups to certify and compete for federally funded projects. The DBE program follows similar rules for disadvantaged groups—it includes women-owned and minority-owned businesses. However, the definition of a small business depends on the industry in which the business operates. The DBE definition of small business places different standards in both size and gross receipts on businesses according to their NAICS classification. This definition comes from the U.S. Small Business Administration (SBA).

The DSBSD also administers DBE certification in Virginia.

This report seeks to provide DSBSD with an understanding of the SWaM and DBE programs' recent trends, participant impacts, and economic impacts. It also tests whether changes to the definition of "small business" might have benefits for Virginia businesses and the economy overall. The following represent major findings:

- Between 2014 and 2017, Virginia agencies did not meet the 42 percent SWaM spending goal. However, the state met a 40 percent target (the state target prior to a 2014 executive order increasing it to 42 percent) in 2009 and 2010. SWaM spending since the introduction of the 42 percent target has averaged 34.3 percent.

- Most SWaM spending between 2007 and 2017 went to small businesses without women or minority ownership. Small businesses received an average of 25 percent of the state's discretionary procurements between 2007 and 2017, compared to 5.4 percent for minority-owned businesses and 5.1 percent for women-owned businesses. This is procurement driven since Virginia has a small business program.

- A survey of program participants (n = 1,475) found that more than one-third of respondents saw increases in their annual revenues after receiving SWaM or DBE certification.

- More than half of minority-owned business respondents who reported an increase in annual revenues after certification saw revenue increases of more than 20 percent.

- Minority-owned business respondents placed greater emphasis on the importance of the SWaM program than other business types.

- SWaM businesses appear to experience annual revenue increases at rates greater than all Virginia small businesses experience growth in annual sales receipts.

- Experience in the SWaM program plays an ongoing role in helping businesses successfully bid for state contracts. Survey respondents with more than two years of experience with the program reported receiving at least some revenue from state contracts at a far higher rate than respondents with two years of experience or less.

- Of the three sub-categories of businesses studied here, small businesses appear to work with SWaM/ DBE-certified sub-contractors and suppliers at a greater rate than women-owned or minority-owned businesses. This is likely due to procurement being race and gender neutral.

- SWaM-certified businesses have an annual economic impact of $3.6 billion, including $146 million in state and local tax revenues.

- State spending with minority-owned SWaM businesses have a higher economic multiplier (1.58) than small SWaM businesses (1.53) and women-owned SWaM businesses (1.43).

- Using the SBA definition of small business for SWaM certification would increase the pool of certified businesses by 10 percent. However, Virginia SWaM businesses would only increase by 0.55 percent. Out-of-state SWaM businesses would increase by 99.6 percent. Adoption of the SBA small business definition would increase the estimated economic impact of SWaM spending by just 0.2 percent.

- Additionally, adopting the SBA definition would require additional paper work and staff time to evaluate each of the 1,031 industry types using industry specific certification criteria, which will increase certification costs to DSBSD.

- Currently, any small business that meets the criteria of less than 250 employees "OR" less than $10 million in gross receipts averaged over the three years are eligible tor SWaM certification. Requiring SWaM businesses to meet both size "AND" revenue requirements would decrease the pool of certified businesses by 18 percent. SWaM-certified Wholesale Trade and Manufacturing sector businesses would shrink by more than 90 percent.

- Although the program has struggled to meet the absolute goal of 42 percent, the share of discretionary spending going to SWaM-certified businesses has consistently remained above 30 percent over the past 10 years. Projections suggest the program could increase its performance by adopting the SBA definition of small businesses. However, that increase would stem largely from out-of-state businesses ineligible under the current definition. In this regard, even though the program goals would be met, the economic impact of the additional spending would not be realized within the Commonwealth.

INTRODUCTION

INTRODUCTION

In 2006, then-Governor of Virginia Tim Kaine signed Executive Order 33 directing state agencies to strive to make 40 percent of purchases from small businesses. A small business in the executive order is defined as any Virginia business with 250 employees or fewer or having gross receipts of $10 million or less (averaged over the previous three years). The definition explicitly includes women-owned and minority-owned businesses that meet the small business definition. In 2014, then-Governor Terry McAuliffe signed Executive Order 20, increasing the Commonwealth's small business spending goal to 42 percent.

The primary objective of this initiative is to advance small business goals for the state to remain competitive among its peers. The Commonwealth expects to realize the objective by spurring creativity, promoting economic justice, and encouraging procurement participation by small, women-owned, and minority-owned businesses. Although the executive order does not set special goals for women-owned and minority-owned businesses, it specifically mentions that these businesses, among others, are categorized as small business if they meet the required criteria. Women- and minority-owned business may obtain SWaM certification without meeting small business criteria.

Existing research suggests employment patterns among minority-owned business dramatically differ from those of non-minority firms. Research findings on small business employment consistently reveal a pattern in which minority-owned businesses primarily employ minority workers, while non-minority firms primarily employ non-minority workers. The disparities in workforce composition by race are largely attributed to network hiring inclination, wherein, small business firms rely on family-based networks to hire employees (Bates, 2008; Simms & Allen, 1997). For non-minority (white) small business owners, these networks primarily consist of other white workers. Likewise, family-based networks for black business owners primarily consist of other black workers.

Given the nature of network hiring, in which the availability of small business jobs are in part a function of the race of the hiring owner, expanding opportunities for minority businesses also expands minority employment opportunities. Multiple studies demonstrated that African American-owned businesses employed a predominately African American workforce (Bates, 1994; Boston & Ross, 1997; Simms & Allen, 1997). Additionally, these black-owned businesses were more likely than white-owned businesses to recruit low-income minority workers (Bates, 1994; Simms & Allen, 1997).

The Center for Women's Business Research, in partnership with the National Women's Business Council and Walmart, undertook a 2009 study to determine the economic impact of women-owned businesses nationwide. The methodology used in the study determined the economic impact of privately held firms in which women held 51 percent or more of ownership. According to research findings, 28.2 percent of all businesses, nationally, are women-owned. These businesses were found to contribute $3 trillion annually to the US economy, or 4.2 percent of all revenue (Center for Women's Business Research, 2009). Additionally, women-owned businesses contributed 23 million jobs, or 16 percent of total US employment. These findings highlight the substantial impact of this market sector.

Similarly, a study in 2017 found that women's entrepreneurship has been on the rise in the United States for the last two decades, with an estimated 11.6 million women-owned businesses in 2017 employing nearly 9 million people and generating about $1.7 trillion in revenues (American Express, 2017). The report also identifies women-owned businesses in Virginia as having considerably increased their economic clout and employment over the 20 year period from 1997 through 2017.

The Virginia Department of Small Business and Supplier Diversity (DSBSD) certifies Small, Women-owned, and Minority-owned (SWaM) businesses and administers the SWaM program to achieve the 42 percent goal set forth by the 2014 executive order. SWaM certification is principally limited to Virginia businesses; however, an out-of-state business that meets the required criteria can apply for SWaM certification if its home state has a reciprocal policy that allows Virginia small businesses to compete for procurement contracts in that state.
DSBSD also certifies Disadvantaged Business Enterprises (DBE) in Virginia. DBE is a Federal program designed

to increase participation of small, disadvantaged businesses in projects funded by the US Department of Transportation and other federal sectors. To qualify as a DBE, a business' majority-owner (the person who owns 51 percent of the business and oversees its day-to-day operation) must be socially and economically disadvantaged. To be regarded as socially disadvantaged, the majority-owner must belong to a minority or historically disadvantaged group, including African American, Hispanic, Native American, and women business owners. Persons with disabilities and others may be determined as socially disadvantaged on a case-by-case basis. The economic disadvantage goal requires that the majority-owner's personal net worth not exceed $1.32 million. Finally, a DBE must be certified as a small business. However, this definition of small business differs from that of the SWaM program.

The DBE program requires firms meet the small business definition set by the federal Small Business Administration (SBA). The SBA sets different size criteria—both in gross receipts and in number of employees—for different types of businesses. However, Virginia businesses that plan to participate in the procurement process with Virginia agencies that do not receive federal transportation funds do not need to get DBE certification.

Besides SWaM and DBE, DSBSD also administers certification for programs that include Employment Service Organizations (ESO), Historically Black Colleges and Universities (HBCU), Service Disabled Veterans (SDV), and Micro Businesses. Additionally, the Business Development and Outreach Services (BDOS) division of DSBSD provides consultation and resources to enable small businesses in Virginia to grow, create jobs, and strengthen the state's economy.

Virginia's small business set-aside policy currently requires that purchases below an established threshold be procured from businesses certified as "small" or "micro" businesses. The 2014 executive order expanded the small businesses set-aside from $50,000 to $100,000 for goods and non-professional services (and up to $50,000 for professional services). The executive order also set-aside all state procurements under $10,000 for qualifying micro businesses. The order defines a micro business as a certified small business with fewer than 25 employees and three-year average gross receipts less than $3 million.

Although the state's small business set-aside is race- and gender-neutral—only small or micro business certification is required to qualify for the small business set aside—contracts with women- and minority-owned small businesses are encouraged, so long as their prices are considered fair and reasonable.

Many public policies are driven by a recognition of and desire to address societal inequities. In the case of SWaM/DBE certification program, the objective is to empower small, women- and minority-owned businesses by providing them a level playing field to compete for the Commonwealth's procurement spending among other businesses of similar sizes. The accountability of such policy rests upon how the players are selected—the credibility of the certification criteria, the achievement of specified goals, and the overall effect of the program in empowering small businesses in the Commonwealth. At the operational level, the basic accountability metric is to make sure that 42 percent of the state's discretionary procurement spending is happening through SWaM or DBE certified businesses. This keeps the target simple and the outputs easy to measure. However, the fundamental objective is much larger than simply achieving a numerical benchmark. The program's effectiveness may be understood by answering the following questions:

- Are more state contracts—and state procurement dollars—flowing to certified small, minority, and women-owned businesses as a result of the initiative?
- Has the program encouraged small business entrepreneurship and generated new employment and/or growth in wages?
- What is the program's economic impact on Virginia's economy?

In an attempt to measure the effectiveness of the SWaM/DBE certification program, DSBSD solicited professional research services from the Center for Urban and Regional Analysis (CURA) at Virginia Commonwealth University's L. Douglas Wilder School of Government and Public Affairs. CURA developed a customized methodology and economic modeling tool to evaluate and analyze the program's effects on certified businesses and its economic impact in the Commonwealth. Those findings are documented in the proceeding sections of this report.

Following a review of relevant published literature documenting findings from similar programs in other states, CURA used a combination of quantitative and qualitative methods to conduct the analysis. The results are divided into four parts.

1. Historical trends and numbers in SWaM certification: Using historical data on discretionary spending for the past ten years, CURA identified business certification trends by business type to analyze changes in certification and spending over time. Further, employment and spending trends for all Virginia small, women-owned, and minority-owned businesses—SWaM certified and non-certified—were obtained from the Census Bureau's Survey of Small Businesses. These trends were compared with the employment and spending trends of certified SWaM businesses to examine if certification correlates with greater spending, employment, and wages for these businesses.

2. SWaM participant perspectives: CURA conducted an online census of SWaM business owners to understand the impact of certification from the perspective of program participants. A randomized sample of businesses were chosen for interviews, providing a more detailed understanding of the intangible benefits realized by SWaM-certified businesses as well as their experiences with the program and its administration.

3. Economic impact: CURA esimated the economic impact of the SWaM certification program using economic input-output models informed by the data and analysis conducted in the prior two sections. The models were analyzed using the state-of-the art IMPLAN Pro software.

4. Policy alternatives: Finally, researchers at CURA separately applied the two different small business definitions—SWaM and SBA—to a sample of Virginia businesses to measure the difference in eligibility totals under the two definitions. DSBSD currently uses a small business definition based on the criteria set forth by the Governor's executive order for SWaM certification. However, DBE certification follows the SBA definition. CURA has evaluated the economic and administrative impacts if DSBSD were to adopt the SBA definition of small business for SWaM certification. CURA also investigated how SWaM eligibility would grow or shrink if the current small business criteria, which requires businesses meet one of two size conditions, were changed to require both size conditions.

CHAPTER 1: VIRGINIA SWaM & DBE CERTIFICATION TRENDS

As described in the introduction, the Virginia Small, Women-, and Minority-Owned ("SWaM") procurement initiative aims to expand business opportunities for SWaM businesses by directing state agencies to seek out SWaM-certified businesses for state contracts. The Commonwealth has set a procurement spending target of 42 percent with SWaM businesses.

The Disadvantaged Business Enterprise (DBE) certification program is a Federal program aimed at helping small businesses owned by women and miniorities to participate in projects with federal funding. Although the DBE initiative is a federal program, it is administered by state and local agencies. The DSBSD administers both SWaM and DBE certification in Virginia.

SMALL BUSINESS TRENDS

The average number of businesses that received SWaM Certification from FY 2000-2017 are delineated in Table 2.1. These figures represent approximate values, based on unofficial DSBSD records[1]. Data for some individual years remains uncertain; however, a long-term growth trend is evident. In FY 2000-2004, the average number of SWaM-certified businesses was 232. From FY 2000 – 2009, the number of certified businesses increased and decreased with volatility. By the period of 2005-2009 the average number of certified businesses was around 8,000. This figure was more than 30 times the average total number of certified businesses from FY 2000-2004. For the next several years, the number of certified businesses experienced strong growth (9 to 14 percent annually), until it peaked at more than 20,437 in FY 2010-2014. The number of certified businesses has, in the 2015-2017 period, declined to approximately 14,890 accounting for about a 27 percent drop from the previous period.

TABLE 2.1: AVERAGE NUMBER OF SWAM-CERTIFIED BUSINESSES (FY 2000-2017)

FISCAL YEAR	TOTAL	MBE	WBE	SBE	DBE*
2000-2004	232	176	71	-	40
2005-2009	7,897	1,669	2,533	1,726	114
2010-2014**	20,437	5,150	6,575	8,712	1,299
2015-2017	14,890	4,367	3,672	6,851	1,869

*Denotes amount not included within total

** Data was not available for FY 2011, 2012, and 2013

Note: As these are average values grouped by year for totals and programs the totals will not accurately sum.

In addition to being SWaM-certified, a business is assigned to one of three main certification types: Minority Business Enterprise (MBE), Woman Business Enterprise (WBE), and Small Business Enterprise (SBE). While an individual business may qualify for multiple certification types (e.g., Small and Woman Business Enterprise), each business in this report has been assigned to only one designation based on the following hierarchy: MBE, WBE, followed by SBE. For example, a small, woman-owned business would be considered both a WBE and SBE, but would be marked as a WBE to avoid double counting.

As shown in Figure 2.1, SWaM businesses from FY 2000-2004 were comprised largely of MBEs (greater than 55 percent). Since FY 2005, the proportion of MBEs has remained steady, ranging from 23 percent to 36 percent. The proportion of WBEs between FY 2000 and FY 2014 hovered around 32 percent. The proportion of SBEs was 21 percent in the 2005-2009 period which increased about 42 percent in 2010-2014 and went further up to 46

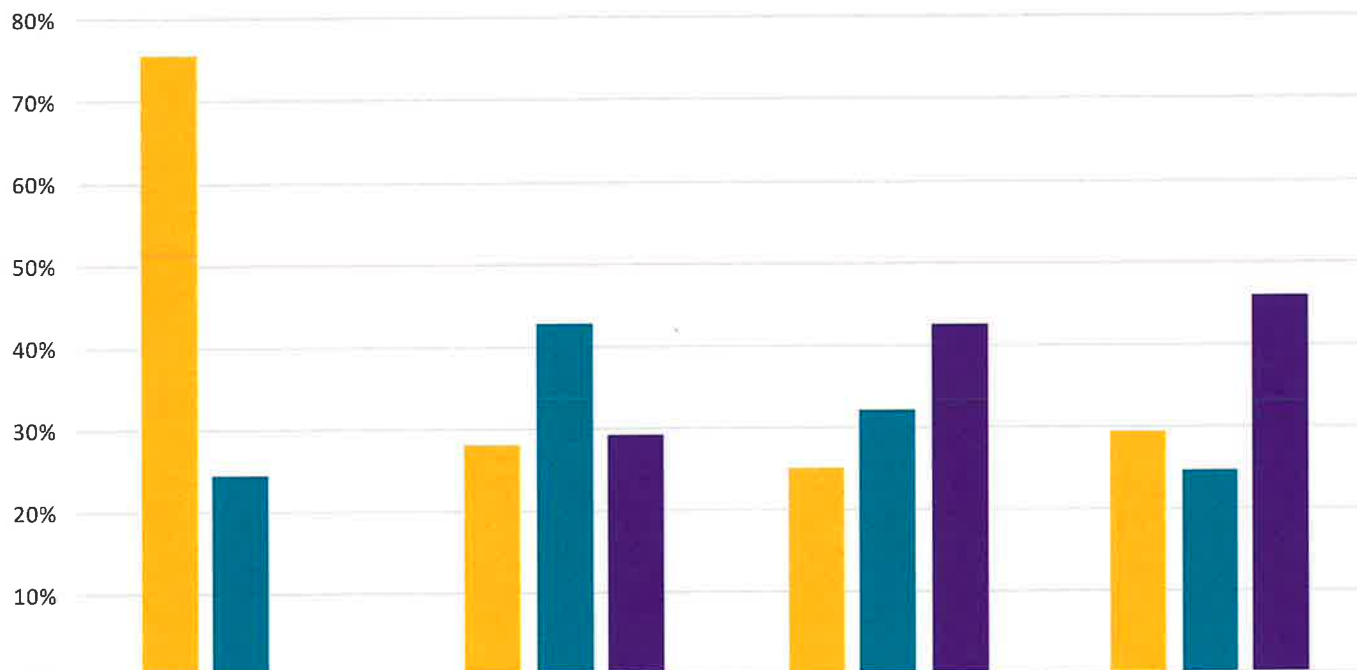
1 As DSBSD does not keep official records on the total number of certified businesses for each year, these figures were aggregated (with the assistance of DSBSD staff) from a variety of sources, including DSBSD emails and internal reports. As a result, there are some years in which data was not available (FY 2011-2013). These figures represent approximate values for the specified time periods.

percent in the 2015-2017 period. A portion of the large percentage jump between 2005-2009 and 2010-2014 can be attributed to a campaign by Virginia Commonwealth University and other large colleges and universities under the direction of former Governor Kaine to encourage existing vendors towards certification. Also, the program evolved from a minority-owned business program to a woman-owned business program, then finally to a program that included small business.

As stated previously, DSBSD certifies both SWAM and DBE certifications. The percent of SWaM businesses also possessing DBE certification has ranged from 7 percent in 2000-2014 to about 12 percent in 2015-2017. Even though there is some drop in percentage points, the real numbers have consistently increased as evidenced from the information in Table 2.1.

The US Census Bureau conducts a Survey of Business Owners (SBO) every five years. Data from this survey indicates the number of Virginia women-owned businesses grew by 23.0 percent and minority-owned businesses by 33.8 percent from 2007 to 2012 (see left columns in Figure 2.2)—rates far greater than the overall small business growth rate of 2.3 percent. However, SWaM-certified small businesses grew by 56.1 percent in the same period. Similarly, SWaM-certified women-owned and minority-owned businesses increased at rates greater than natural growth would suggest, increasing by 36.2 percent and 96.2 percent, respectively. In short, SWaM certification rates increased faster than business formation rates.

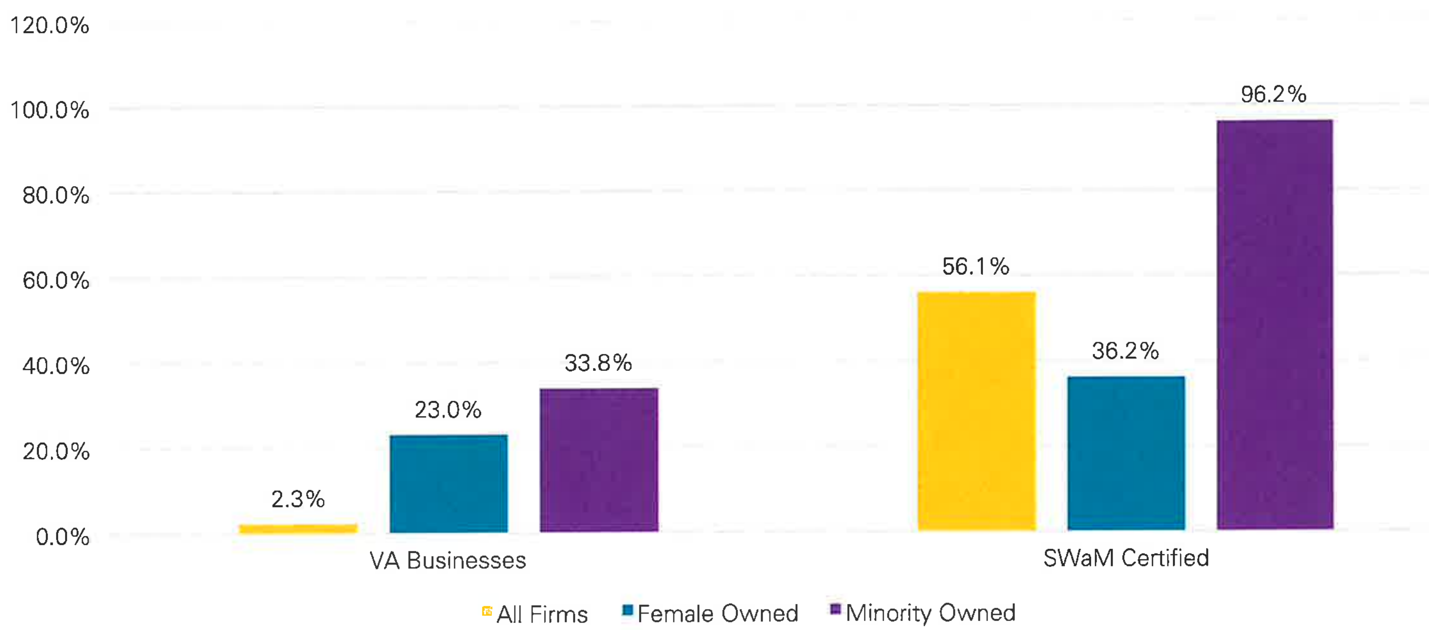
FIGURE 2.1: PERCENT OF SWAM BUSINESSES, BY CERTIFICATION TYPE (FY 2000-2017)



	2000-2004	2005-2009	2010-2014	2015-2017
MBE	76%	28%	25%	29%
WBE	24%	43%	32%	25%
SBE		29%	43%	46%

Note: Data for 2000-2004 for SBE didn't exist; as there was no small business program at that time

FIGURE 2.2: PERCENT GROWTH IN THE NUMBER OF SMALL BUSINESSES BY SWaM CERTIFICATION, 2007-2012



SWAM SPENDING

Discretionary spending from FY 2007 through FY 2017 is outlined in Table 2.2. These data are from official DSBSD records of total discretionary spending and disaggregated by SWaM certification type. Again, to avoid double counting, spending amounts for each business are assigned to a certification group based on the following heirachy: MBE, WBE, and SBE. As can be seen in the table, total discretionary spending increased and decreased somewhat cyclically, with one to two years of double-digit growth followed by two to three years of minor growth (less than one percent) and/or single-digit contraction. Nonetheless, the overall trend of total discretionary spending increased.

TABLE 2.2: ANNUAL DISCRETIONARY SPENDING (AMOUNT & ANNUAL % CHANGE), BY SWAM CERTIFICATION TYPE (AMOUNT IN $ MILLIONS)

FY	TOTAL		SWAM		MBE		WBE		SBE	
	AMOUNT ($)	% CHANGE	AMOUNT ($)	% CHANGE	AMOUNT ($)	% CHANGE	AMOUNT ($)	% CHANGE	AMOUNT ($)	% CHANGE
2007	3,973		1,005		103		116		786	
2008	4,856	22%	1,858	85%	262	154%	198	70%	1,398	78%
2009	4,920	1%	2,060	11%	268	2%	252	28%	1,540	10%
2010	4,748	-3%	1,985	-4%	319	19%	272	8%	1,393	-10%
2011	5,259	11%	2,069	4%	340	7%	308	13%	1,421	2%
2012	6,190	18%	2,192	6%	435	28%	332	8%	1,425	0%
2013	5,825	-6%	2,029	-7%	276	-37%	351	6%	1,401	-2%
2014	5,603	-4%	1,819	-10%	261	-6%	267	-24%	1,292	-8%
2015	5,630	0%	2,050	13%	313	20%	328	23%	1,410	9%
2016	6,519	16%	2,405	17%	396	27%	397	21%	1,612	14%
2017	6,616	1%	2,073	-14%	305	-23%	288	-28%	1,481	-8%

The amount of discretionary spending going towards SWaM-certified businesses increased significantly in FY 2008 by 85 percent from $1 billion to $1.9 billion and by 11 percent in FY 2009 to $2.1 billion. Since then, SWaM spending has remained around $2 billion, with the exception of FY 2014, when it decreased to $1.8 billion, and FY 2016, when it increased to $2.4 billion. Discretionary spending going towards MBEs showed strong growth from FY 2008 to FY 2012, averaging 42 percent annual growth. In FY 2013 and 2014, MBE spending had two consecutive years of contraction. MBE spending increased in FY 2015 and 2016 by more than 20 percent each year and decreased in 2017 by 23 percent. WBE spending has seen generally positive growth, averaging 22 percent annually, with the exception of FY 2014 and 2017, when it decreased by more than 20 percent. Except for FY 2008, SBE spending has not experienced the same strong growth as the other certification categories.

Overall, SWaM spending experienced a 106 percent growth in the same period, SBE spending (88 percent), WBE (147 percent), and MBEs have experienced the strongest growth since FY 2007, increasing by 195 percent from $103 million to $305 million. SWaM-certified businesses—particularly MBEs and WBEs—appear to have made significant gains in participating in state procurement as a share of total discretionary spending.

As noted in the introduction, the 2004 Executive Order No. 33 established a 40 percent goal of discretionary spending to go towards SWaM businesses from 2006 to 2013, and 2014 Executive Order No. 20 increased the target to 42 percent of discretionary spending. As seen in Figure 2.3, the 40 percent goal was achieved in FY 2009 and FY 2010, when the percent of discretionary spending awarded to SWaM businesses reached 41.9 percent and 41.8 percent, respectively. FY 2009 and 2010 marked slow growth years in which public spending was severely impacted by a global recession. In FY 2011, SWaM spending (39.3 percent) was just short of the 40 percent goal and has continued to decrease as a share of total spending. Since the signing of Executive Order No. 20 in 2014, the share of discretionary spending going to SWaM businesses has fallen short of the 42 percent goal, ranging from 31.3 percent to 36.9 percent and averaging 34.3 percent.

FIGURE 2.3: PERCENT OF DISCRETIONARY SPENDING, BY SWAM & NON-SWAM (FY 2007-20017)

To overcome the annual variations in discretionary spending, CURA compared average spending between 2007 and 2009 with average spending between 2014 and 2017. The results are presented in Figure 2.4. The data suggests total discretionary spending going to SWaM-certified businesses increased by about 13.4 percent during this period. Non-minority and non-women owned small businesses continue to receive more than two-thirds of total discretionary spending on SWaM businesses. However, the shares of spending going to minority-owned and women-owned businesses increased by about 35 percent and 51 percent the same period. Although MBEs and WBEs remain a small subset of SWaM-related discretionary spending recipients, their representation is improving.

Further analysis of discretionary spending by certification type is shown in Figure 2.5. A much larger percent of discretionary spending has gone towards SBEs than other types of SWaM businesses. The percentage ranges from 20 percent to 31 percent, with an average of 25 percent. MBEs and WBEs have similar shares of discretionary spending, ranging from 3 percent to 7 percent; however, MBEs have a slightly higher average of 5.4 percent vs 5.1 percent for WBEs. This is likely due to procurement laws in Virginia being race and gender neutral.

FIGURE 2.4: AVERAGE INCREASE IN DISCRETIONARY SPENDING IN PROCUREMENT THROUGH SWAM CERTIFIED BUSINESSES, 2007-2017

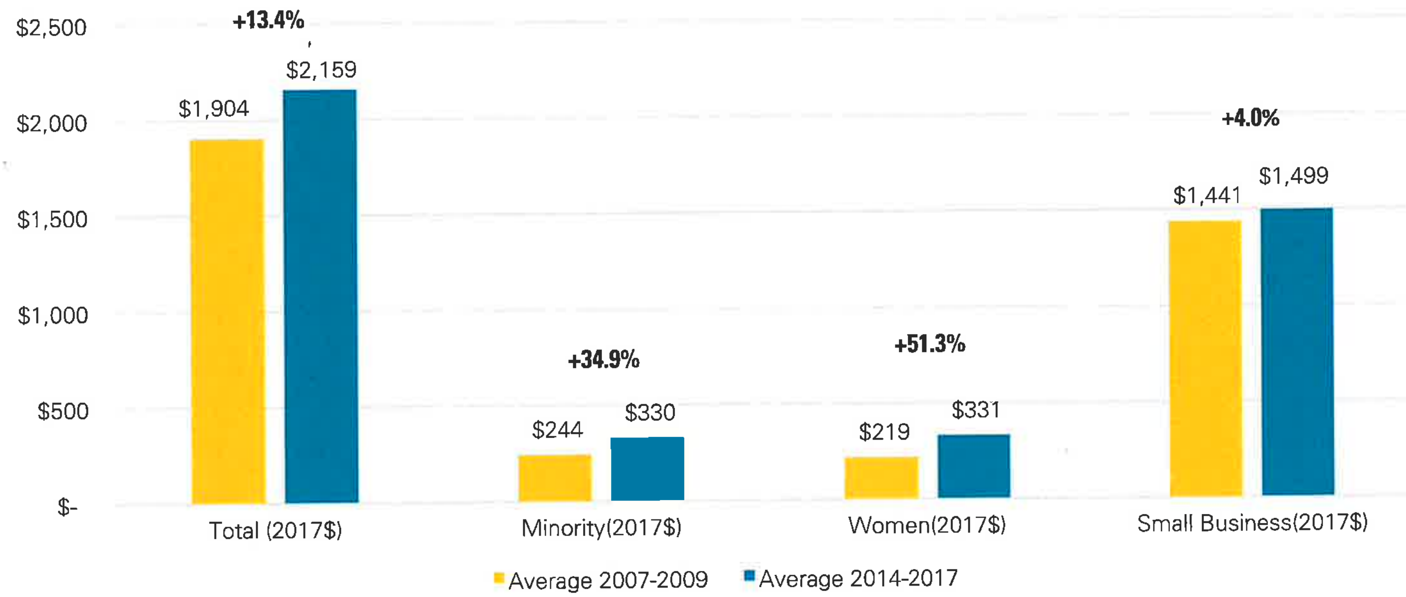
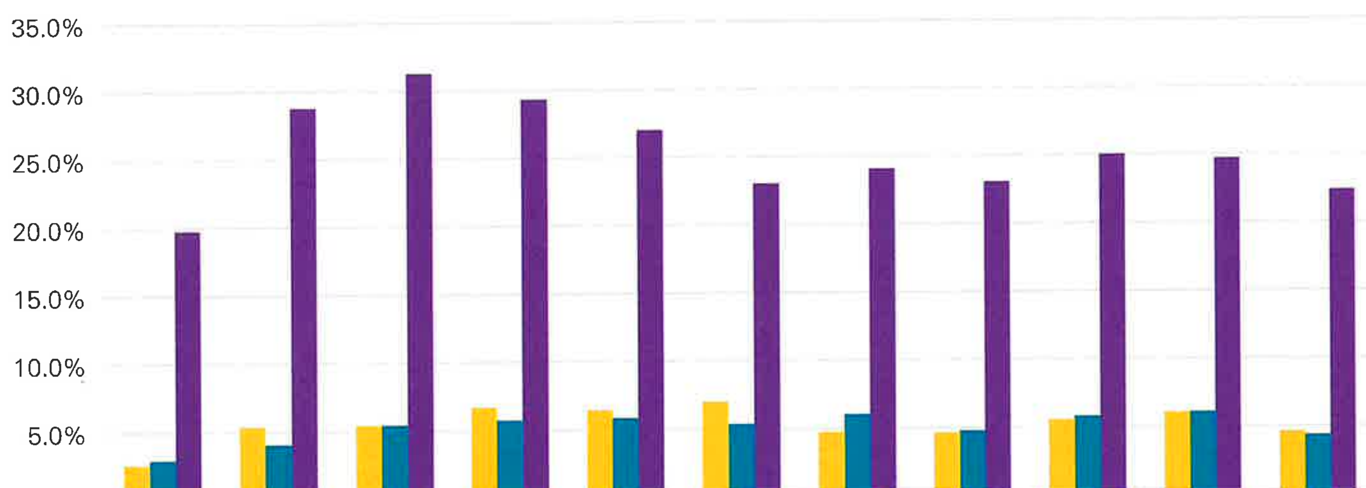


FIGURE 2.5: PERCENT OF DISCRETIONARY SPENDING, BY CERTIFICATION TYPE (FY 2007-2017)



	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
MBE	2.6%	5.4%	5.4%	6.7%	6.5%	7.0%	4.7%	4.7%	5.6%	6.1%	4.6%
WBE	2.9%	4.1%	5.4%	5.7%	5.9%	5.4%	6.0%	4.8%	5.8%	6.1%	4.3%
SBE	20%	29%	31%	29%	27%	23%	24%	23%	25%	25%	22%

CHAPTER 2: PROGRAM PARTICIPANT PERSPECTIVES

CURA designed and implemented a survey to gain insight from certified businesses that could not be gleaned from existing data, including trends in revenues and employment. The survey protocol began with questions about business characteristics (e.g., industry and size), followed by sections on business performance, employment, sub-contractors, suppliers, community engagement, and demographic information about the majority owner. At the end of the survey, respondents were given an opportunity to provide comments or questions regarding the survey, the SWaM/DBE program, or DSBSD in general.

From these respondents, CURA interviewed a random selection for a deeper understanding of their businesses and how they interact with and utilize the SWaM and DBE programs.

CURA administered the online survey in August and September 2017. The survey was distributed to all SWaM- and DBE-certified businesses with valid email addresses per DSBSD records as of June 2017. In total, 14,766 SWaM- and DBE-certified businesses were invited to participate. Of those, 2,033 businesses responded for a statistically significant response rate of 13.8 percent. Of these responses, 1,475 completed the survey in its entirety for a final response rate of 10.0 percent. The following discussion of survey results provides a synthesized understanding of the data. Full and detailed data tables, as well as a copy of the survey protocol, can be found in the Appendix.

SURVEY RESULTS

Descriptive statistics of the survey sample are presented in Table 3.1. Compared to the overall study population (SWaM-certified businesses as of August 2017), the respondent pool is comprised of more Virginia businesses, more women-owned businesses, fewer small-businesses, more DBEs, and has fewer employees.

TABLE 3.1: CHARACTERISTICS OF SURVEY SAMPLE

	SWAM-CERTIFIED*	RESPONDENTS
Number of businesses	13,718	1,475
Located in VA	81%	87%
Located outside VA	19%	13%
MBE	33%	34%
WBE	21%	38%
SBE	46%	28%
DBE**	14%	26%

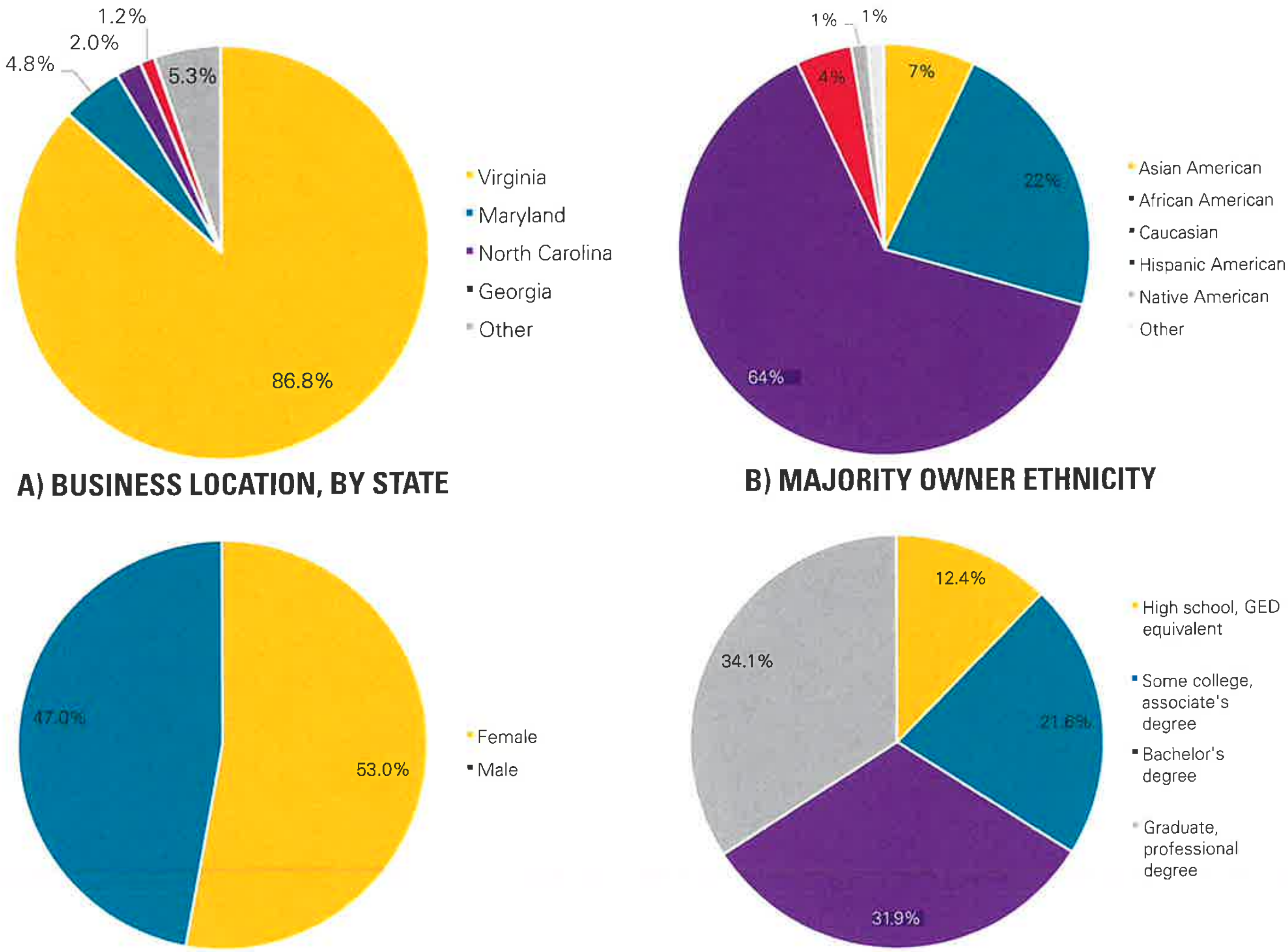
* Study population is defined as SWaM-certified businesses as of August 2017

** Denotes amount within total

MAJORITY OWNER DEMOGRAPHICS

The survey sought understanding of the demographic characteristics of majority owners of the responding businesses. In terms of race/ethnicity, 64 percent of majority owners identified as Caucasian, followed by African American (22 percent), Asian American (7 percent), and Hispanic American (4 percent) (see Figure 3.1). Most respondents identified the majority owner's gender as female. A plurality of respondents had owners with graduate/professional degrees (34 percent), followed by bachelor's degrees (32 percent), associate's degrees (22 percent), and high school/GED equivalent (12 percent).

FIGURE 3.1: MAJORITY OWNER DEMOGRAPHICS



A) BUSINESS LOCATION, BY STATE

B) MAJORITY OWNER ETHNICITY

C) MAJORITY OWNER GENDER

D) MAJORITY OWNER EDUCATION

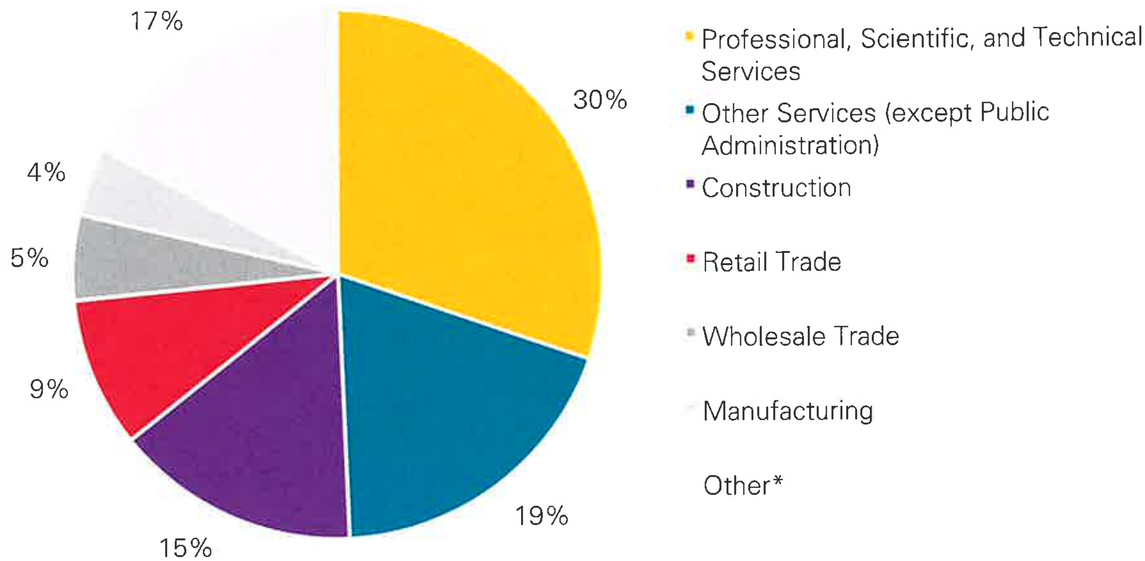
BUSINESS CHARACTERISTICS

While the SWaM certification program is largely aimed at benefiting Virginia businesses, it also allows businesses from other states to apply for certification. These other states must have small business diversity programs that do not preclude Virginia businesses from applying or participating in bids for agency contracts. Given this, a question was included in the survey to gain insight into the respondent's business location. Regarding location of the business, 87 percent of businesses surveyed indicated that they were located in Virginia (see Figure 3.1.A). For businesses located outside of VA, Maryland, North Carolina, and Georgia had the highest frequencies.

Figure 3.2 illustrates NAICS categories that best describe respondents' business sectors. As can be seen, respondents represent a diverse set of businesses. The sectors with the most significant representation are Professional, Scientific and Technical Services (30 percent), Other Services (except Public Administration) (19 percent), and Construction (15 percent). Together, these three sectors constitute more than 64 percent of the respondents. These sectors are followed by Retail Trade, Wholesale Trade, and Manufacturing. The 13 remaining NAICS sectors represent less than 3 percent of businesses each, and they have been aggregated in the "Other" category. This category constitutes 17 percent of all businesses (see Figure 3.2).

Figure 3.3 illustrates the distribution of years in which respondents were first certified. Approximately half of respondents first obtained certification in 2013 or later, indicating that many respondents have five or fewer years of experience participating in SWAM/DBE-certification programs.

FIGURE 3.2: TOP SIX NAICS CATEGORIES REPRESENTED BY SURVEY SAMPLE



The Virginia SWaM certification program recognizes the federal DBE[2] certification program. SWaM-certified businesses often also have DBE certification. As shown in Table 3.2, 74 percent of surveyed businesses report having only SWaM certification, while 2 percent report having only DBE certification. Factoring in businesses with dual certification, 98 percent of respondents reported having SWaM-only or SWam and DBE certification, while 26 percent reported having DBE-only or SWaM and DBE certification. This 26 percent representation of DBE-certified businesses is higher than DBE figures for August 2017 (14 percent) as well as the historical average (10.5 percent) (see Table 3.1 and Figure 2.1).

FIGURE 3.3: YEAR OF FIRST CERTIFICATION

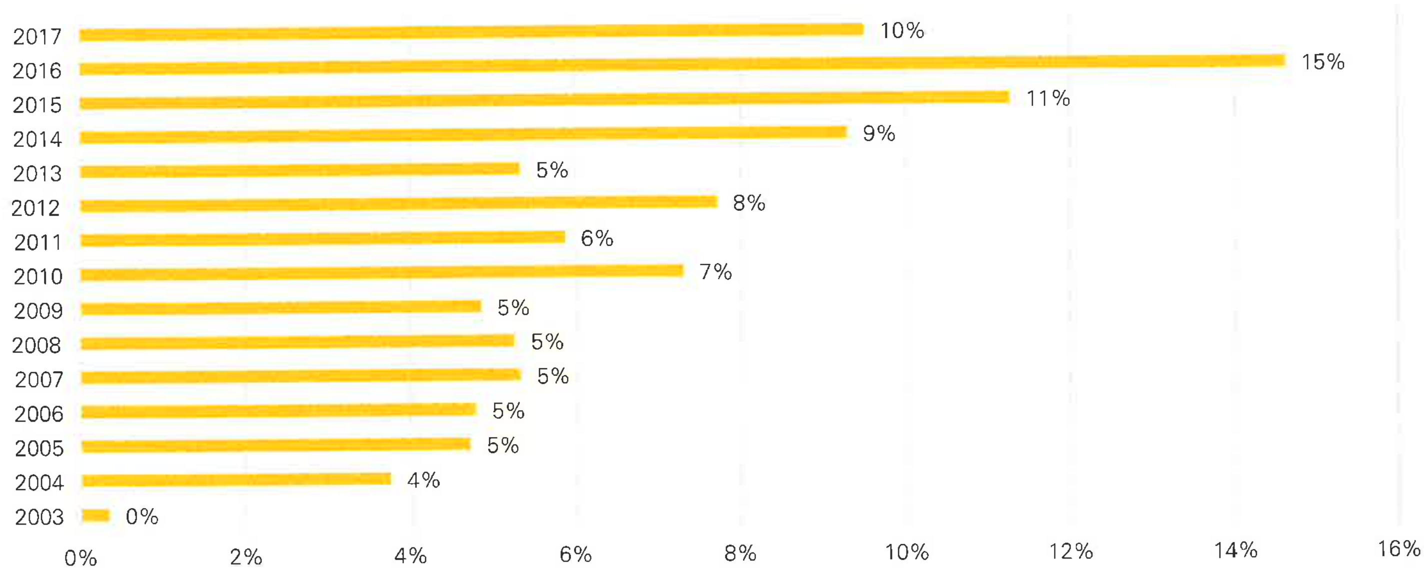


TABLE 3.2: CERTIFICATION TYPE

	RESPONDENTS	PERCENT
SWAM only	1,098	74%
DBE only	26	2%
Both	351	24%
TOTAL	**1,475**	**100%**

2 Where businesses that applied for DBE are eligible for SWaM, but they still need to apply and get evaluated as per SWaM guidelines.

BUSINESS PERFORMANCE

To understand how the SWaM certification program may have impacted business performance, the survey included several questions about annual revenues. When asked how their annual revenues changed since becoming SWaM/DBE-certified, 37 percent of respondents indicated their revenues increased, 7 percent indicated they decreased, and 55 percent said they remained the same (see Figure 3.4). Disaggregating these results by certification type, it appears that woman-owned businesses experienced more favorable revenue trends relative to minority-owned and small businesses. A higher proportion of woman-owned (42 percent) and small businesses (39 percent) observed an increase in annual revenues, compared to minority-owned businesses (32 percent). Regarding decreases in annual revenues, the differences between certification type groups are minimal; nonetheless, a slightly smaller proportion of woman-owned (6.7 percent) and minority-owned (7.3 percent) businesses experienced a decrease relative to small businesses (7.8 percent). Furthermore, a smaller percentage of businesses owned by women (51 percent) and small businesses (54 percent) observed no change in revenues relative to minority-run businesses (61 percent).

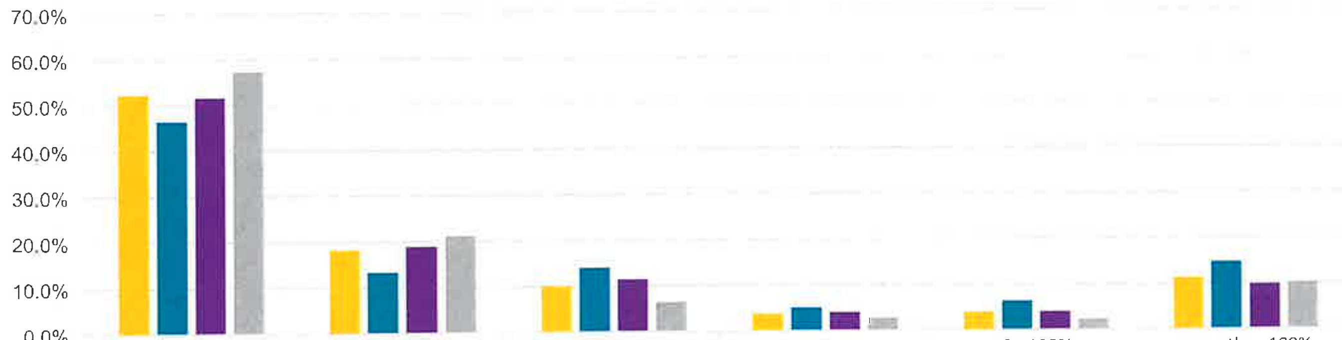
FIGURE 3.4: HOW HAVE YOUR ANNUAL REVENUES CHANGED SINCE BECOMING SWAM/DBE-CERTIFIED?, BY CERTIFICATION TYPE (N = 1475, 496, 415, 563)

	Increased	Decreased	Remained the same
All	37.2%	7.4%	55.4%
Minority	31.7%	7.3%	61.1%
Women	41.9%	6.7%	51.3%
Small	38.7%	7.8%	53.5%

Of those respondents reporting an increase in revenues, the majority (53 percent) reported an increase of 1 to 20 percent, while a small minority (18 percent) reported an increase of 21 to 40 percent. Disaggregating these results by Minority-owned, Woman-owned, and Small, Figure 3.5 indicates that while a smaller percentage of MBEs observed an increase of 1 to 20 percent or 21 to 40 percent (47 percent and 13 percent, respectively), compared to WBEs and SBEs, more MBEs experienced larger relative gains in annual revenues, compared to their counterparts. Specifically, across the higher increase ranges (41 to 60 percent and up) a higher proportion of MBEs were consistently represented (26 percent), compared to WBEs (18 percent) and SBEs (15 percent). Again, WBEs indicated positive trends in revenue gains and were well represented in five out of six ranges relative to the other certification groups. These results suggest that while fewer MBEs reported an increase in annual revenues subsequent to certification, those MBEs experiencing gains were more likely to observe gains upward of 40 to 100 percent compared to WBEs and SBEs. In addition, woman-owned businesses appear to perform well relative to SBEs and MBEs, not only in terms of a higher percentage reporting increases, but also being well-represented across most percentage increase ranges relative to other certification groups.

MORE THAN 10% OF SWaM BUSINESSES DOUBLED SALES RECEIPTS BETWEEN 2007-2012 X2

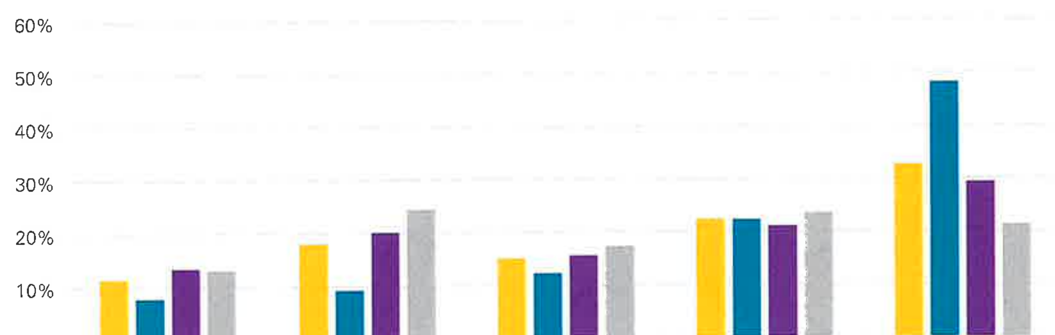
FIGURE 3.5: BY HOW MUCH HAVE YOUR ANNUAL REVENUES INCREASED SINCE BECOMING SWAM/DBE CERTIFIED?, BY CERTIFICATION TYPE (N=549, 157, 174, 219)



	1-20%	21-40%	41-60%	61-80%	81-100%	more than 100%
All	52.5%	18.2%	10.2%	3.8%	4.0%	11.3%
Minority	46.5%	13.4%	14.0%	5.1%	6.4%	14.6%
Women	51.7%	19.0%	11.5%	4.0%	4.0%	9.8%
Small	57.3%	21.1%	6.4%	2.8%	2.3%	10.1%

Of the 37 percent of certified business that experienced a revenue increase, about 47.5 percent of respondents said that their annual revenues have increased by more than 20 percent. The Census Bureau's Survey of Business Owners[3] data shows that small businesses in the Commonwealth experienced a 5 percent increase in sales between the years 2007 and 2012, suggesting SWaM and DBE participants experienced annual revenue growth well in excess of the broader universe of small businesses in Virginia. The increase in the total value of sales receipts for all small businesses (SWaM and non-SWaM) is presented in Figure 3.6. Although sales receipts and revenue are separate metrics, an increase in sales receipts can be considered to directly affect an increase in revenue, assuming that business operating costs are constant across the samples.

FIGURE 3.6: PERCENT CHANGE IN SALES RECEIPTS FOR ALL SMALL BUSINESSES IN VIRGINIA BETWEEN 2007 AND 2012



	Not Important	Slightly Important	Moderately Important	Important	Very Important
All	11%	18%	15%	23%	33%
Minority	8%	9%	12%	22%	48%
Woman	13%	20%	16%	21%	29%
Small	13%	25%	17%	24%	21%

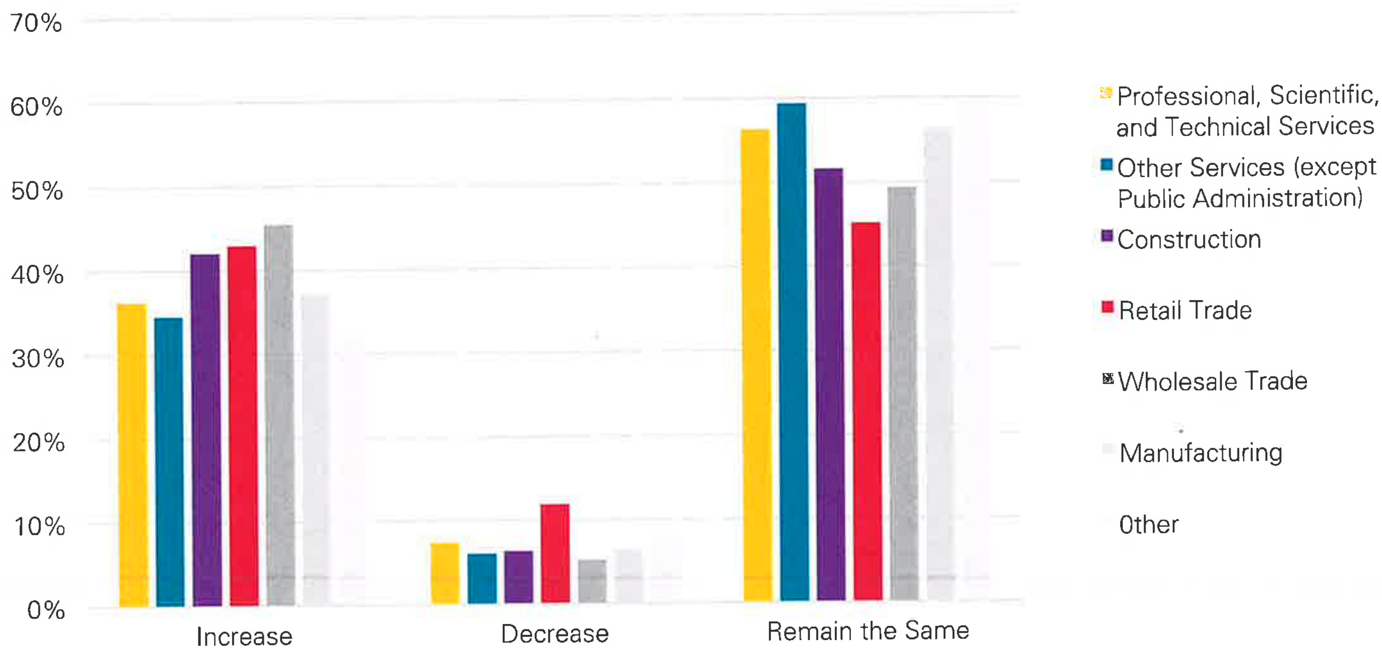
SWaM-certified women- and minority-owned business may reap the greatest gains compared to similar firms statewide. About 48 percent of SWaM certified women-owned businesses with increases in revenue reported annual revenues increased by more than 20 percent, and about 40 percent of SWaM certified minority-owned businesses reported increases had increases greater than 40 percent. Both SWaM certification categories outpaced sales receipts growth of women-and minority-owned small businesses statewide (see Figure 3.6)[4]. Honing in on the six NAICS categories with the largest representation in the sample (Professional, Scientific, and Technical Services; Other Services except Public Administration; Construction; Retail Trade; Wholesale Trade; and Manufacturing), CURA examined the change in annual revenues by industry (see Figure 3.7). Wholesale

3 The Census Bureau sales data has been measured between 2007 and 2012. About 50 percent of the survey respondents received certification before 2012. The time frames for the Census data and the survey data partially overlap with each other. This is the closest comparison available between SWaM businesses and all small businesses in Virginia.

4 All dollar amounts are converted to 2017 constant dollar value using the CPI inflation factor published by the Bureau of Labor Statistics.

Trade exhibited the highest proportion of businesses (45 percent) reporting an increase in annual revenues and the smallest proportion indicating a decrease (5 percent). Respondents from the Retail Trade sector had the second highest percentage of businesses stating an increase (43 percent), but also had the highest percentage reporting a decrease in annual revenues (12 percent). In general, businesses outside of these six categories reported revenue increases with less frequency; only 32 percent of businesses grouped in the Other category indicated an increase. Those identifying as Professional, Scientific, and Technical Services, as well as Other Services (except Public Administration) had the lowest percentages of businesses indicating an increase in annual revenues (36 percent and 35 percent). Roughly 5 to 7 percent of respondents in each sector reported decreases in annual revenues.

FIGURE 3.7: CHANGE IN ANNUAL REVENUES, BY TOP SIX NAICS CATEGORIES



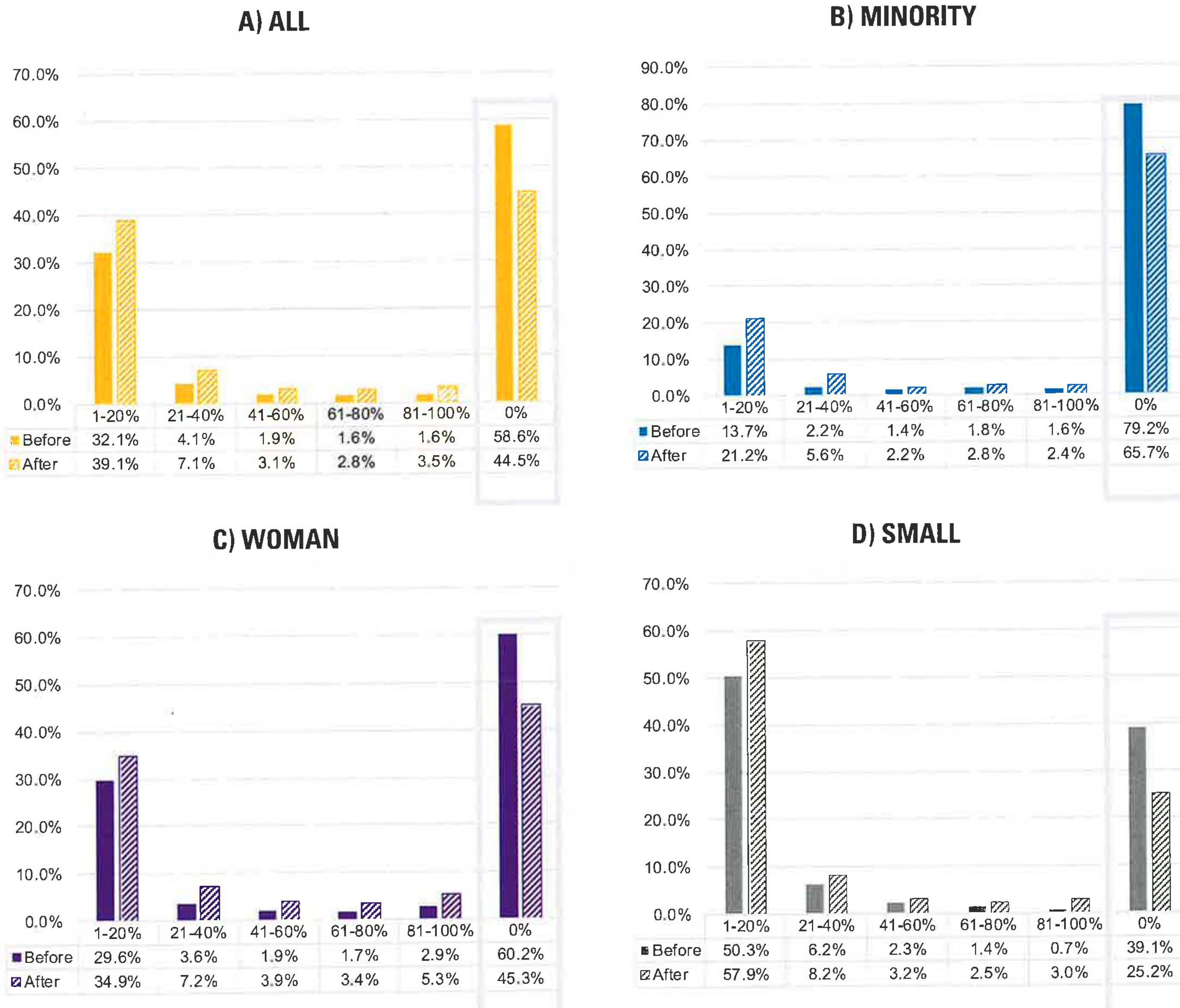
Other includes Transportation and Warehousing; Educational Services; Health Care and Social Assistance; Information (i.e. publishing, journalism, telecommunication, library, etc.); Accommodation and Food Services; Management of Companies and Enterprises; Arts, Entertainment, and Recreation; Finance and Insurance; Agriculture, Forestry, Fishing and Hunting; Utilities (i.e. electric, gas, water, sewage); Administrative and Support and Waste Management and Remediation Services; Public Administration; Real Estate Rental and Leasing; Mining

As SWaM/DBE-certified businesses age into the program, one would expect to see state agency contracts grow as a share of annual revenues. Accordingly, respondents were asked about the percentage of their annual revenues coming from contracts with a Commonwealth of Virginia agency prior to becoming SWAM/DBE-certified as well as presently. Approximately 59 percent of respondents reported having no revenues from Virginia agencies prior to certification. Another 32 percent indicated Virginia contracts accounted for 1 to 20 percent of company revenues (see Figure 3.8.A). The percentage of respondents reporting zero dollars in business with Virginia agencies reduced 14 percent after becoming certified.

The percentage of respondents reporting that none of their annual revenues are attributable to state agency contracts after certification—45 percent—raises questions, given the purpose of certification. One possible explanation is that these businesses have only been certified for a few years and have not yet learned how to leverage the SWaM certification or how to navigate the state contract bidding process. Roughly half of respondents reporting no revenue from state contracts indicated that they were first certified in 2015 or later, while 76 percent of respondents with at least one percent of revenue reported their first certification before 2015. Although other factors may be at play, it appears that experience with the SWaM certification program is in an important factor in successfully bidding for and receiving revenues from agency contracts.

Disaggregating these results by certification type, Figure 3.8 shows that a much lower proportion of minority-owned businesses (21 percent) received at least some revenue from state contracts than women-owned (40 percent) and small (61 percent) businesses. All certification types saw the proportion of businesses reporting zero percent of revenue from state contracts before certification decline by roughly 14 percentage points after certification. There does not appear to be significant variation in the share of respondents reporting higher levels of state contract-based revenues after certification by certification type: all increased by similar intervals. These results suggest that while a smaller proportion of minority- and woman-owned businesses receive revenues from state contracts, the certification program benefits the different groups—in terms of relative gains to annual revenues—more or less equally.

FIGURE 3.8: CONCENTRATION OF REVENUES COMING FROM VIRGINIA AGENCY CONTRACTS PRIOR TO CERTIFICATION AND CURRENTLY BY CERTIFICATION TYPE



A) ALL

	1-20%	21-40%	41-60%	61-80%	81-100%	0%
Before	32.1%	4.1%	1.9%	1.6%	1.6%	58.6%
After	39.1%	7.1%	3.1%	2.8%	3.5%	44.5%

B) MINORITY

	1-20%	21-40%	41-60%	61-80%	81-100%	0%
Before	13.7%	2.2%	1.4%	1.8%	1.6%	79.2%
After	21.2%	5.6%	2.2%	2.8%	2.4%	65.7%

C) WOMAN

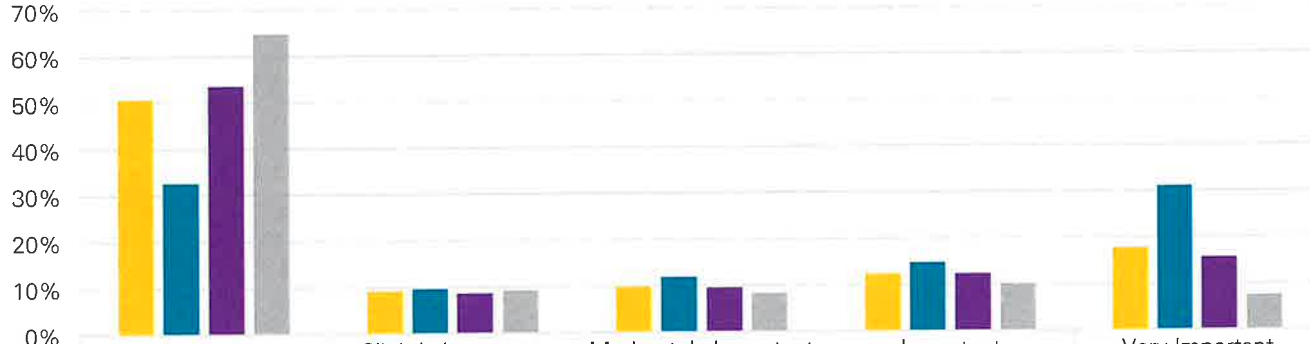
	1-20%	21-40%	41-60%	61-80%	81-100%	0%
Before	29.6%	3.6%	1.9%	1.7%	2.9%	60.2%
After	34.9%	7.2%	3.9%	3.4%	5.3%	45.3%

D) SMALL

	1-20%	21-40%	41-60%	61-80%	81-100%	0%
Before	50.3%	6.2%	2.3%	1.4%	0.7%	39.1%
After	57.9%	8.2%	3.2%	2.5%	3.0%	25.2%

The survey also attempted to explore the extent to which businesses are dependent on SWaM/DBE certification. Survey participants were asked to rate the importance of the SWAM/DBE program as a factor in the decision to start their business. More than 50 percent of respondents indicated that it was not important, while 30 percent indicated that it was important or very important (see Figure 3.9). Minority-owned business respondents placed the greatest importance on the program, with 46 percent of respondents describing the program as important or very important. Woman-owned businesses followed with 28 percent of respondents. Small businesses placed the least importance on the program, with just 17 percent describing it as important or very important and 65 percent describing it as not important.

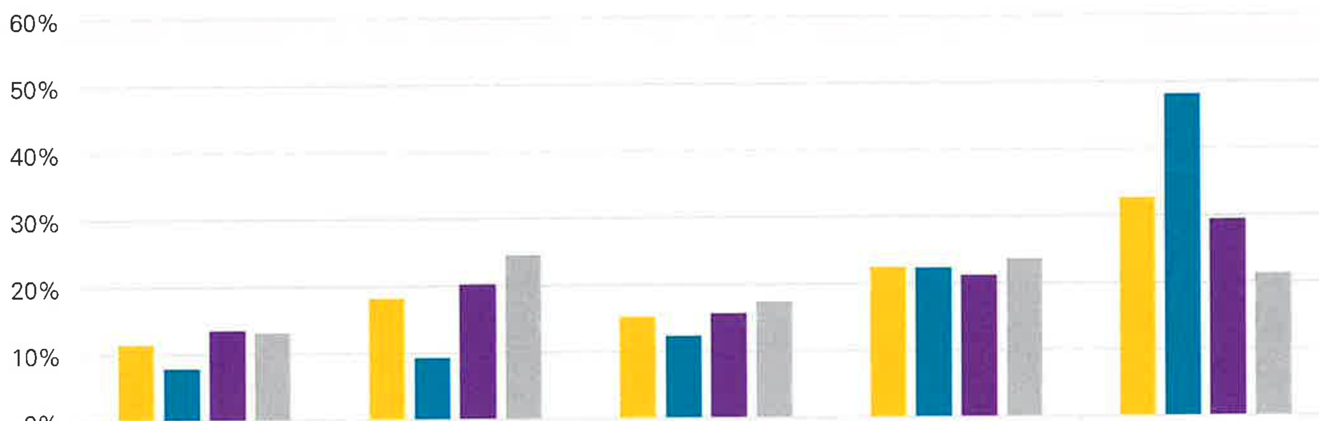
FIGURE 3.9: HOW IMPORTANT OF A FACTOR WAS THE SWAM/DBE PROGRAM IN YOUR DECISION TO START YOUR BUSINESS? BY CERTIFICATION TYPE (N=1,474)



	Not Important	Slightly Important	Moderately Important	Important	Very Important
All	51%	9%	10%	12%	18%
Minority	33%	10%	12%	15%	31%
Woman	54%	9%	10%	12%	16%
Small	65%	9%	8%	10%	7%

When asked how important their participation in the SWaM/DBE program is to the long-term viability of their business, 33 percent of all respondents described it as very important, 23 percent described it as important, and 15 percent described it as moderately important (see Figure 3.10). Nonetheless, when asked if their business would exist if it was not participating in the SWaM/DBE program, a large majority of respondents (85 percent), indicated 'Yes.'

FIGURE 3.10: HOW IMPORTANT IS YOUR PARTICIPATION IN THE SWAM/DBE PROGRAM TO THE LONG-TERM VIABILITY OF YOUR BUSINESS? BY CERTIFICATION TYPE (N=1,474)



	Not Important	Slightly Important	Moderately Important	Important	Very Important
All	11%	18%	15%	23%	33%
Minority	8%	9%	12%	22%	48%
Woman	13%	20%	16%	21%	29%
Small	13%	25%	17%	24%	21%

Once again, minority-owned business respondents tended to rate the certification program's importance much higher than other certification types. A much higher proportion of MBEs (71 percent), compared to WBEs (51 percent) and SBEs (45 percent), view their participation in the SWaM/DBE programs as very important or important to the long-term viability of their business.

EMPLOYMENT

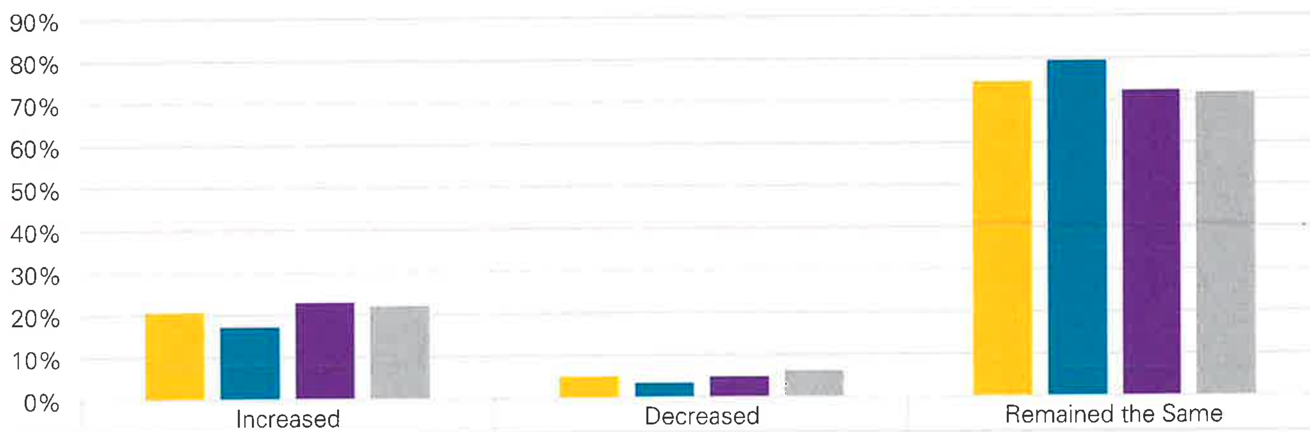
Several survey questions addressed the effects of certification on employment. Table 3.3 outlines workforce descriptive statistics, related to number of employees, full-time, part-time, and disadvantaged groups. Respondents employ, on average, 16 workers—75 percent full time and 25 percent part time. Respondents reported an average of 31 percent of employees as members of a minority group, 40 percent as women, and 4 percent as service-disabled veterans.

TABLE 3.3: WORKFORCE DESCRIPTIVE STATISTICS

	AVERAGE
Number of employees	16
Full time	75%
Part time	25%
Minority	31%
Woman	40%
Service-disabled veteran	4%

When asked how employment has changed since becoming certified, 21 percent of respondents indicated employment increased, while just 5 percent indicated that it decreased. The large majority (74 percent) indicated that employment remained unchanged. Employment trends were not significantly affected by certification type (Figure 3.11). Of respondents reporting an increase in employment, the average business grew by 14 persons. For those businesses reporting a decrease in employment, the average decrease was 8 employees.

FIGURE 3.11: HOW HAS YOUR BUSINESS'S EMPLOYMENT CHANGED SINCE BECOMING SWAM/DBE-CERTIFIED? BY CERTIFICATION TYPE (N=1,475)



	Increased	Decreased	Remained the Same
All	21%	5%	74%
Minority	17%	3%	79%
Woman	23%	5%	72%
Small	22%	6%	72%

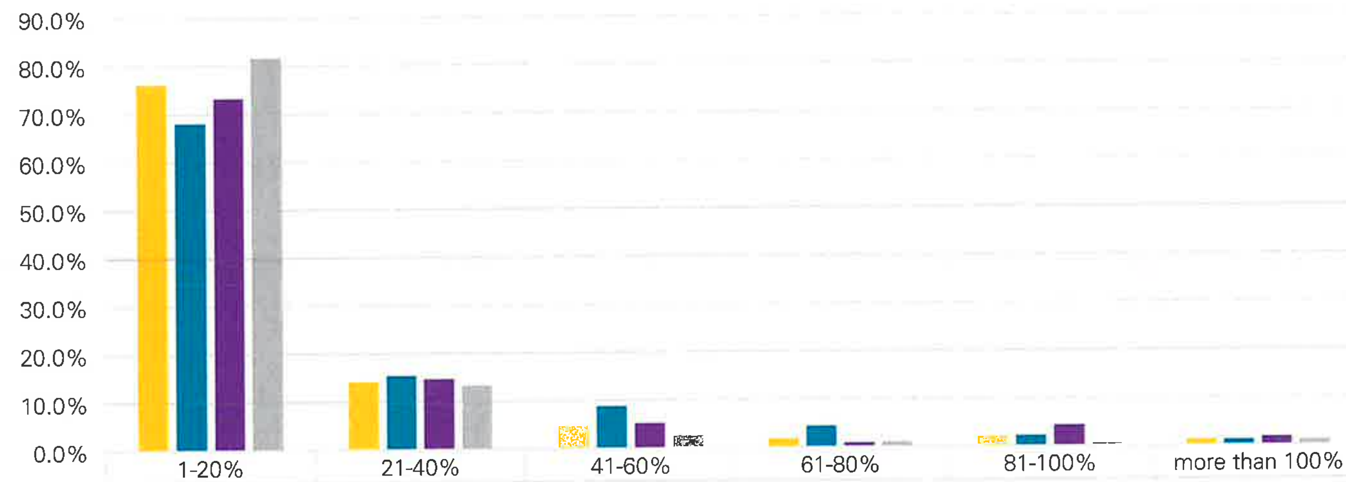
When asked how the average salary of employees changed since becoming SWaM/DBE-certified, 27 percent of respondents said that it increased, while only 4 percent said that it decreased. The majority of respondents (69 percent) said the average employee salary remained unchanged (see Figure 3.12). Among those who reported an increase in average employee salary, 76 percent indicated that the average salary increased by 1 to 20 percent, and another 14 percent indicated it increased 21 to 40 percent. Responses differed by certification type (Figure 3.13). Around 35 percent of small businesses and 28 percent of woman-owned businesses reported an increase in average employee salary, but only 18 percent of minority-owned businesses reported an increase.

Many factors influence an employer's decision to increase employee salaries, and respondents were asked to rank five factors by their impact on increased wages from 1 (most important) to 5 (least important). Minority-owned, woman-owned, and small businesses all attributed wage increases primarily to improved employee productivity. MBEs ranked improved financial standing due to SWaM certification as having a greater impact than inflation, making MBEs the only group to rank the program's impact higher than another option. Woman-owned businesses ranked cost of living adjustments as the second most important factor, over promotions.

FIGURE 3.12: CHANGE IN AVERAGE EMPLOYEE SALARY SINCE CERTIFICATION, BY CERTIFICATION TYPE

	Increased	Decreased	Remained the same
All	27.3%	3.5%	69.2%
Minority	18.3%	3.4%	78.2%
Woman	28.0%	3.6%	68.4%
Small	34.8%	3.4%	61.8%

FIGURE 3.13: PERCENT CHANGE IN AVERAGE SALARY SINCE CERTIFICATION, BY CERTIFICATION TYPE



	1-20%	21-40%	41-60%	61-80%	81-100%	more than 100%
All	76.2%	14.1%	4.7%	1.7%	2.0%	1.2%
Minority	68.1%	15.4%	8.8%	4.4%	2.2%	1.1%
Woman	73.3%	14.7%	5.2%	0.9%	4.3%	1.7%
Small	81.6%	13.3%	2.6%	1.0%	0.5%	1.0%

SUB-CONTRACTORS & SUPPLIERS

SWaM businesses may behave differently than the average business in working with sub-contractors and suppliers. As noted in the introduction and, in greater detail, the Appendix, published research indicates that small businesses rely on family networks in business practices, resulting in an inherent disadvantage for women, racial and ethnic minorities, and other historically disadvantaged groups.

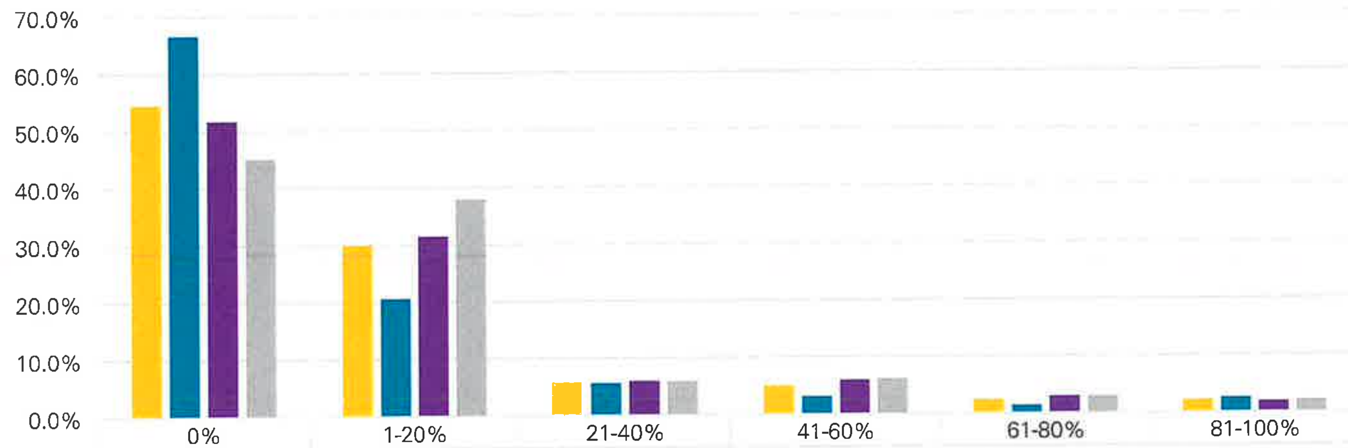
The survey probed respondents' work with sub-contractors and suppliers before and after certification. Approximately 19 percent of respondents indicated the number of sub-contractors they worked with increased since becoming certified (see Table 3.4). Of the 997 respondents that reported having sub-contractors, 46 percent indicated that they sub-contracted with other SWaM/DBE-certified businesses. A greater share of respondents, 69 percent, indicated that at least some of these sub-contractors were located within the Commonwealth of Virginia.

TABLE 3.4: SUB-CONTRACTORS

	ALL		MINORITY		WOMEN		SMALL	
	NUMBER	%	NUMBER	%	NUMBER	%	NUMBER	%
Since becoming SWaM/DBE-certified, has the number of sub-contractors you work with increased?								
Yes	278	18.8%	93	18.8%	87	21.0%	98	17.4%
No	719	48.7%	261	52.6%	180	43.4%	277	49.2%
N/A	478	32.4%	142	28.6%	148	35.7%	188	33.4%
Total	1475		496		415		563	

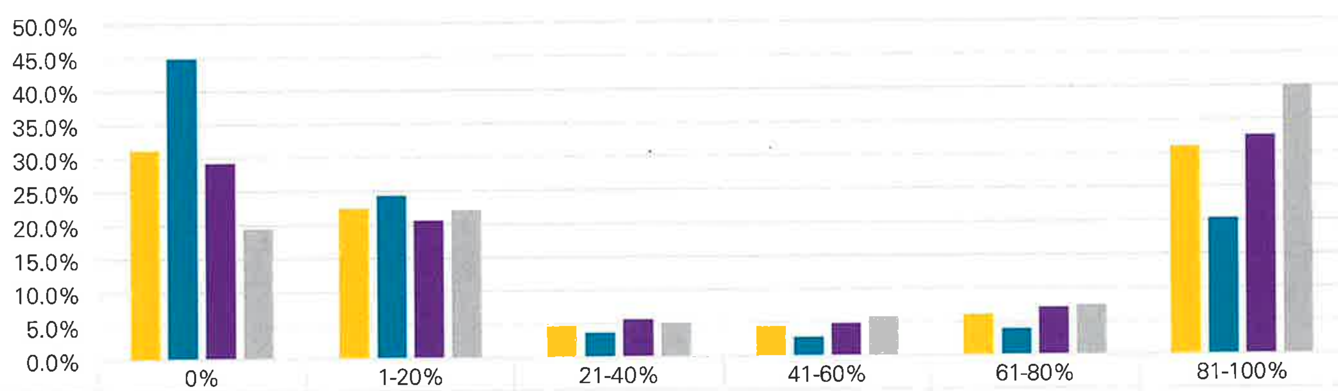
Disaggregating this by certification type, the results differ from what literature would suggest. Small business respondents reported working with other SWaM/DBE-certified sub-contractors at a greater rate than both woman- and minority-owned businesses (see Figure 3.14). Approximately 55 percent of SBEs, 48 percent of WBEs, and 33 percent of MBEs worked with sub-contractors that were SWaM/DBE-certified. The same pattern followed for sub-contractors within the Commonwealth, with 81 percent of SBEs, 71 percent of WBEs, and 55 percent of MBEs having Virginia based sub-contractors (see Figure 3.15).

FIGURE 3.14: WHAT PERCENTAGE OF YOUR SUB-CONTRACTORS ARE SWAM/DBE-CERTIFIED? BY CERTIFICATION TYPE



	0%	1-20%	21-40%	41-60%	61-80%	81-100%
All	54.6%	30.0%	5.8%	5.0%	2.4%	2.2%
Minority	66.7%	20.6%	5.6%	3.1%	1.4%	2.5%
Women	51.7%	31.5%	6.0%	6.0%	3.0%	1.9%
Small	45.1%	37.9%	5.9%	6.1%	2.9%	2.1%

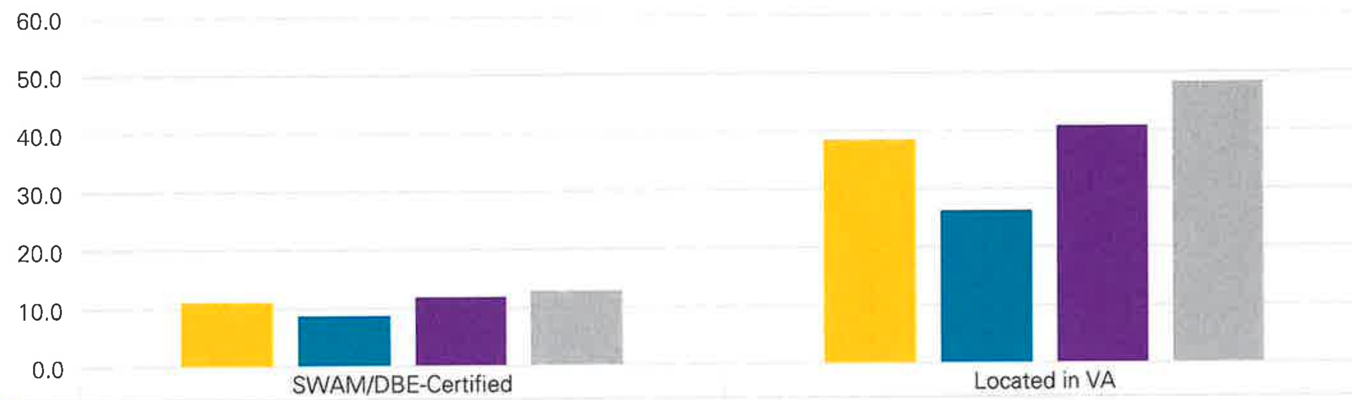
FIGURE 3.15: WHAT PERCENTAGE OF YOUR SUB-CONTRACTORS ARE LOCATED IN VIRGINIA? BY CERTIFICATION TYPE



	0%	1-20%	21-40%	41-60%	61-80%	81-100%
All	31.2%	22.5%	4.7%	4.5%	6.1%	31.0%
Minority	44.9%	24.3%	3.7%	2.8%	4.0%	20.3%
Women	29.2%	20.6%	5.6%	4.9%	7.1%	32.6%
Small	19.5%	22.1%	5.1%	5.9%	7.5%	40.0%

The weighted average of responses indicates that approximately 11 percent of respondent sub-contractors are SWaM/DBE certified and 38 percent are located in Virginia (Figure 3.16). For minority-owned businesses, 9 percent of sub-contractors are SWaM/DBE certified and 26 percent are located in Virginia—the lowest results of all groups. Approximately 12 percent of woman-owned businesses' sub-contractors are SWaM/DBE-certified and 41 percent are located in Virginia. Lastly, 13 percent of SBE sub-contractors are SWaM/DBE-certified and 48 percent are located in Virginia.

FIGURE 3.16: SUB-CONTRACTORS: ESTIMATED WEIGHTED-AVERAGE* (%), BY CERTIFICATION TYPE %

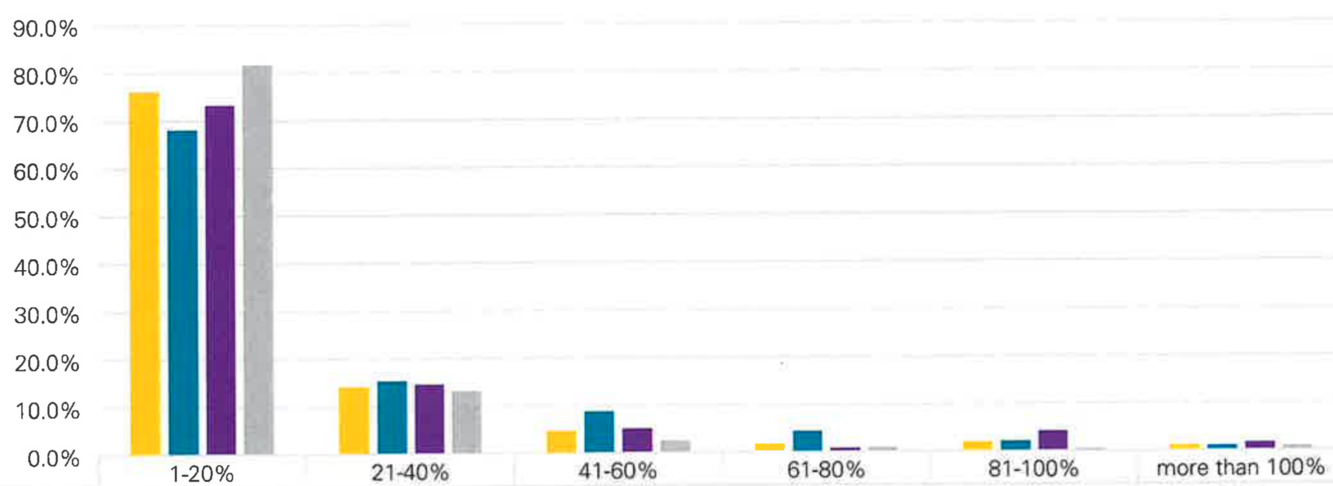


	SWAM/DBE-Certified	Located in VA
All	11.1	38.4
MBE	8.8	26.3
WBE	12.0	40.8
SBE	12.9	48.3

* The survey respondents represented an unequal proportion of small, minority-owned, and women-owned businesses. Weighted average was calculated to accurately represent the reported sub-contractor's certification types.

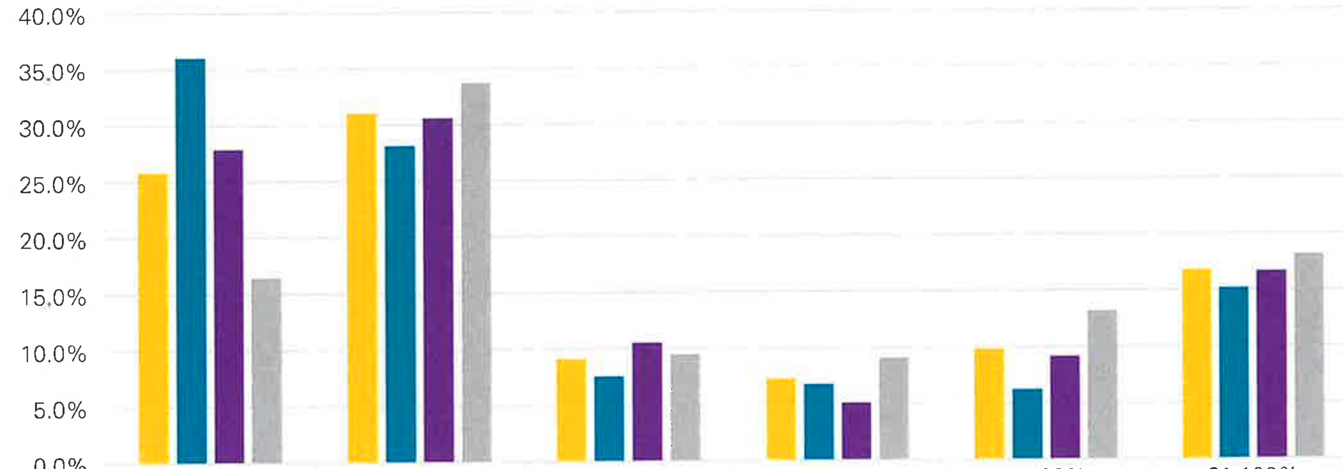
A higher number of respondents reported having suppliers (1,126) than sub-contractors (997). Of respondents with suppliers, 47 percent indicated that at least some of their suppliers were SWaM/DBE-certified, with 35 percent reporting that 1 to 20 percent were certified. Nonetheless, a large majority of respondents (74 percent) reported at least a portion of suppliers were located in Virginia. The pattern of suppliers by respondent certification type follows that of sub-contractors, with 56 percent of SBEs, 50 percent of WBEs, and 34 percent of MBEs indicated a portion of their suppliers were SWaM/DBE-certified (see Figure 3.17). In terms of suppliers' location, for those having suppliers, 84 percent of small businesses, 72 percent of woman-owned businesses, and 64 percent of minority-owned businesses indicated that at least some percentage of their suppliers were located in Virginia (see Figure 3.18).

FIGURE 3.17: WHAT PERCENTAGE OF YOUR SUPPLIERS ARE SWAM/DBE-CERTIFIED? BY CERTIFICATION TYPE



	1-20%	21-40%	41-60%	61-80%	81-100%	more than 100%
All	76.2%	14.1%	4.7%	1.7%	2.0%	1.2%
Minority	68.1%	15.4%	8.8%	4.4%	2.2%	1.1%
Woman	73.3%	14.7%	5.2%	0.9%	4.3%	1.7%
Small	81.6%	13.3%	2.6%	1.0%	0.5%	1.0%

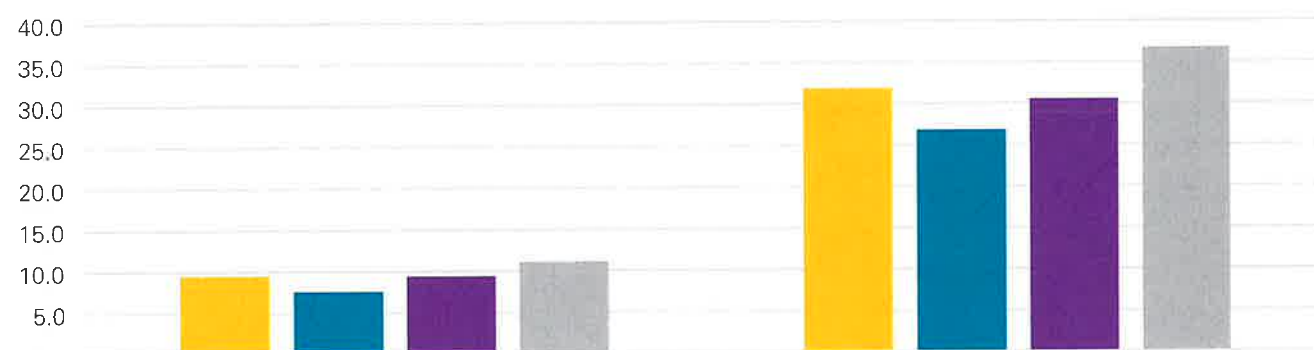
FIGURE 3.18: WHAT PERCENTAGE OF YOUR SUPPLIERS ARE LOCATED IN VIRGINIA? BY CERTIFICATION TYPE



	0%	1-20%	21-40%	41-60%	61-80%	81-100%
All	25.8%	31.1%	9.1%	7.3%	9.9%	16.8%
Minority	36.0%	28.2%	7.6%	6.8%	6.2%	15.2%
Woman	27.9%	30.6%	10.5%	5.1%	9.2%	16.7%
Small	16.4%	33.7%	9.5%	9.1%	13.2%	18.1%

A weighted-average of respondent suppliers indicates that 10 percent of all respondent suppliers are SWaM/DBE-certified. For SBEs, WBEs, and MBEs, this figure was 11 percent, 9 percent, and 8 percent, respectively. Approximately 32 percent of all respondent suppliers are located in Virginia. Small businesses, woman-owned businesses, and minority-owned businesses have 37 percent, 31 percent, and 27 percent of their suppliers in Virginia, respectively (see Figure 3.19).

FIGURE 3.19: SUPPLIERS: ESTIMATED WEIGHTED-AVERAGE (%), BY CERTIFICATION TYPE

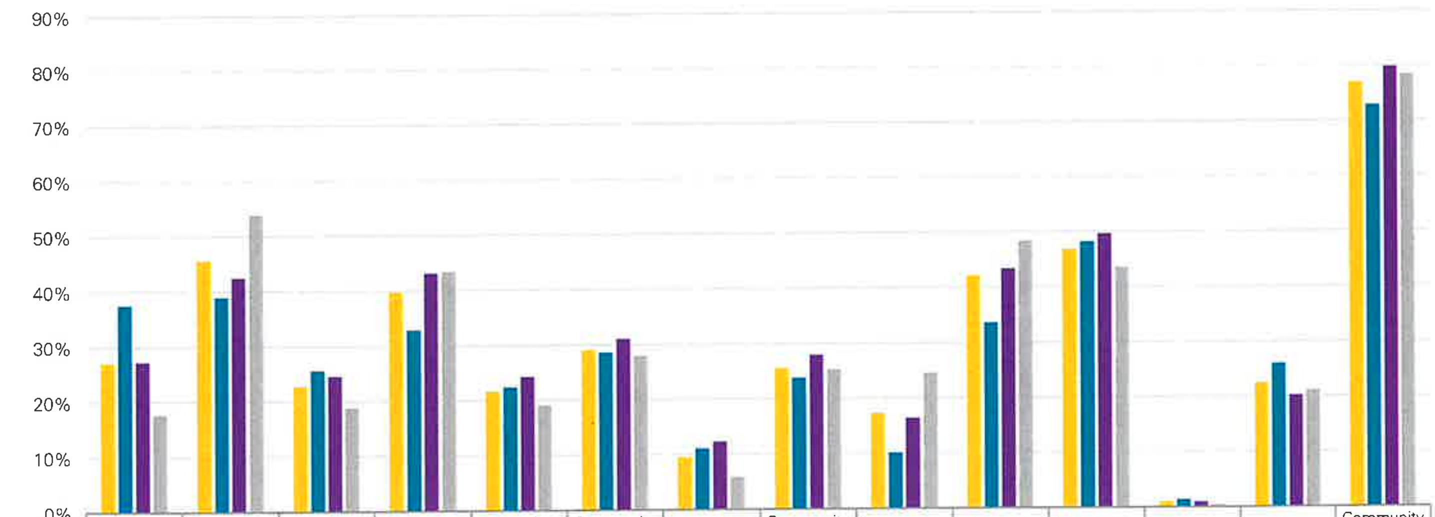


	SWAM/DBE-Certified	Located in VA
All	9.5	31.9
Minority	7.6	26.8
Woman	9.4	30.6
Small	11.1	36.7

COMMUNITY ENGAGEMENT

To appreciate how SWaM businesses impact their communities, survey respondents were asked to indicate any types of community engagement in which their businesses or employees were involved. While there are many ways for a business to engage with its community, the most commonly cited methods of involvement among all respondents were volunteering (47 percent), donating (46 percent), supporting a local charity (42 percent), and being involved in local associations or clubs (40 percent) (see Figure 3.20). Overall, 77 percent of respondents reported involvement in at least one form of community engagement.

FIGURE 3.20: COMMUNITY ENGAGEMENT, BY CERTIFICATION TYPE



	Mentoring	Donations	Community Education	Local Clubs	Local Initiatives	Community Events	Scholarships	Community Boards	Local Sports	Charity	Volunteering	Other	None	Community Engagement
All	27.1%	45.6%	22.8%	39.8%	21.7%	29.1%	9.5%	25.6%	17.4%	42.0%	46.8%	0.9%	22.5%	76.9%
Minority	37.5%	38.9%	25.6%	32.9%	22.4%	28.6%	11.1%	23.8%	10.1%	33.7%	48.2%	1.4%	26.0%	72.8%
Woman	27.2%	42.4%	24.6%	43.1%	24.3%	31.1%	12.3%	28.0%	16.4%	43.4%	49.6%	1.0%	20.2%	79.8%
Small	17.6%	53.8%	18.8%	43.3%	19.0%	27.9%	5.9%	25.2%	24.5%	48.3%	43.5%	0.5%	21.1%	78.3%

A slightly higher percentage of woman-owned businesses (80 percent) reported being involved in a form of community engagement, compared to small (78 percent) and minority-owned (73 percent) businesses. Furthermore, relative to their small and minority-owned counterparts, more WBEs are involved in volunteering, community events, community boards, local initiatives, and scholarships. Meanwhile, a higher percentage of SBEs are involved in donating, charity, local clubs, and local sports. MBEs are more involved in mentoring and community education.

SUCCESS STORIES AND PROGRAM FEEDBACK

Phone interviews with a handful of SWaM businesses allowed CURA to gain deeper insight into how businesses viewed the process of certification and its impacts. DSBSD representatives provided a list of potential success story candidates (53 in all). In an effort to provide perspectives from a diverse group of businesses, CURA sought to interview businesses from different distinct regions within Virginia, as well as businesses that were minority-owned, woman-owned, and represented diverse business sectors. Interviews took place in October and November 2017 and lasted approximately 30 minutes each.

The interview process conducted for this study allowed CURA to gauge participant views on potential changes to SWaM certification criteria. Interviewees were generally opposed to the idea of making the definition more inclusive, saying it would make competition for contracts more difficult. The goal should be, "to help the little guys," as one participant put it.

However, the focus of these conversations was mostly centered around perceived community impacts. Interviews produced personal stories about businesses, communities, and the human impacts of some SWaM participants. The following success stories capture the various ways SWaM vendors contribute to their communities and the Commonwealth as a whole, including through tax revenues, job creation, workforce development, and community engagement.

The SWaM certification program is intended to support diversity among Virginia Agency suppliers, but the program also contributes to the economic benefit of the Commonwealth. By helping small, woman- and minority-owned businesses compete for state agency contracts, the program supports the sustained economic viability of Virginia businesses and generates business tax revenues for the Commonwealth (i.e. corporate income tax revenue and sales tax revenue) that otherwise might go to businesses outside Virginia. For example, Bill Puckett, the president and owner of Lynchburg Camera, a retail imaging equipment and supplies store in downtown Lynchburg, said the SWaM program has been important in keeping his business afloat. Since its establishment in 1938, Lynchburg Camera has endured significant market changes. In particular, the brick and mortar establishment faces competition from internet retailers such as Amazon, B&H Photo, and Adorama. Puckett says that prospective customers increasingly have a tendency to use Lynchburg Camera as a showroom, ultimately purchasing the products from other online retailers. Fortunately, revenues generated through contracts Puckett attributes to the SWaM program have helped to make up for much of that lost business. Local factors, such as construction outside of Puckett's downtown establishment, have deterred foot traffic. Puckett says the store is thankful for continued SWaM-related business to smooth out sales revenues. With an estimated 15 percent of revenues coming from SWaM specific sales, Lynchburg Camera values the stability the SWaM program provides. The SWaM program has played an important role in keeping Lynchburg Camera in business, and the business gives back in the form of tax revenues through corporate income taxes, gross receipts taxes, and sales taxes—taxes that would otherwise be foregone if sales went to major online retailers located outside Virginia.

SWaM businesses also support job creation in the Commonwealth. Gerald Burr, Jr. is the President & CEO of Canterbury Enterprises, LLC, a general contractor for commercial and multifamily housing in Chester. The company, which has been in operation for over 13 years, has grown its workforce from 3 to 24 employees. Prior to the recession, Canterbury reached a peak of 30 employees. In addition to creating jobs, Mr. Burr has been able to increase salaries. Burr says improved access to bidding opportunities on state agency contracts played a role in the increase in salaries. Canterbury has also played an important role in working with Virginia sub-contractors. Burr estimates that his firm works with 50 to 100 sub-contractors, 75 percent of whom are SWaM/DBE-certified and all of which are located in Virginia. Canterbury encourages sub-contractors without SWaM/DBE certification to become certified in an effort to increase the overall capacity of SWaM businesses and create more opportunities for SWaM businesses. To aid in the SWaM certification process of its sub-contractors, Burr says Canterbury mentors other businesses and gives them points of contacts. Burr estimates they have encouraged 15 to 20 firms to pursue SWaM Certification.

SWaM businesses also have a positive impact on development through training programs, thus generating income tax revenue for the Commonwealth. For example, Strategy US is a minority- and woman-owned, small, micro business, owned by wife and husband, Bhavna and Jatinder Chandook. The couple operate a consulting firm specializing in information technology training for higher education institutions such as George Mason University. In addition to its training programs, the company offers reduced tuition for unemployed individuals. According to Mr. Chandook, the company has aided individuals facing homelessness. One individual found employment within two months of entering a training program and, by the end of the program, was negotiating for a raise. Chandook reports that 14 participants with reduced tuition have found jobs with an average starting salary of $84,000. The students' prosperity often leads to a chain reaction, according to Chandook, and the individuals go on to help family members achieve economic well-being.

SWaM vendors also play an important role in community engagement. Veronica Musie runs a small catering business called Vera's Catering. Musie provides catering for small gatherings and large corporate and private events. She established her business in 2016 and became certified in 2017. As a new participant to SWaM, the company has received a few contracts, and Musie expressed confidence in acquiring more as she learns how to bid on contracts. Ms. Musie also operates a nonprofit organization for women affected by breast cancer called Alpha Breast Cancer Support Service. The organization arranges meetings, luncheons, and an annual fundraising walk to raise awareness and provide survivors with support services. Support has included providing rides to women who need to commute to receive treatment as well as financial support for groceries, rent, or child care. Musie and her two part-time employees volunteer with the organization 10-20 hours a week. A survivor herself, Musie is originally from Ethiopia. Her experience has driven her to provide support for other women so they do not have to go through the process alone.

CHAPTER 3: ECONOMIC IMPACT

This section of the report details the economic impact generated on the Commonwealth's economy, as well as in each Metropolitan Statistical Area (MSA), through discretionary spending with small, minority-owned, or women-owned businesses. In addition to empowering SWaM businesses throughout the Commonwealth, the SWaM/DBE certification program channels spending towards thousands of Virginia businesses, which in turn generates additional impact throughout the economy through the spending of suppliers, sub-contractors, and their employees.[1]

This section will also compare the economic impact, in terms of multiplier (i.e. total economic impact for each $1.00 spent), of spending through different business ownership types, including non-SWaM businesses. The differences in the multipliers are primarily a function of the industrial structure of each group (that is, which industries or NAICS codes are represented), but they provide a useful snapshot to understand how the Commonwealth's discretionary spending impacts its own economy.

METHODOLOGICAL NOTE

This report uses economic input-output analysis to illustrate the impact of the discretionary spending happening through SWaM-certified businesses. An input-output model measures the economic impact of an activity or entity by looking at the spending that goes into the activity, modeling the resultant economic output in dollars, and feeding those dollars into the model as an input for economically linked business sectors.

Economic linkages may be best described as an interconnected network, from suppliers and manufacturers to retailers and customers. The entire network is connected in a very specific pattern. When one industry increases or decreases production, it sends a pulse that is felt in other parts of the network, forwards and backwards. That change affects the supply and demand for materials, labor, and goods. Economic impact models, like the one created for this study, contain information on how the network of industries is structured, so the effect of a change in production in one industry can be estimated throughout the economy.

To estimate the impact of the SWaM/DBE certification program, CURA used IMPLAN ProTM software to prepare and customize an economic model for the Commonwealth of Virginia as well as a model for each of the state's ten MSAs. IMPLAN is a regional input-output computer modeling system used by economists to estimate the effects of spending and policy actions. In this case, IMPLAN was used to estimate the economic effects that take place as goods and services are purchased in connection with procurements towards small, women-owned and minority-owned businesses.
The IMPLAN model divides economic activity into three components—direct, indirect, and induced effects—and sums them to derive a total economic impact (See Table 3.1).

TABLE 3.1: IMPLAN IMPACT DEFINITIONS

IMPACT TERM	DEFINITION
Direct Impact	The initial expenditures, or production, made by the industry experiencing economic change
Indirect Impact	The effects on local inter-industry spending through backward linkages (which track industry purchases backward through the supply chain)
Induced Impact	The results of local spending of employee wages and salaries for both employees of the directly affected industry and the employees of the indirectly affected industries

Source: Frances Day - "Principles of Impact Analysis & IMPLAN Applications"

1 It must be noted that the Commonwealth would have purchased those goods and services regardless of the businesses certification status. However, it is necessary to understand what the economic impact of this spending is, and how it compares—in terms of multiplier—with the rest of the discretionary spending procurements towards non certified businesses.

DIRECT EFFECTS are expenditures made to SWaM/DBE-certified businesses. This initial spending causes ripple effects (also known as "multiplier effects") within the study area. These additional effects are called indirect and induced impacts.

INDIRECT EFFECTS are "supplier" effects. Businesses (such as professional services or general contractors) that receive money from the original purchases must also buy additional goods and services to accommodate the new demand. As purchases are made from other firms, the economy is stimulated further.

INDUCED EFFECTS are generated by changes in household expenditures. When companies receive additional business because of the direct and indirect effects, they meet the new demand by hiring additional workers or paying existing employees more to work longer hours. As a result, these employees will have more money to spend on the goods and services that they buy within the study area.

The direct, indirect, and induced effects are estimated for labor income, value added, economic impact, and employment impact. These components are defined below:

- **LABOR INCOME:** The wages and salaries paid to local employees of firms as well as an estimate of the value of benefits earned by these workers. Labor income also includes payments received as income by freelance employees.

- **ECONOMIC IMPACT:** The overall economic effects on the region, which can be viewed as the total additional output generated by rehabilitation, are equal to the value added plus intermediate expenditures. Consider the economic impact as the value of change in sales or the value of change in production.

- **EMPLOYMENT:** The number of total jobs in the study area, including full-time and part-time employees, supported by the new economic activity.

CALCULATING THE ECONOMIC IMPACT – DATA PREPARATION

Spending data was obtained from the Commonwealth of Virginia's SpendCompass Dashboard. All discretionary spending transactions were downloaded for calendar year 2015.[2] The more than 1.29 million transactions were then grouped and summed by unique tax identification number to calculate the amount of discretionary spending received by each business.[3] In CY 2015 (see table 3.2), we estimate that 43,596 businesses provided discretionary spending-related services and products to Virginia agencies for a total spending of $6.17 billion. Of those businesses, 6,827 were SWAM-certified and 36,769 were not SWaM-certified ("non-SWaM"). This data suggests that in CY 2015, approximately 35 percent[4] of certified businesses were able to leverage their certification and convert it into revenues.

TABLE 3.2: DISCRETIONARY SPENDING SUMMARY FOR CY 2015

	SWAM-CERTIFIED BUSINESSES	NON-SWAM BUSINESSES	TOTAL
Discretionary Spending	$2,383,675,378	$3,790,558,532	$6,174,233,910
Number of businesses receiving Virginia procurements	6,827	36,769	43,596
Spending in Virginia	$2,132,742,162	$2,040,055,852	$4,172,798,013
Leakage (Spending Out of State)	$250,933,216	$1,750,502,680	$2,001,435,897

2 Procurement spending on SWaM business varies from year to year. Calendar year 2015 was chosen for the economic impact analysis because it closely represented the average spending for the period 2010-2017, thus making it a 'typical year'. The economic impact thus calculated can be considered to be close to the average annual impact resulting from the certification program.

3 For a more detailed summary of the data preparation process, see the Appendix.

4 We estimated the number of certified businesses for CY 2015 (19,242) by averaging the number of certified businesses for FY 2014 (21,316) and FY 2015 (17,168). 6,820/19,242*100 = 35%

However, not all discretionary spending happens in Virginia. The spending data was therefore reduced to reflect only the spending that took place in the Commonwealth, as transactions outside Virginia are considered leakages in the economic impact model. After accounting for these leakages, both in SWaM-certified businesses, as well as in non-SWaMs, the total amount considered for this analysis was almost $4.2 billion, of which $2.13 billion spent through procurements with SWaM certified businesses, and $2.04 billion spent on other Virginia businesses. It should be noted how most of the leakage happens through non-SWaM businesses, while – as expected – most of the SWaM-certified businesses receiving contracts from the Commonwealth are Virginia businesses.

In order to calculate the economic impact of this spending, the following data points were identified and/or calculated:

- At state level, total amount of discretionary spending paid to both SWaM-certified and non-SWaM businesses, by NAICS code and – just for the SWaM businesses – disaggregated by certification type
- For each Virginia MSA, total amount of discretionary spending to SWaM-certified businesses, by NAICS code and disaggregated by certification type
- For both sets of data, identification of the appropriate IMPLAN sector code for each six-digits NAICS code.

Table 3.3 shows the breakdown of the discretionary spending (both in dollar value and as a percentage of the total) to SWaM-certified businesses located in Virginia.

TABLE 3.3: TOTAL SPENDING TO SWAM BUSINESSES, BY NAICS CODE

NAICS CODE	NAICS DEFINITION	SWAM SPENDING	%SWAM SPENDING
11	Agriculture, Forestry, Fishing And Hunting	$2,180,168	0.1%
21	Mining, Quarrying, Oil And Gas Extraction	$5,988,491	0.3%
22	Utilities	$3,503,821	0.2%
23	Construction	$1,050,572,846	49.3%
31 - 33	Manufacturing	$68,841,534	3.2%
42	Wholesale Trade	$167,987,440	7.9%
44 - 45	Retail Trade	$125,543,522	5.9%
48 - 49	Transportation And Warehousing	$109,166,783	5.1%
51	Information	$4,652,787	0.2%
52	Finance And Insurance	$1,143,736	0.1%
53	Real Estate Rental And Leasing	$9,409,458	0.4%
54	Professional, Scientific, And Technical Services	$326,503,251	15.3%
55	Management Of Companies And Enterprises	$57,457	0.0%
56	Administrative And Support And Waste Management And Remediation Services	$174,958,355	8.2%
61	Educational Services	$1,896,358	0.1%
62	Health Care And Social Assistance	$11,220,148	0.5%
71	Arts, Entertainment, And Recreation	$658,638	0.0%
72	Accommodation And Food Services	$20,447,872	1.0%
81	Other Services (Except Public Administration)	$20,381,626	1.0%
SWAM TOTAL $2,105,114,291			
NON-SWAM TOTAL $2,037,781,895			
GRAND TOTAL $4,142,896,186			

Source: SpendCompass Dashboard, Commonwealth of Virginia

ECONOMIC IMPACT RESULTS

Tables 3.4 and 3.5 show the economic impact generated by discretionary spending procurements through SWaM-certified businesses.

In CY 2015, the $2.13 billion in discretionary spending for goods and services provided by SWaM-certified businesses generated a total economic impact of more than $3.6 billion, which means that each $1.00 of discretionary spending generates a total economic impact of $1.69. The total impact includes $1.38 billion in Virginia employee paychecks for all affected industries, distributed to the 25,375 jobs generated directly, indirectly, and through induced spending. In addition, state and local jurisdictions see revenues of more than $146 million. The federal government collects approximately $315 million as a direct result of this portion of discretionary spending.

TABLE 3.4: ESTIMATED IMPACTS OF DISCRETIONARY SPENDING PROCUREMENTS WITH SWAM-CERTIFIED BUSINESSES, CY 2015

	DIRECT	INDIRECT	INDUCED	TOTAL
Economic Impact	$2,051,853,664	$721,783,307	$856,485,214	$3,630,122,184
Labor Income	$843,786,704	$267,615,806	$274,278,376	$1,385,680,886
Employment Impact (number of jobs)	15,188	4,241	5,946	25,375
Tax Impact (state and local)				$146,348,284
Tax Impact (federal)				$315,294,801

Source: Estimates developed on DSBSD data by the Center for Urban and Regional Analysis at VCU, using IMPLANProTM. Inflation adjustments made using the U.S. Bureau of Labor Statistics' "Consumer Price Index for All Urban Consumers".
Note: All dollar values are in 2018 Dollars

In the same calendar year, $2.04 billion of the Commonwealth's discretionary procurements went towards the purchase of goods and services from non-certified businesses.

- $3.6 billion in total economic activity (or impact), including almost $1.4 billion in salaries for Virginia employees.
- More than 25,000 jobs supported by the direct and indirect impacts of discretionary spending in Virginia.
- $146 million in state and local taxes, and $315 million in federal revenues.

Table 3.5 details the top ten industries by employment impact. SWaM-certified businesses tend to focus on construction, retail, and non-professional services (e.g. services to buildings, employment services).

TABLE 3.5: ESTIMATED EMPLOYMENT IMPACT BY SWAM CERTIFICATION, FIRST 10 INDUSTRIES

SWAM BUSINESSES		
INDUSTRY	TOTAL EMPLOYMENT	PERCENT OF TOTAL EMPLOYMENT
Construction of new highways and streets	2658	11.2%
Maintenance and repair construction of nonresidential structures	1913	8.1%
Landscape and horticultural services	1081	4.6%
Wholesale trade	1062	4.5%
Retail - Miscellaneous store retailers	965	4.1%
Architectural, engineering, and related services	911	3.9%
Employment services	777	3.3%
Services to buildings	761	3.2%
Truck transportation	697	2.9%
All other food and drinking places	588	2.5%
All other industries	13,962	59.1%
TOTAL	25,375	100%

Source: Estimates developed on DSBSD data by the Center for Urban and Regional Analysis at VCU, using IMPLANProTM. Inflation adjustments made using the U.S. Bureau of Labor Statistics' "Consumer Price Index for All Urban Consumers".

Note: All dollar values are in 2018 Dollars

As mentioned in Chapter 1, in addition to receiving the SWaM certification, each business is assigned one or more ownership types: MBE (minority business enterprise), WBE (women's business enterprise), and SBE (small business enterprise). We assigned each business a single ownership type based on a hierarchy: MBE first, then WBE, and finally SBE. These assignments were necessary to calculate separate economic impact estimates for each category. The results are presented in table 3.6, and the differences among them are, for the most part, a reflection of the spending amounts for each ownership type.

TABLE 3.6: ESTIMATED ECONOMIC IMPACT BY OWNERSHIP TYPE (CY 2015)

	ECONOMIC IMPACT	LABOR INCOME	EMPLOYMENT IMPACT (NUMBER OF JOBS)	TAX IMPACT (STATE AND LOCAL)	TAX IMPACT (FEDERAL)
MBE	$512,304,677	$209,655,409	3,713	$20,675,046	$46,500,189
WBE	$459,664,513	$188,799,069	3,684	$20,511,537	$42,839,376
SBE	$2,279,404,122	$845,093,147	15,368	$87,463,807	$192,784,031

Source: Estimates developed on DSBSD data by the Center for Urban and Regional Analysis at VCU, using IMPLANProTM. Inflation adjustments made using the U.S. Bureau of Labor Statistics' "Consumer Price Index for All Urban Consumers".

Note: All dollar values are in 2018 Dollars

However, the multipliers presented in Table 3.7 offer a little more information on which ownership has the most relative impact.[5] Minority-owned businesses generate the highest multiplier (1.58), while small businesses have a slighter lower multiplier (1.53), and women-owned businesses show the lowest multiplier (1.43).

5 As for the considerations made on the SWaM Vs non-SWaM analysis, these differences are largely due to the spending distribution among the different industrial sectors of each ownership type, rather than any specific characteristic connected to the ownership type. The multipliers for each of the SWaM sub-groups are lower than the multiplier of all combined SWaM spending because of the economic backward and forward linkages that each model includes (i.e., multipliers are unique to the economic linkages of each sub category and are not additive in nature).

TABLE 3.7: ECONOMIC MULTIPLIER FOR SMALL, WOMEN-OWNED, AND MINORITY-OWNED BUSINESSES

OWNERSHIP TYPE	ECONOMIC MULTIPLIER	DESCRIPTION
MBE	1.58	For every $1.00 spent in MBE, there is a total impact of $1.58
WBE	1.43	For every $1.00 spent in WBE, there is a total impact of $1.43
SBE	1.53	For every $1.00 spent in SBE, there is a total impact of $1.53

Source: Estimates developed on DSBSD data by the Center for Urban and Regional Analysis at VCU, using IMPLANProTM.

ADDITIONAL CONSIDERATIONS TO THE ECONOMIC IMPACT RESULTS

As explained earlier, the impact differences among the different type of SWaM ownership (as well as for SWaM and non-SWaM businesses) are largely due to differences in spending distribution among the different industrial sectors for each group. However, information and analysis from the survey described in Chapter 2 and a review of existing literature may offer some understanding of how other variables and circumstances have influence—marginal or otherwise—on any of the spending types (direct, indirect or induced) and, therefore, the multiplier. To this end, it is useful to consider the following:

- Literature shows that minority business owners tend to hire minority employees. Although the social and economic impact of this type of informal employment policy might escape the view of statistics and numbers, the communities where these businesses operate likely reap the benefits. Such employment practices likely increase diversity in workforce participation—one of the goals of the Virginia SWaM certification program.

- Similarly, when comparing SWaM-certified businesses with non-SWaM businesses, literature suggests that the former tend to hire and do business locally to a greater degree than their non-SWaM counterparts. Although the economic impact and the multipliers are indeed very similar, much of the difference may be attributed to industrial structures. One may assume that, should SWaM and non-SWaM businesses have identical industrial structures, SWaM businesses would tend to have a higher impact on both state and regional economies because their business networks and models favor regional and state linkages.

- Survey results of SWaM-certified businesses show that in comparison with minority-owned businesses, women-owned businesses, and small businesses rely more on local and SWaM-certified sub-contractors and suppliers. In terms of economic effects, this should translate to a higher impact generated by the discretionary spending with the businesses belonging to those two ownership types. This suggests that the difference in those multipliers might realistically be smaller than what has been calculated.

- Finally, while the economic impact model did not include spending taking place outside Virginia, it is very likely that firms from out of state that received procurements from and operate in the Commonwealth spend a portion of their operational budgets (in terms of suppliers, sub-contractors, and even employees) within the Commonwealth. This creates an additional economic impact, both at state and regional levels, that the described economic impact estimates can't capture. The estimates in this report remain conservative.

SWaM BUSINESSES HAVE A HIGH IMPACT ON THE STATE'S ECONOMY DUE TO BUSINESS NETWORKS WITH STRONG REGIONAL LINKAGES

IMPACTS ON VIRGINIA'S METROPOLITAN STATISTICAL AREAS (MSA[6])

The economic impact of discretionary spending with SWaM-certified businesses within each of Virginia's MSAs may be estimated using similar methods to the above state estimates. Transactions that took place during CY 2015 were grouped by unique tax identification numbers to calculate the total amount of state discretionary spending received by each business for the year. A total amount of spending for each six-digits NAICS code (industrial sector) was calculated for each of MSA based on the locations of the noted businesses. This data was then entered in customized IMPLAN models that CURA built for each MSA. Table 3.8 shows the amount of state discretionary spending with SWaM-certified businesses in each MSA.

TABLE 3.8: SUMMARY OF DISCRETIONARY SPENDING WITH SWAM-CERTIFIED BUSINESSES BY MSA

MSA	DISCRETIONARY SPENDING
Blacksburg MSA	$25,693,551
Charlottesville MSA	$36,053,199
Harrisonburg MSA	$8,933,652
Bristol MSA	$12,153,858
Lynchburg MSA	$78,531,574
Richmond MSA	$674,912,279
Roanoke MSA	$68,345,662
Hampton Roads MSA	$399,432,104
Northern Virginia MSA	$584,733,682
Staunton MSA	$29,286,862
Winchester MSA	$8,662,432
TOTAL	$1,926,738,855

Source: Virginia Department of Small Business and Supplier Diversity Note: The Bristol, Hampton Roads, Northern Virginia, and Winchester MSAs are defined as only the Virginia portions of the entire MSA.

Table 3.9 details the economic impact generated by discretionary spending taking place in each MSA.

TABLE 3.9: ESTIMATED REGIONAL IMPACTS OF SWAM SPENDING BY MSA

PLACE	ECONOMIC IMPACT	LABOR INCOME	EMPLOYMENT IMPACT (NUMBER OF JOBS)	TAX IMPACT (STATE AND LOCAL)
Blacksburg MSA	$37,853,492	$13,075,568	294	$1,268,110
Charlottesville MSA	$55,882,028	$18,112,750	378	$1,908,690
Harrisonburg MSA	$13,571,971	$4,213,387	100	$490,958
Bristol MSA	$17,080,199	$5,826,484	132	$778,265
Lynchburg MSA	$105,033,737	$36,564,857	864	$5,295,800
Richmond MSA	$1,231,697,606	$465,931,615	8,417	$52,366,150
Roanoke MSA	$115,447,990	$37,571,528	809	$5,277,691
Hampton Roads MSA	$43,345,481	$14,733,486	352	$1,816,897
Northern Virginia MSA	$650,124,831	$230,670,184	4,839	$26,091,041
Staunton MSA	$930,892,148	$395,003,761	6,157	$37,510,327
Winchester MSA	$7,107,503	$2,453,866	61	$286,806

Source: Estimates developed on DSBSD data by the Center for Urban and Regional Analysis at VCU, using IMPLANProTM. Inflation adjustments made using the U.S. Bureau of Labor Statistics' "Consumer Price Index for All Urban Consumers". Note: All dollar values are in 2018 Dollars

6 From the OMB Glossary: [An MSA is] a geographic entity delineated by the Office of Management and Budget for use by federal statistical agencies. Metropolitan statistical areas consist of the county or counties (or equivalent entities) associated with at least one urbanized area of at least 50,000 population, plus adjacent counties having a high degree of social and economic integration with the core as measured through commuting ties.

When examining the MSA-level impacts, it is important to keep the following points in mind:

1. The values for economic impact, employment impact, labor income, and state and local tax revenue that are estimated for Virginia are greater than the combined impacts from the 11 MSAs. When examining each region of the state, any spending that takes place outside of the MSA is considered leakage from the local economy and is not considered for the regional impact analysis. In the state model, however, spending anywhere in Virginia contributes to the estimated impacts. There are more opportunities for expenditures to occur within the borders of Virginia than there are within each MSA.

2. Smaller MSAs will experience greater leakage of spending outside the MSA. Local businesses in a small MSA will likely have a greater share of suppliers outside the MSA than businesses in a larger MSA, thus creating leakages in the indirect and induced stages of spending. Therefore, the overall MSA-level impact of state discretionary spending with SWaM-certified businesses in small MSAs will be smaller.

3. Impacts are not estimated for spending that happened with businesses that are located outside established MSAs.

CHAPTER 4: POLICY SCENARIOS USING ALTERNATIVE DEFINITIONS OF SMALL BUSINESSES

The success of a business empowerment program largely depends upon its administrative effectiveness in achieving the intended objectives. This requires both simplicity and robustness in the criteria used to certify these businesses. Simple and easy certification requirements reduce transaction cost for the participating businesses, while robust methods discourage unnecessary competition from non-target businesses.

In addition to the SWaM program, DSBSD also administers certification for the Disadvantaged Business Enterprise (DBE) program in Virginia. The SWaM and DBE programs combined have grown from 3,000 certified vendors in FY2005 to 16,000 in FY2018, according to internal documents. The growth—over 400 percent—represents a significant increase in administrative responsibilities. In the same time, staffing increased from 7 to 13 employees, or about 86 percent. As a result the SWaM certification application volume has exceeded current agency resources.

Within that context, this section explores alternative criteria to define small businesses and compares the pool of SWaM certified businesses under two scenarios: one using the small business definition adopted by the federal Small Business Administration, and another using a modified version of the existing criteria.

The DBE program uses certification criteria defined by the USDOT, which uses the SBA definition of small businesses. DBE is the federal government's certification program for small and minority-owned businesses (including women-owned) seeking priority in contracts that use federal funds. To be certified for the DBE program, businesses are required to meet ownership and size criteria set by the SBA. The owner must belong to a disadvantaged group, and the size of the business must fall below a certain number of employees or gross receipts, depending on the industry (NAICS categorization is used).

According to the Virginia Administrative Code (7 Va. Admin. Code § 13-20-155), any Virginia business receiving DBE certification is eligible for the SWaM program . Additionally, the Code of Virginia gives the DSBSD Director the power to "mandate SWaM certification without any additional paperwork to any small, women-owned, or minority-owned business that has obtained certification under any federal certification program." (Va. Code Ann. § 2.2-1606). Table 4.0 summarizes the specific eligibility requirements, the similarities, and the differences between the SWaM and DBE programs.

Both SWaM and DBE programs require businesses to meet two basic criteria: the size of the business and the race, ethnicity, or gender of the primary owner. The SWaM program has a fixed size threshold of 250 employees or $10 million in average gross receipts (3-years). The DBE program requires that the number of employees and annual gross receipts meet specific criteria based on the NAICS classification of the business. The size criteria vary from 100 employees in wholesale-related businesses to 1,500 employees in selected mining and manufacturing-related businesses. The criteria for annual gross receipts also vary from $0.75 million for farming-related businesses to $38.5 million for finance, insurance, leasing, aerospace and military weapons, hazardous waste disposal, and selected sports entertainment-related businesses. SBA has a separate size and receipts requirements for 1,031 different NAICS industries.

The SWaM program does not define disadvantaged groups, as the DBE program does. Instead, it extends certification to only those businesses that are defined as micro, small, women-owned, minority-owned, ESO, HBCU, or federally certified within a program that has third party verification. DBE expands ethnicity and race criteria (social disadvantage) to include a maximum threshold for personal net worth (economic disadvantage). SWaM eligibility requirements are simpler and easier to verify. However, the expansive definition of small business in SWaM may allow non-target businesses to realize the benefits of the program. For example, a professional firm with fewer than 50 employees can have annual turnover substantially higher than a labor intensive manufacturing firm with 500 employees. Some firms can achieve higher levels of output by keeping their employment level at the minimum and outsourcing portions of their work to sub-contractors and still maintain a small footprint. Other businesses that depend on seasonal employment might be able to minimize their averages and still meet the eligibility criteria.

The SBA definition used for DBE certification takes a more granular approach in defining small businesses by using NAICS classification. While it increases the accuracy and robustness of the eligibility calculations, it almost certainly creates additional work for the certifying agency. DSBSD has already seen a steady increase in its certification workload without an equal increase in staff.

To evaluate alternative small business classification criteria, CURA conducted a comparative estimate of the number of eligible businesses under two hypothetical scenarios:

- The SWaM program adopts SBA small business definition
- The existing SWaM definition is changed from "less than 250 employees **OR** less than $10 million in gross receipts" to "less than 250 employees **AND** less than $10 million in gross receipts"

TABLE 4.0: CERTIFICATION CRITERIA FOR VIRGINIA'S SWAM PROGRAM AND THE FEDERAL DBE PROGRAM

PROGRAM	VIRGINIA SWAM PROGRAM	FEDERAL DBE PROGRAM
Target Businesses	Small, women-owned, minority-owned, veteran owned, and ESO	Small, owned by a member of a disadvantaged group (women, minority, disabled, veteran)
Definition of Small Business	Business with less than 250 employees OR average annual gross receipts of $10 million or less averaged over the previous three years	SBA definition based on size standards and gross receipts for businesses by 6-digit NAICS category. Depending on the NAICS classification, size standard varies between 100 to 1500 employees, and gross receipts vary from $0.75 million to $38.5 million (separate criteria have been developed for 1,031 different industry types)
Definition of Minority-Owned Business	Majority owner of the business (owns 51% stakes and controls the day to day management of the business) is a member of one of the identified minority race or ethnic groups	Majority owner of the business (owns 51% stakes and oversees the day to day management of the business) is a member of one of the identified minority race or ethnic groups
Definition of Woman-Owned Business	Majority owner of the business (owns 51 % stakes and controls the day to day management of the business) is identified as a woman	Majority owner of the business (owns 51 % stakes and oversees the day to day management of the business) is identified as a woman
Criteria for Personal Net Worth	Not Applicable	Under $1.32 million

SCENARIO-1: ADOPTING SBA SMALL BUSINESS DEFINITION FOR THE SWAM PROGRAM

In order to maintain accuracy in comparison we used the 2007 PUMS sample data from the Survey of Business Owners (SBO) and applied both the current SWaM and SBA rules to get the results[1].

Table 4.1 presents the results of SWaM and SBA small and minority business definition on the selected sample of Virginia businesses based on the calendar year 2015 certification data. In CY 2015, 19,242 businesses qualified for SWaM certification using the existing criteria of "less than 250 employees OR gross receipts of less than $10 million." Applying the SBA rule increased the total pool of certified businesses by roughly 10 percent. Of the 21,205 businesses estimated to be certified under the SBA definition, 17,363 are from Virginia and 3,842 are from other states. This scenario suggests that only 45 additional businesses from Virginia will be added to the pool, whereas an additional 1,918 businesses from out-of-state will get certification—effectively doubling the number of certified out-of-state businesses. Both definitions use the same criteria for women-owned and minority-owned businesses, and there are no difference in the qualified percentages in those categories.

TABLE 4.1: NUMBER OF BUSINESSES CERTIFIED UNDER SWAM AND SBA RULES

BUSINESS LOCATION	AVERPERCENT CHANGE	ESTIMATED INCREASE IN NUMBER OF ELIGIBLE BUSINESSES IF SBA DEFINITION IS ADOPTED
Virginia Businesses	0.30%	45
Out-of-State Businesses	99.60%	1,918
TOTAL	10.20%	1,963

Table A4.1 in the appendix presents, by NAICS code, the comparison of businesses qualifying under the SWaM definition and the SBA definition. The increase in number of certified businesses using SBA definition is more pronounced in the following sectors:

- Accommodation & Food
- Construction
- Professional, Scientific, and Technical Services
- Administrative and Support and Waste Management
- Health Care and Social Assistance

Businesses related to sectors such as Real Estate Rental and Leasing, Information, Finance and Insurance, and Manufacturing also see modest increases in certification when using the SBA definition. However, as mentioned earlier, most of this increase is due to out-of-state businesses. Table 4.2 on the following page presents the difference in the number of certified businesses within Virginia. Even though the overall average increases by less than a percent between the two definitions, some reshuffling of certification by business type is evident in our findings. Most notably, some of the existing businesses in the Retail Trade sector will no longer be eligible for the program, a reduction in small businesses would reduce the pool of competitors for remaining eligible businesses, such as women and minority owned businesses.

Adopting the SBA definition will substantially increase participation of businesses in Professional, Scientific, and Technical Services, and Administrative and Support Services—two of the largest sectors with a higher percentage of women-owned and minority-owned businesses. Conversely, the conversion negatively impacts businesses in the Retail Trade sector which has high percentages of women-owned and minority-owned businesses in Virginia and constitutes about nine percent of the current pool of SWaM-certified businesses. If fully adopted, the SBA definition will have modest positive impact on the participation of businesses owned by disadvantaged groups. It would considerably increase the participation of out-of-state businesses.

1 This is the most recent public use micro-data sample that has information on the number of employees, gross receipts, and ownership by gender and ethnicity. PUMS data has the NAICS classification of the businesses at 2- digit level. However, the SBA size standards are presented at the 6-digit level. CURA team used the 2015 Quarterly Census of Employment and Wages to calculate the percentage of businesses in Virginia at 6-digit level and used that percentage to calculate the weighted averages for the SBA size requirements. The average values were used in determining business eligibility for comparison. Only the rules for small, minority-owned, and women-owned business were compared; the personal net worth criteria was not considered in this comparison. The SBA and SWaM rules applied to this sample allowed CURA to calculate the percentage of businesses that qualified under each criteria. The percentages were applied to the 2015 SBO estimate of Virginia businesses and the DSBSD's 2015 calendar year certification data to estimate the current number of businesses in each category.

TABLE 4.2: COMPARISON OF BUSINESS ELIGIBILITY USING EXISTING SWAM AND SBA SMALL BUSINESS DEFINITION (IN-STATE BUSINESSES)

		CURRENT CERTIFICATION CRITERIA		SBA CERTIFICATION CRITERIA	EST. DIFFERENCES
NAICS CODE	NAICS CODE DESCRIPTION	# OF CERTIFIED BUSINESSES	DISCRETIONARY SPENDING	EST. # OF CERTIFIED BUSINESSES (SBA CRITERIA)	Δ IN NUMBER OF BUSINESSES
11	Agriculture, Forestry, Fishing and Hunting	34	$2,180,168	34	0
21	Mining, Quarrying, and Oil and Gas Extraction	17	$5,988,491	17	0
22	Utilities	4	$3,503,821	4	0
23	Construction	1373	$1,050,572,846	1,381	8
31-33	Manufacturing	387	$68,841,534	393	6
42	Wholesale Trade	732	$167,987,440	732	0
44-45	Retail Trade	864	$125,543,522	863	-1
48-49	Transportation and Warehousing	298	$109,166,783	299	1
51	Information	121	$4,652,787	123	2
52	Finance and Insurance	11	$1,143,736	11	0
53	Real Estate and Rental and Leasing	79	$9,409,458	80	1
54	Professional, Scientific, and Technical Services	831	$326,503,251	840	9
55	Management of Companies and Enterprises	2	$57,457	2	0
56	Administrative and Support and Waste Management and Remediation Services	653	$174,958,355	665	12
61	Educational Services	33	$1,896,358	33	0
62	Health Care and Social Assistance	112	$11,220,148	113	1
71	Arts, Entertainment, and Recreation	19	$658,638	19	0
72	Accommodation and Food Services	171	$20,447,872	177	6
81	Other Services (except Public Administration)	463	$20,381,626	463	0
TOTALS		6,204	$2,105,114,291	6,249	45

Note: Table A4.1 in the appendix presents the comparison of business eligibility for both in-state and out-of-state businesses

SCENARIO-2: MODIFYING EXISTING SWAM SMALL BUSINESS CRITERIA

As discussed in Scenario 1, the SWaM program uses simple certification criteria to encourage small, minority-owned, and women-owned businesses to participate in the State's procurement contracts. As mentioned earlier, there is a possibility that the inclusiveness of the SWaM definition of "small" may extend program benefits to non-targeted businesses. Businesses that can maintain a small employee footprint by sub-contracting or keep employment averages low by hiring and firing on a seasonal basis can meet the "less than 250 employees" criteria, even if they surpass the $10 million gross receipts threshold. The reverse is also possible. We examined changes to the certification pool using an "AND" instead of "OR" in the existing criteria. That is, requiring businesses to meet both number of employees and gross receipts criteria. Table 4.3 presents the comparison of the number of businesses under the two scenarios.

TABLE 4.3: COMPARISON OF CY 2017 BASED ON NUMBER OF QUALIFYING BUSINESSES FROM SAMPLE DATA

BUSINESS TYPE	USING EXISTING SWAM DEFINITION ("OR" RULE)	USING "AND" RULE	NUMERICAL DIFFERENCE	PERCENT DIFFERENCE
SWaM Certified Businesses in Virginia	19,242	18,084	-1,158	-6%

Adopting "AND" in place of "OR" removes an estimated 6 percent of businesses from the existing pool of certified SWaM businesses. The number of women-owned and minority-owned businesses remain the same, as the ownership rule is not affected. Table A4.2 in the Appendix presents the breakdown by NAICS classification. By changing the criteria from "OR" to "AND," about 17 percent of businesses in the Wholesale Trade sector, and about 11.5 percent of businesses in the Manufacturing sector become ineligible. The conversion from "OR" to "AND" also causes 5.6 percent Retail Trade businesses and 4.3 percent of Professional, Scientific, and Technical Services businesses to lose eligibility. An average of about three percent of businesses in the Transportation and Warehousing, and Information sectors will also will also become ineligible. The following business sectors are not affected by the change:

- Agriculture, Forestry, Fishing and Hunting
- Utilities
- Management of Companies and Enterprises
- Arts, Entertainment, and Recreation

By comparison, adopting "AND" in place of "OR" in the existing small business definition would result in a substantial number of Manufacturing and Wholesale Trade-related businesses becoming ineligible for the SWaM program. These two sectors represent less than 10 percent of all businesses currently certified. Similarly, adopting the "AND" rule also removes a substantial number of businesses in the Retail Trade, Professional Services, and Construction sectors. Together, they equal about 39 percent of all businesses currently certified under the SWaM program. These sectors also account for about 33 percent of women-owned and 29 percent of minority-owned businesses in the Commonwealth.

The differences between the "AND" and "OR" scenarios, for Virginia businesses organized by two-digits NAICS code, is shown in Table A.4.2 in the appendix.

MINIMAL ECONOMIC IMPACT FROM THE ADOPTION OF SBA DEFINITION

Using the results of the SBA scenario simulation, CURA built a statewide economic model with a new set of data reflecting discretionary spending that would take place through the expanded pool of SWaM-certified businesses.

In CY 2015, the number of businesses receiving discretionary spending was 6,827 – approximately 35 percent of the total businesses certified during that period. Of these 6,827 businesses, an estimated 6,218 were licensed in Virginia. Assuming that under the SBA scenario the same proportion of businesses received procurements from the Commonwealth, we would have 7,422 small, minority-owned or women-owned businesses engaged in contracts with the Commonwealth[2].

Obviously, such a small increase in certification numbers of only 0.5 percent from the current spending scenario—doesn't produce an appreciable difference in the economic impact estimates. As shown in Table 4.5, the economic impact metrics (employment, labor income, and total economic impact) of discretionary spending through SWaM-certified businesses using the SBA criteria are almost identical to those calculated under the current scenario. This means that the adoption of the SBA criteria wouldn't produce any significant difference in the impact of SWaM discretionary spending on the Commonwealth's economy.

ISSUES WITH ADOPTING THE SBA DEFINITION

Changing the state's definition of a small business to the federal definition used by the SBA would make the certification process more cumbersome for the small business community as well as the DSBSD staff. Because the SBA's definition is based on NAICS codes and a business's primary industry, the certification staff would have to evaluate each business's eligibility for each NAICS code that it requests.

In order to determine a business's primary industry and the NAICS codes that the business qualifies for, the SBA considers the distribution of receipts, employees, and costs of doing business among the different industries in which business operations occurred for the most recently completed fiscal year. SBA may also consider other factors, such as the distribution of patents, contract awards, and assets. Since this is not part of the current review process, it would require a business to submit more paperwork in order for DSBSD to determine the business's primary industry and proper NAICS code.

In addition, it would lengthen the processing time for SWaM applications. With more paperwork being required and having to review the business's eligibility for each NAICS code, it will take the certification officer a longer time to review all documentation and make a proper eligibility determination. Currently, the average time to review a SWaM application is 1-2 hours. Depending on the number of NAICS codes that a business is requesting, it could take the certification officer an additional 1-2 hours to review the application.

Furthermore, the size standards are usually updated by the U.S. Census Bureau every five years. Due to changes in the economy, the size limits for each NAICS code could change each time the U.S. Census Bureau completes a study. The size standards have been increased every five years since 1997. This would require DSBSD to stay aware of the changes as they occur and to constantly train staff to ensure that they are using the most updated standards.

Using the federal definition of a small business would also require a change in technology for DSBSD and other state agencies and organizations such as eVA and Cardinal. These systems currently use codes for small businesses that are not compatible with the NAICS system. In order to change to NAICS codes, these agencies would have to update their technology and systems.

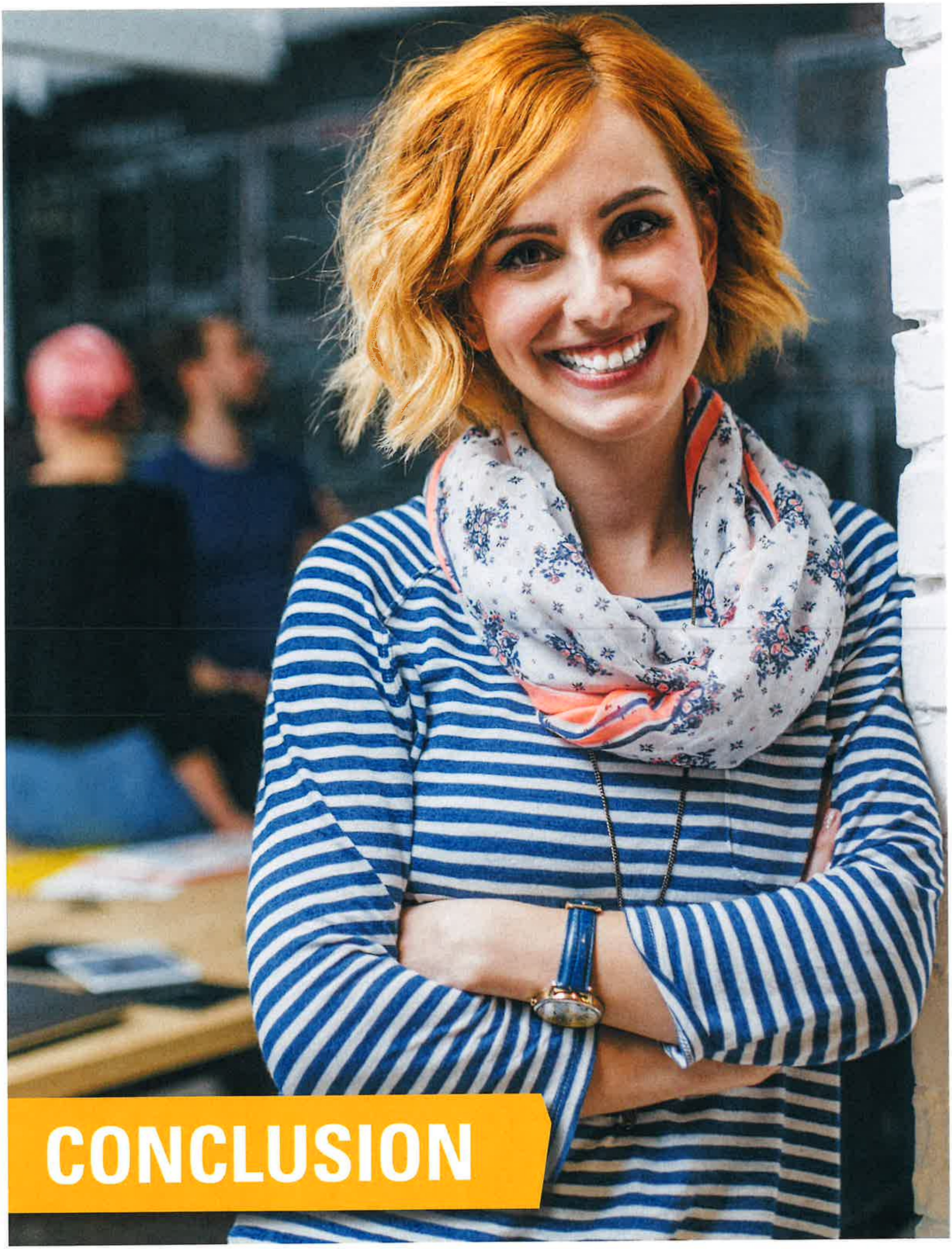
Lastly, changing to the federal definition of a small business would make the SWaM program slightly larger, which would likely lead to an influx of applications to DSBSD. The current staffing level of the certification

2 However, only the spending taking place in Virginia is considered. Out-of-state businesses and relative spending were not included in the analysis, and the total number of Virginia-based businesses (6,243) under this scenario is only 30 more than the current scenario. As described earlier in this chapter, the increase under the SBA scenario would be mostly in the out-of-state businesses.

division could not handle an influx in applications. This would create another backlog of applications and cause the processing times to increase significantly.

Overall, the application process would require more paperwork, more scrutiny, longer processing times, and a change in technology if the small business definition is changed to that of the federal government.

On the other hand, changing the Commonwealth's small business definition to consider gross receipts and number of employees versus gross receipts or number of employees (the AND/OR scenario), would cause little to no impact on the certification process for the small business community or DSBSD staff. Businesses would not be required to submit any additional paperwork, and the processing time frame of 60 business days would remain the same. DSBSD staff training would be necessary to ensure that certification officers are evaluating the firm based on both gross receipts and employees instead of one or the other.



CONCLUSION

CONCLUSION

The SWaM certification program has been designed and implemented to empower minorities and women and to provide small businesses with business opportunities. While the program is essentially measured on the hard metric of 42 percent of discretionary spending across all agencies going to SWaM businesses—a metric that has proven a difficult target to reach—CURA explored additional metrics and features to obtain an overall understanding of the program's effectiveness in addressing its overarching goals.

Although the program has yet to achieve the 42 percent target, DSBSD internal data show other important and positive effects that have resulted from the programs:

- The program has encouraged women and minority participation. Certification numbers show positive participation trends since the program's inception in 2000.
- While SWaM discretionary spending has remained relatively constant since 2009 (approximately $2 billion), the distribution among ownership types has seen a steady increase in spending going towards both minority-owned and women-owned businesses.

In addition, the research team was able to gauge how the program is positively impacting SWaM businesses and the regions in which they operate. A survey of program participants offered a rich picture of SWaM's impacts beyond what data and the economic impact estimates tell:

- A significant percentage of respondents (37 percent) have experienced revenue growth since becoming certified—significantly more than observed in the analysis of sales receipts for non-SwAM businesses (only 5 percent experienced an increase).
- The program is an important factor in business creation and stabilization: 40 percent of respondents deem the SWaM certification program moderately important or very important in their decision to start their business. More than 70 percent consider the program moderately to very important for the long-term viability of their business.
- In CY 2015, the $2.13 billion in discretionary spending for goods and services provided by SWaM-certified businesses generated a total economic impact of more than $3.6 billion, which means that each $1.00 of discretionary spending generates a total economic impact of $1.69.
- The program seems to show positive "trickle down" effects on the state economy and on the target populations that the program aims to serve. Between 9 and 11 percent of SWaM businesses suppliers and sub-contractors are also SWaM-certified businesses, and between 32 and 38 percent of them are located in Virginia.
- These community and economic impacts were confirmed by the business owners interviewed by the research team. Each interviewee produced a personal story about their contribution to their community and the Commonwealth's economy through tax revenues, job creation, and workforce development.
- Finally, SWaM businesses value the communities where they operate. More than three in four survey respondents state that their company participates in at least one form of community engagement among those presented in the survey.

ADOPTING THE SBA DEFINITION
WILL CERTIFY OUT OF STATE BUSINESSES AT A DETRIMENT TO THE COMMONWEALTH'S ECONOMY.

REVIEW OF POLICY SCENARIO 1 [ADOPTING SBA FEDERAL DEFINITION]

The overall in-state percentage of SWaM-eligible businesses under an SBA-based definition of small businesses would remain almost the same compared to the existing pool. However, overall makeup of businesses by industry would shift. Under the SBA definition, a significant number of additional businesses in service sectors—primarily professional services and administrative support—as well as in manufacturing sectors would become SWaM-eligible. At the same time, many businesses in wholesale and retail sectors would become ineligible. A change in definition would require additional paperwork and burden on the applicant and increased review time by DSBSD staff delaying the certification process. More businesses would be introduced into the vendor pool but 99.6 percent of newly added businesses would be from outside of Virginia. This would be detrimental to the Commonwealth's economy.

REVIEW OF POLICY SCENARIO 2 [CHANGING CURRENT DEFINITION FROM 'OR' TO 'AND']

On the other hand, analysis indicates converting the existing SWaM small business definition from employees OR gross receipts to employees AND gross receipts would significantly reduce the number of businesses eligible for the program, potentially diminishing the share of discretionary spending going to SWaM businesses. This change would have little to no impact to the application process or DSBSD staff.

APPENDIX: REFERENCES

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APPENDIX: TABLES

TABLE A2.1: NAICS CATEGORIES REPRESENTED BY SURVEY SAMPLE

NAICS CATEGORY	FREQUENCY	PERCENT
Professional, Scientific, and Technical Services	447	30.3%
Other Services (except Public Administration)	281	19.1%
Construction	221	15.0%
Retail Trade	135	9.2%
Wholesale Trade	77	5.2%
Manufacturing	62	4.2%
Educational Services	35	2.4%
Health Care and Social Assistance	35	2.4%
Transportation and Warehousing	35	2.4%
Information (i.e. publishing, journalism, telecommunication, library, etc.)	29	2.0%
Accommodation and Food Services	25	1.7%
Management of Companies and Enterprises	21	1.4%
Arts, Entertainment, and Recreation	19	1.3%
Finance and Insurance	14	0.9%
Agriculture, Forestry, Fishing and Hunting	10	0.7%
Administrative and Support and Waste Management and Remediation Services	8	0.5%
Utilities (i.e. electric, gas, water, sewage)	8	0.5%
Public Administration	6	0.4%
Real Estate Rental and Leasing	4	0.3%

TABLE A2.2: SURVEY QUESTIONS AND RESULTS - BUSINESS REVENUES

	ALL		MINORITY		WOMAN		SMALL	
	N	%	N	%	N	%	N	%
How have your annual revenues (including all revenue streams) changed since becoming SWaM/DBE-certified?								
Increased	549	37.2%	157	31.7%	174	41.9%	218	38.7%
Decreased	109	7.4%	36	7.3%	28	6.7%	44	7.8%
Remained the same	817	55.4%	303	61.1%	213	51.3%	301	53.5%
Total	1475	100.0%	496	100.0%	415	100.0%	563	100.0%
By how much have your annual revenues increased since becoming SWaM/DBE-certified?								
1-20%	288	52.5%	73	46.5%	90	51.7%	125	57.3%
21-40%	100	18.2%	21	13.4%	33	19.0%	46	21.1%
41-60%	56	10.2%	22	14.0%	20	11.5%	14	6.4%
61-80%	21	3.8%	8	5.1%	7	4.0%	6	2.8%
81-100%	22	4.0%	10	6.4%	7	4.0%	5	2.3%
more than 100%	62	11.3%	23	14.6%	17	9.8%	22	10.1%
Total	549	100.0%	157	100.0%	174	100.0%	218	100.0%
By how much have your annual revenues decreased since becoming SWaM/DBE-certified?								
1-20%	41	37.6%	6	16.7%	13	46.4%	21	47.7%
21-40%	29	26.6%	14	38.9%	7	25.0%	8	18.2%
41-60%	20	18.3%	7	19.4%	3	10.7%	10	22.7%
61-80%	11	10.1%	4	11.1%	3	10.7%	4	9.1%
81-100%	8	7.3%	5	13.9%	2	7.1%	1	2.3%
Total	109	100.0%	36	100.0%	28	100.0%	44	100.0%
Prior to becoming SWaM/DBE-certified, what percentage of your business's annual revenues came from contracts with a Commonwealth of Virginia agency?								
0%	864	58.6%	393	79.2%	250	60.2%	220	39.1%
1-20%	474	32.1%	68	13.7%	123	29.6%	283	50.3%
21-40%	61	4.1%	11	2.2%	15	3.6%	35	6.2%
41-60%	28	1.9%	7	1.4%	8	1.9%	13	2.3%
61-80%	24	1.6%	9	1.8%	7	1.7%	8	1.4%
81-100%	24	1.6%	8	1.6%	12	2.9%	4	0.7%
Total	1475	100.0%	496	100.0%	415	100.0%	563	100.0%
Currently, what percentage of your business's annual revenues comes from contracts with a Commonwealth of Virginia agency?								
0%	657	44.5%	326	65.7%	188	45.3%	142	25.2%
1-20%	576	39.1%	105	21.2%	145	34.9%	326	57.9%
21-40%	104	7.1%	28	5.6%	30	7.2%	46	8.2%
41-60%	45	3.1%	11	2.2%	16	3.9%	18	3.2%
61-80%	42	2.8%	14	2.8%	14	3.4%	14	2.5%
81-100%	51	3.5%	12	2.4%	22	5.3%	17	3.0%
Total	1475	100.0%	496	100.0%	415	100.0%	563	100.0%

TABLE A2.3: ANNUAL REVENUE TRENDS, BY NAICS CATEGORY

NAICS	N (TOTAL)	INCREASE		DECREASE		REMAIN THE SAME	
		#	% OF N	#	% OF N	#	# OF N
Mining	3	2	67%	1	33%	0	0%
Utilities (i.e. electric, gas, water, sewage)	8	5	63%	0	0%	3	38%
Administrative and Support and Waste Management and Remediation Services	8	4	50%	0	0%	4	50%
Real Estate Rental and Leasing	4	2	50%	0	0%	2	50%
Wholesale Trade	77	35	45%	4	5%	38	49%
Accommodation and Food Services	25	11	44%	0	0%	14	56%
Retail Trade	135	58	43%	16	12%	61	45%
Management of Companies and Enterprises	21	9	43%	3	14%	9	43%
Construction	221	93	42%	14	6%		52%
Manufacturing	62	23	37%	4	6%	35	56%
Professional, Scientific, and Technical Services	447	162	36%	33	7%		56%
Finance and Insurance	14	5	36%	0	0%	9	64%
Other Services (except Public Administration)	281	97	35%	17	6%		59%
Transportation and Warehousing	35	11	31%	3	9%	21	60%
Agriculture, Forestry, Fishing and Hunting	10	3	30%	0	0%	7	70%
Educational Services	35	10	29%	0	0%	25	71%
Information (i.e. publishing, journalism, telecommunication, library, etc.)	29	8	28%	1	3%	20	69%
Health Care and Social Assistance	35	9	26%	9	26%	17	49%
Arts, Entertainment, and Recreation	19	2	11%	2	11%	15	79%
Public Administration	6	0	0%	2	33%	4	67%
Total	**1,475**						

TABLE A2.4: IMPORTANCE OF SWAM/DBE CERTIFICATION TO BUSINESS

SCALE	ALL		MINORITY		WOMAN		SMALL	
	#	%	#	%	#	%	#	%
How important of a factor was the SWaM/DBE Program in your decision to start your business?								
Not Important	750	50.8%	162	32.7%	223	53.7%	365	64.8%
Slightly Important	136	9.2%	48	9.7%	36	8.7%	52	9.2%
Moderately Important	146	9.9%	59	11.9%	40	9.6%	47	8.3%
Important	181	12.3%	73	14.7%	51	12.3%	57	10.1%
Very Important	262	17.8%	154	31.0%	65	15.7%	42	7.5%
Total	1,475		496	1	415	1	563	1
How important is your participation in the SWaM/DBE program to the long-term viability of your business?								
Not Important	169	11.5%	39	7.9%	56	13.5%	74	13.1%
Slightly Important	268	18.2%	46	9.3%	84	20.2%	138	24.5%
Moderately Important	224	15.2%	61	12.3%	65	15.7%	98	17.4%
Important	332	22.5%	111	22.4%	88	21.2%	133	23.6%
Very Important	482	32.7%	239	48.2%	122	29.4%	120	21.3%
Total	1,475	1	496	1	415	1	563	1
Would your business exist if it was not participating in the SWaM/DBE program?								
Yes	1255	85.1%	392	79.0%	356	85.8%	506	89.9%
No	64	4.3%	27	5.4%	21	5.1%	16	2.8%
Not sure	156	10.6%	77	15.5%	38	9.2%	41	7.3%
Total	1,475	1	496	1	415	1	563	1

TABLE A2.5: EMPLOYMENT AND SALARY TRENDS, BY CERTIFICATION TYPE

	ALL		MINORITY		WOMAN		SMALL	
	#	%	#	%	#	%	#	%
How has your business's employment changed since becoming SWaM/DBE-certified?								
Increased	304	21%	85	17.1%	95	22.9%	124	22.0%
Decreased	73	5%	17	3.4%	20	4.8%	35	6.2%
Remained the same	1,098	74%	394	79.4%	300	72.3%	404	71.8%
Total	1,475	100%	496	100%	415	100%	563	100%
How has the average salary of your employees changed since becoming SWaM/DBE-certified?								
Increased	403	27.3%	91	18.3%	116	28.0%	196	34.8%
Decreased	51	3.5%	17	3.4%	15	3.6%	19	3.4%
Remained the same	1,021	69.2%	388	78.2%	284	68.4%	348	61.8%
Total	1,475	100%	496	100%	415	100%	563	100%
By how much has the average salary of your employees increased since becoming SWaM/DBE-certified?								
1-20%	307	76.2%	62	68.1%	85	73.3%	160	81.6%
21-40%	57	14.1%	14	15.4%	17	14.7%	26	13.3%
41-60%	19	4.7%	8	8.8%	6	5.2%	5	2.6%
61-80%	7	1.7%	4	4.4%	1	0.9%	2	1.0%
81-100%	8	2.0%	2	2.2%	5	4.3%	1	0.5%
More than 100%	5	1.2%	1	1.1%	2	1.7%	2	1.0%
Total	403	100%	91	100%	116	100%	196	100%

A2.6: SURVEY QUESTIONS AND RESULTS - SUB-CONTRACTORS

	ALL		MINORITY		WOMEN		SMALL	
	N	%	N	%	N	%	N	%
Since becoming SWaM/DBE-certified, has the number of sub-contractors you work with increased?								
Yes	278	18.8%	93	18.8%	87	21.0%	98	17.4%
No	719	48.7%	261	52.6%	180	43.4%	277	49.2%
N/A	478	32.4%	142	28.6%	148	35.7%	188	33.4%
Total	1475	100%	496	100%	415	100%	563	100%
What percentage of all your sub-contractors are SWaM/DBE-certified?								
0%	544	54.6%	236	66.7%	138	51.7%	169	45.1%
1-20%	299	30.0%	73	20.6%	84	31.5%	142	37.9%
21-40%	58	5.8%	20	5.6%	16	6.0%	22	5.9%
41-60%	50	5.0%	11	3.1%	16	6.0%	23	6.1%
61-80%	24	2.4%	5	1.4%	8	3.0%	11	2.9%
81-100%	22	2.2%	9	2.5%	5	1.9%	8	2.1%
Total	997	100%	354	100%	267	100%	375	100%
What percentage of the sub-contractors you work with are located within the Commonwealth of Virginia?								
0%	311	31.2%	159	44.9%	78	29.2%	73	19.5%
1-20%	224	22.5%	86	24.3%	55	20.6%	83	22.1%
21-40%	47	4.7%	13	3.7%	15	5.6%	19	5.1%
41-60%	45	4.5%	10	2.8%	13	4.9%	22	5.9%
61-80%	61	6.1%	14	4.0%	19	7.1%	28	7.5%
81-100%	309	31.0%	72	20.3%	87	32.6%	150	40.0%
Total	997	100%	354	100%	267	100%	375	100%

A2.7: SURVEY QUESTIONS AND RESULTS - SUPPLIERS

	ALL		MINORITY		WOMAN		SMALL	
	N	%	N	%	N	%	N	%
What percentage of your business's suppliers are SWaM/DBE-certified?								
0%	594	52.8%	243	66.0%	148	50.3%	203	43.8%
1-20%	388	34.5%	87	23.6%	109	37.1%	192	41.4%
21-40%	75	6.7%	18	4.9%	22	7.5%	35	7.5%
41-60%	39	3.5%	11	3.0%	7	2.4%	21	4.5%
61-80%	17	1.5%	2	0.5%	6	2.0%	9	1.9%
81-100%	13	1.2%	7	1.9%	2	0.7%	4	0.9%
N/A		0.0%		0.0%		0.0%		0.0%
Total	1126	1	368	1	294	1	464	100.0%
What percentage of your business's suppliers are located within the Commonwealth of Virginia?								
0%	291	25.8%	133	36.0%	82.0	27.9%	76.0	16.4%
1-20%	350	31.1%	104	28.2%	90.0	30.6%	156.0	33.7%
21-40%	103	9.1%	28	7.6%	31.0	10.5%	44.0	9.5%
41-60%	82	7.3%	25	6.8%	15.0	5.1%	42.0	9.1%
61-80%	111	9.9%	23	6.2%	27.0	9.2%	61.0	13.2%
81-100%	189	16.8%	56	15.2%	49	16.7%	84	18.1%
N/A		0.0%		0.0%		0.0%		0.0%
Total	1126	1	369	1	294	1	463	1

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TABLE A2.8: SURVEY QUESTION AND RESULTS - COMMUNITY ENGAGEMENT

	ALL		MINORITY		WOMAN		SMALL	
	N	%	N	%	N	%	N	%
Mentoring	399	27.1%	186	37.5%	113	27.2%	99	17.6%
Donations	673	45.6%	193	38.9%	176	42.4%	303	53.8%
Community Education	336	22.8%	127	25.6%	102	24.6%	106	18.8%
Local Clubs	587	39.8%	163	32.9%	179	43.1%	244	43.3%
Local Initiatives	320	21.7%	111	22.4%	101	24.3%	107	19.0%
Community Events	429	29.1%	142	28.6%	129	31.1%	157	27.9%
Scholarships	140	9.5%	55	11.1%	51	12.3%	33	5.9%
Community Boards	377	25.6%	118	23.8%	116	28.0%	142	25.2%
Local Sports	256	17.4%	50	10.1%	68	16.4%	138	24.5%
Charity	620	42.0%	167	33.7%	180	43.4%	272	48.3%
Volunteering	691	46.8%	239	48.2%	206	49.6%	245	43.5%
Other	14	0.9%	7	1.4%	4	1.0%	3	0.5%
None	332	22.5%	129	26.0%	84	20.2%	119	21.1%
Community Engagement	1134	76.9%	361	72.8%	331	79.8%	441	78.3%
Total N*	1475		496		415		563	

Note: * Respondents could select more than one type of community engagement; thus 'N' values do not equal Total N, nor do % values total 100%

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TABLE A2.9: SURVEY QUESTION AND RESULTS - LOCATION OF BUSINESS (STATE)

STATE	FREQUENCY	PERCENT
Virginia	1,280	86.8%
Maryland	71	4.8%
North Carolina	29	2.0%
Georgia	17	1.2%
Pennsylvania	12	0.8%
New Jersey	9	0.6%
South Carolina	7	0.5%
Texas	7	0.5%
Missouri	6	0.4%
New York	6	0.4%
Massachusetts	4	0.3%
District of Columbia	3	0.2%
Illinois	3	0.2%
Indiana	3	0.2%
Michigan	3	0.2%
Ohio	3	0.2%
Washington	3	0.2%
Nevada	2	0.1%
Wisconsin	2	0.1%
California	1	0.1%
Deleware	1	0.1%
Kentucky	1	0.1%
Nebraska	1	0.1%
South Dakota	1	0.1%
Total	1,475	100.0%

TABLE A4.1: COMPARISON OF BUSINESS ELIGIBILITY USING EXISTING SWAM AND SBA SMALL BUSINESS DEFINITION (IN-STATE AND OUT-OF-STATE BUSINESSES)

NAICS SECTORS	NAICS SECTORS DEFINITION	CURRENT CERTIFIED SWAM BUSINESSES	NUMBER OF BUSINESSES WHEN SBA RULES ARE APPLIED	NUMERICAL DIFFERENCE	PERCENT CHANGE
11	Agriculture, Forestry, Fishing and Hunting	105	116	11	10.2%
21	Mining, Quarrying, Oil and Gas Extraction	53	59	6	12.2%
22	Utilities	12	14	1	9.9%
23	Construction	4249	4671	422	9.9%
31-33	Manufacturing	1198	1335	138	11.5%
42	Wholesale Trade	2265	2463	197	8.7%
44-45	Retail Trade	2674	2934	260	9.7%
48-49	Transportation and Warehousing	922	1016	94	10.2%
51	Information	374	414	39	10.5%
52	Finance and Insurance	34	37	3	10.1%
53	Real Estate Rental and Leasing	244	271	26	10.8%
54	Professional, Scientific, and Technical Services	2572	2842	270	10.5%
55	Management of Companies and Enterprises	6	7	1	12.4%
56	Administrative and Support and Waste Management and Remediation Services	2021	2256	235	11.6%
61	Educational Services	102	113	10	10.2%
62	Health Care and Social Assistance	347	382	35	10.2%
71	Arts, Entertainment, and Recreation	59	65	6	9.9%
72	Accommodation and Food Services	529	589	59	11.2%
81	Other Services (except Public Administration)	1433	1575	142	9.9%

TABLE A4.2: COMPARISON OF BUSINESS ELIGIBILITY USING "OR" AND "AND" SCENARIO FOR THE EXISTING SWAM SMALL BUSINESS DEFINITION. (NOTE: DSBSD CURRENTLY USES THE "OR" CRITERIA)

NAICS SECTORS	NAICS SECTORS DEFINITION	PERCENT CHANGE
11	Agriculture, Forestry, Fishing and Hunting	-0.4%
21	Mining, Quarrying, Oil and Gas Extraction	-12.6%
22	Utilities	-3.0%
23	Construction	-5.8%
31-33	Manufacturing	-11.5%
42	Wholesale Trade	-16.8%
44-45	Retail Trade	-5.6%
48-49	Transportation and Warehousing	-2.5%
51	Information	-2.8%
52	Finance and Insurance	-1.9%
53	Real Estate Rental and Leasing	-1.6%
54	Professional, Scientific, and Technical Services	-4.3%
55	Management of Companies and Enterprises	-5.4%
56	Administrative and Support and Waste Management and Remediation Services	-3.0%
61	Educational Services	-0.9%
62	Health Care and Social Assistance	-1.6%
71	Arts, Entertainment, and Recreation	-0.4%
72	Accommodation and Food Services	-2.0%
81	Other Services (except Public Administration)	-0.5%

TABLE A4.3: PERCENT DISTRIBUTION OF WOMEN-OWNED AND MINORITY-OWNED BUSINESSES BY NAICS

NAICS SECTORS	SECTOR DESCRIPTION	PERCENT WOMEN-OWNED	PERCENT MINORITY-OWNED
54	Professional, Scientific, and Technical Services	17.5%	14.7%
44-45	Retail Trade	15.6%	13.9%
81	Other Services (except Public Administration)	11.1%	11.8%
62	Health Care and Social Assistance	10.3%	9.0%
53	Real Estate Rental and Leasing	7.8%	5.2%
56	Administrative and Support and Waste Management and Remediation Services	7.6%	6.5%
23	Construction	4.2%	6.6%
71	Arts, Entertainment, and Recreation	4.2%	3.0%
61	Educational Services	3.4%	2.5%
52	Finance and Insurance	3.3%	4.2%
31-33	Manufacturing	3.1%	2.3%
42	Wholesale Trade	3.1%	3.2%
48-49	Transportation and Warehousing	2.8%	8.6%
72	Accommodation and Food Services	2.6%	4.8%
51	Information	2.2%	3.0%
11	Agriculture, Forestry, Fishing and Hunting	0.6%	0.4%
55	Management of Companies and Enterprises	0.2%	0.2%
22	Utilities	0.1%	0.2%
21	Mining, Quarrying, Oil and Gas Extraction	0.1%	0.1%

APPENDIX: SURVEY

Virginia Department of Small Business & Supplier Diversity

Virginia Small Business and Supplier Diversity Survey

Introduction

The Virginia Department of Small Business and Supplier Diversity (SBSD) has requested the Center for Urban and Regional Analysis (CURA) at Virginia Commonwealth University (VCU) to conduct an economic impact study of the Small, Women-owned, and Minority-owned (SWaM) as well as the Disadvantaged Business Enterprise (DBE) certification programs on participating businesses. As a part of the research, CURA will administer the following online survey.

The survey, which will take approximately 10 minutes to complete, contains questions pertaining to your business's performance, employment, sub-contractors, suppliers, and community engagement. All information collected will be kept strictly confidential. Responses will be analyzed and reported only in aggregate (totals). No individuals or companies will be identified in the published results. Any information that could identify you or your business will be stored separately and will not be associated to your email or your business name.

Your participation in this survey is important as it will inform SBSD's future policy and programming.

Virginia Department of Small Business & Supplier Diversity

Virginia Small Business and Supplier Diversity Survey

General

* 1. Business name

* 2. Which of the following best describes your business sector?

Virginia Department of Small Business & Supplier Diversity

Virginia Small Business and Supplier Diversity Survey

General

* 3. In what year was your business established?

* 4. In what year did your business first become SWaM/DBE-certified?

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Virginia Department of Small Business & Supplier Diversity

Virginia Small Business and Supplier Diversity Survey

General

* 5. What is your business's SWaM certification number?

* 6. Is your business certified as SWaM, DBE, or both?

- SWaM
- DBE
- both SWaM/DBE

Virginia Department of Small Business & Supplier Diversity

Virginia Small Business and Supplier Diversity Survey

General

* 7. How many employees do you currently have?

Full-time

Part-time

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Virginia Department of Small Business & Supplier Diversity

Virginia Small Business and Supplier Diversity Survey

Business

* 8. How have your annual revenues (including all revenue streams) changed since becoming SWaM/DBE-certified?

- ◯ Increased
- ◯ Decreased
- ◯ Remained the same

Virginia Department of Small Business & Supplier Diversity

Virginia Small Business and Supplier Diversity Survey

Business

* 9. By how much have your annual revenues increased since becoming SWaM/DBE-certified?

- 1-20%
- 21-40%
- 41-60%
- 61-80%
- 81-100%
- more than 100%

Virginia Department of Small Business & Supplier Diversity

Virginia Small Business and Supplier Diversity Survey

Business

* 10. By how much have your annual revenues decreased since becoming SWaM/DBE-certified?

- ◯ 1-20%
- ◯ 21-40%
- ◯ 41-60%
- ◯ 61-80%
- ◯ 81-100%

Virginia Department of Small Business & Supplier Diversity

Virginia Small Business and Supplier Diversity Survey

Business

* 11. Prior to becoming SWaM/DBE-certified, what percentage of your business's annual revenues came from contracts with a Commonwealth of Virginia agency?

- 0%
- 1-20%
- 21-40%
- 41-60%
- 61-80%
- 81-100%

* 12. Currently, what percentage of your business's annual revenues comes from contracts with a Commonwealth of Virginia agency?

- 0%
- 1-20%
- 21-40%
- 41-60%
- 61-80%
- 81-100%

Virginia Department of Small Business & Supplier Diversity

Virginia Small Business and Supplier Diversity Survey

Business

* 13. How important of a factor was the SWaM/DBE program in your decision to start your business?

- Very Important
- Important
- Moderately Important
- Slightly Important
- Not Important

* 14. How important is your participation in the SWaM/DBE program to the long-term viability of your business?

- Very Important
- Important
- Moderately Important
- Slightly Important
- Not Important

* 15. Would your business exist if it was not participating in the SWaM/DBE program?

- Yes
- No
- Not sure

Virginia Department of Small Business & Supplier Diversity

Virginia Small Business and Supplier Diversity Survey

Employment

* 16. How has your business's employment changed since becoming SWaM/DBE-certified?

- ◯ Increased
- ◯ Decreased
- ◯ Remained the same

Virginia Department of Small Business & Supplier Diversity

Virginia Small Business and Supplier Diversity Survey

Employment

* 17. By how many people has employment increased since becoming SWaM/DBE-certified?

* 18. What percentage of the employees identified in the previous question fall under the following employment categories?

Total must equal 100; e.g. Full-time 65, Part-time 35

Full-time

Part-time

Virginia Department of Small Business & Supplier Diversity

Virginia Small Business and Supplier Diversity Survey

Employment

* 19. By how many people has employment decreased since becoming SWaM/DBE-certified?

Virginia Department of Small Business & Supplier Diversity

Virginia Small Business and Supplier Diversity Survey

Employment

* 20. How many of your total employees fall under the following categories?

Please answer in terms of number of employees; also, please consider that some employees may fall under multiple categories.

Minority (e.g. Asian, African American, Hispanic, Eskimo/Aluet, Native American)	
Woman	
Service disabled veteran	

Virginia Department of Small Business & Supplier Diversity

Virginia Small Business and Supplier Diversity Survey

Employment

* 21. How has the average salary of your employees changed since becoming SWaM/DBE-certified?

- Increased
- Decreased
- Remained the same

APPENDIX

Virginia Department of Small Business & Supplier Diversity

Virginia Small Business and Supplier Diversity Survey

Employment

* 22. By how much has the average salary of your employees increased since becoming SWaM/DBE-certified?

- 1-20%
- 21-40%
- 41-60%
- 61-80%
- 81-100%
- more than 100%

* 23. Please rank the following factors in terms of impact on increased wages from 1 to 5 (with 1 being most important and 5 being least important) without repeating any numbers.

- Inflation
- Increase in the cost of living
- Increase in employee productivity
- Promotion
- Improved financial standing of company due to SWaM/DBE certification

APPENDIX

Virginia Department of Small Business & Supplier Diversity

Virginia Small Business and Supplier Diversity Survey

Sub-Contractors

The following section contains questions regarding your business's sub-contractors. A sub-contractor is a person or business firm contracted to do part of another business's work.

* 24. Since becoming SWaM/DBE-certified, has the number of sub-contractors you work with increased?

- ◯ Yes
- ◯ No
- ◯ Not applicable (my business does not work with sub-contractors)

Virginia Department of Small Business & Supplier Diversity

Virginia Small Business and Supplier Diversity Survey

Sub-Contractors

* 25. What percentage of all your sub-contractors are SWaM/DBE-certified?

- 0%
- 1-20%
- 21-40%
- 41-60%
- 61-80%
- 81-100%

Virginia Department of Small Business & Supplier Diversity

Virginia Small Business and Supplier Diversity Survey

Sub-Contractors

* 26. What percentage of the sub-contractors you work with are located within the Commonwealth of Virginia?

- ◯ 0%
- ◯ 1-20%
- ◯ 21-40%
- ◯ 41-60%
- ◯ 61-80%
- ◯ 81-100%

APPENDIX

Virginia Department of Small Business & Supplier Diversity

Virginia Small Business and Supplier Diversity Survey

Suppliers

The following section contains questions about your company's suppliers. A supplier is a person or entity that provides something needed such as a product or service.
e.g. A company that provides microprocessors to a major computer business.

* 27. What percentage of your business's suppliers are SWaM/DBE-certified?

- ◯ 0%
- ◯ 1-20%
- ◯ 21-40%
- ◯ 41-60%
- ◯ 61-80%
- ◯ 81-100%
- ◯ Not applicable (my business does not have suppliers)

Virginia Department of Small Business & Supplier Diversity

Virginia Small Business and Supplier Diversity Survey

Suppliers

* 28. What percentage of your business's suppliers are located within the Commonwealth of Virginia?

- 0%
- 1-20%
- 21-40%
- 41-60%
- 61-80%
- 81-100%

Virginia Department of Small Business & Supplier Diversity

Virginia Small Business and Supplier Diversity Survey

Community Engagement

* 29. Is your business or its employees involved in any of the following? (select all that apply)

- [ ] Business/ entrepreneurship mentoring
- [ ] Donations
- [ ] Community education
- [ ] Local associations or clubs
- [ ] Local initiatives
- [ ] Participating in, sponsoring, planning or hosting community events
- [ ] Scholarship fund
- [ ] Serving on community boards
- [ ] Sponsoring a local sports team
- [ ] Supporting a local charity
- [ ] Volunteering
- [ ] None of the above
- [ ] Other (please specify)

Virginia Department of Small Business & Supplier Diversity

Virginia Small Business and Supplier Diversity Survey

Demographic

* 30. In which ZIP Code is your business located?*e.g. 23284*

* 31. What is the majority owner's race/ethnicity?

- Asian American
- African American
- Caucasian
- Hispanic American
- Eskimo and/or Aleut
- Native American
- Other (please specify)

* 32. What is the majority owner's gender?

- Male
- Female

* 33. What is the majority owner's highest level of education?

- High school, GED equivalent
- Some college, associate's degree
- Bachelor's degree
- Graduate, professional degree

Virginia Department of Small Business & Supplier Diversity

Virginia Small Business and Supplier Diversity Survey

Comments

34. Feel free to provide any comments or questions you may have regarding this survey, the SWaM/DBE program, or SBSD in general.

APPENDIX

APPROVED Meeting Minutes

Public Body Procurement Workgroup

Meeting # 6

Tuesday, October 8, 2024, 1:00 p.m.
House South Subcommittee Room, 2nd floor
General Assembly Building
201 North 9th Street, Richmond, Virginia 23219

http://dgs.virginia.gov/dgs/directors-office/pwg/

The Public Body Procurement Workgroup (the Workgroup) met in person in the House South Subcommittee Room in the General Assembly Building in Richmond, Virginia, with Sandra Gill, Deputy Director of the Department of General Services (DGS), presiding. The meeting included with approval of the previous meeting minutes, Workgroup discussion on drafting recommendations for HB 1524, followed by, presentations by Virginia Department of Small Business and Supplier Diversity (DSBSD) and the Joint Legislative Audit and Review Commission (JLARC) on HB 1404 and Workgroup discussion on HB 1404. Materials presented at the meeting are available through the Workgroup's website.

Workgroup members and representatives present at the meeting included Sandra Gill (Department of General Services), Verniece Love (Department of Small Business and Supplier Diversity), Joshua Heslinga (Virginia Information Technologies Agency), Lisa Pride (Virginia Department of Transportation), Jason Saunders (Department of Planning and Budget), Patricia Innocenti (Virginia Association of Governmental Procurement), Kimberly Dulaney (Virginia Association of State Colleges and University Purchasing Professionals), Andrea Peeks (House Appropriations Committee), Mike Tweedy (Senate Finance and Appropriations), Leslie Allen (Office of the Attorney General), and Rebecca Schultz (Division of Legislative Services).

I. Call to Order; Remarks by Chair

Gill called the meeting to order and moved into the second agenda item.

II. Approval of Meeting Minutes from the September 17, 2024, Workgroup Meeting

Joshua Heslinga made a motion to approve the meeting minutes from the September 17, 2024, meeting of the Workgroup. The motion was seconded, and unanimously approved by the Workgroup.

III. Public Comment on HB 1524

There was no public comment either in support or opposition or neutral stance to HB 1524.

IV. Discussion on HB 1524 Preliminary Findings and Recommendations

Sandra Gill said the Workgroup would move into discussion on HB 1524. She reminded the members that the Department of Taxation had been asked to come and present and that they could not present at the Oct. 8 meeting, so they will be presenting at the Oct. 22 meeting. Thus, she asked that the Workgroup pause on drafting anything associated with funding or tax credits until after the Department of Taxation presentation. Gill then reminded the Workgroup that in the letter from the member, the Workgroup was tasked with studying five items related to the bill:

- Increasing the percentage of RAP,
- Cost savings to the Commonwealth of Virginia,
- Environmental impacts,
- Durability and safety,
- And the use of repurposed waste materials.

Gill summarized that the Workgroup heard amazing presentations from the delegate, industry leaders who said that VDOT is a national leader around the topic of RAP, DEQ and VDOT. She said the Workgroup heard from the industry that VDOT currently has specifications around the use of RAP, allowing up to 35% RAP and that VDOT uses on average, 29%. Gill also mentioned that she thought it was particularly interesting that there are 12 VDOT pilot projects that are assessing and gathering information around the five items listed in the delegate's letter. After the summary she asked for any additional input or comments from the Workgroup.

Hearing none, Gill moved forward proposing a possible recommendation that the General Assembly would request VDOT to report on the above-mentioned items in 2026 when she said she believes the analysis will be complete on the 12 pilot projects. She asked Lisa Pride with VDOT to verify that timeframe, and Pride did. Gill asked the Workgroup for any thoughts on that recommendation.

Heslinga stated that it sounded good to him because the bill as he understands it, does not upset the work that VDOT is currently doing in the field. Therefore, it would make sense for VDOT to report its findings to the General Assembly in 2026 so that those findings could be considered at that time.

There was no other comment. Gill articulated the proposed draft recommendation once more, saying that the Workgroup is proposing to move forward with the recommendation: "The General Assembly consider requiring VDOT to report out in 2026 regarding the 12 pilot programs which address the five items in the bill to include but not limited to: the use of recycled asphalt mixes, the cost savings to the commonwealth, if applicable, where in-place asphalt recycling occurred, the environmental impacts, and the durability, safety and longevity of pavement services built with higher percentage of RAP."

Jason Saunders noted a technical consideration that Gill referenced the bill, when the five items came from the delegate's letter and not the bill. Gill thanked Saunders for that correction and re-read the proposed recommendation, switching out "bill" for "the Speaker's letter." The Workgroup agreed to move forward with that recommendation and vote on it at the next meeting.

> "The General Assembly could consider requiring VDOT to report out in 2026 regarding the 12 pilot programs which address the five items addressed in the Speaker's letter to include but not limited to: the use of recycled asphalt mixes, the cost savings to the commonwealth, if applicable, where in-place asphalt recycling occurred, the environmental impacts, and the durability, safety and longevity of pavement services built with higher percentage of RAP."

Gill said the Workgroup would be hearing from the Department of Taxation regarding avenues to provide the funding via tax credit and how the existing tax credits have been used.

V. Presentation on HB 1404

Verniece Love, Deputy Director of the Department of Small Business and Supplier Diversity (DSBSD) gave a presentation on HB 1404. She reminded the Workgroup that at the last meeting she gave a presentation on the certification process for small businesses and the small business definition. She said she was asked at the last meeting to provide additional information on neighboring states and how they define small business.

She asked the Workgroup members to let her know if there are any states she did not include on which they would like this information. She said she focused on states along the east coast from Maryland down to Florida.

First, she reminded everyone what Virginia's small business definition is explaining that it is 250 employees or fewer OR average gross receipts of $10 million or less averaged over the previous three years.

Love then moved to Washington D.C.'s definition, highlighting that their program is for industry firms only, and the businesses have to be located in the District of Columbia by meeting one of four standards: more than 50% of the employees of the business are residents or the District; or the owners of more than 50% of the business enterprise are residents of the District; or move than 50 % of the assets of the business, excluding bank accounts, are in the District; or more than 50% of the business gross receipts are District gross receipts. They have what they call the Certified Business Enterprise program which is similar to Virginia's program. They are different designations under their CBE program for which a business can qualify. Small Business Enterprise is a sub-category under their CBE program. Their size standards are based on a five-year average as opposed to Virginia's three-year average. Additionally, Love pointed out that like the federal SBA, they use industries, but they do not use the federal SBA definition, they have their own with each industry having their own limits.

Love then moved on to Maryland, summarizing that they have different designations within their program like their Small Business Reserve Program which requires businesses to be for profit, independently owned and operated, not a subsidiary, not dominant in its field of operation and either employee limit or gross receipts. But they have it broken out by industry as well.

Tennessee was next in Love's presentation. Love explained that Tennessee has a stipulation that the business must be in business for at least two years before it can qualify for the certification. She said for their size standards, the businesses can have no more than $10 million averaged over the past three years or no more than 99 full-time employees.

North Carolina, Love said, requires that the small business must be headquartered in NC, and their annual income cannot exceed $1.5 million. They can have no more than 100 employees in order to qualify. She pointed out a North Carolina caveat that the do deduct cost of goods sold when they are calculating the gross revenue for the companies.

Next Love highlighted South Carolina, saying that they do not certify just a small business. They certify small businesses that are owned by women or minorities. The use the SBA definition for the small business portion, and they require to owners to be socially, and economically disadvantaged individuals as defined by the federal definition.

Love presented on Georgia next, saying they do not have a formal certification for small businesses but allow businesses to self-certify as small businesses. They consider businesses with less than 300 employees and less than $30 million in gross receipts as a small business. So, their definition is even broader than Virginia's.

The last state in Love's presentation was Florida. She said Florida is like SC where they do not certify a small business, the owners must be women, minorities or veterans. They do consider size when they are certifying—200 or fewer full-time employees. The business must be based in Florida.

There were no questions, and with that Love concluded her presentation.

VI. Presentation on HB 1404

The Workgroup turned their attention to the next presentation on HB 1404 from the Joint Legislative Audit and Review Commission (JLARC) about a study they did a few years ago on the operations of DSBSD. Justin Brown began the presentation on the JLARC 2020 study, highlighting the findings that came from the study. The findings included:

SBSD's business process has become more timely and the appeal right was limited, VSBFA was not fully achieving the mission of helping small businesses access financing and lacked lending policies that set appropriate risk policies, state agency procurement spending with SWaM-certified businesses was substantial but didn't hit the 42% goal, and most of the state's procurements went to businesses much smaller than Virginia's definition of small business.

There were several recommendations that JLARC made based on this study and of those recommendations, DSBSD implemented or is in the process of implementing six of the seven recommendations.

Brown pointed out that JLARC also proposed 10 policy options for consideration in this report. Five of the options related to changing the state's small business definition, one option was for VSBFA to develop a pilot program to test including startup businesses in the microloan program, and two option were related to SWaM spending and goals.

Brown then handed the presentation over to his colleague Lauren Axselle, who went into a quick overview of the small business definition, the 2019 data on the number of small, micro, minority-owned, women-owned and other businesses. She pointed out that most of the small businesses (94%) that were certified, were in fact much smaller than the Virginia definition.

She then dived into policy options. The first of which was to require small businesses to meet both the employment and gross receipts thresholds. This would cut 6% (623) of certified businesses based on the 2019 data. Two more examples to narrow the definition that Axselle touched on were to lower the employee and gross receipts thresholds to the 95th percentile (this would cut 3% of the certified businesses) or to the 75th percentile (which would eliminate 13% of certified businesses).

Axselle's next slide talked about how the size of the business can vary significantly between industries. The federal government and several other states have industry-specific small business definitions. Then JLARC looked at how Virginia compared to other states on the definition and what JLARC discovered was that Virginia's definition allows more employees than other states, but the revenue threshold was comparable. So JLARC included a policy option to develop and adopt thresholds based on industry. This would require a lot of administrative work and would be a one-time fiscal impact. Axselle talked about one more policy option which was to consider broadening preferences to include more than business size.

She then shifted the presentation to focus on the effectiveness of the SWaM program. As of 2019 data, agencies procured over $2 billion through SWaM-certified businesses. Median sales increased approximately 20% for businesses after becoming SWaM-certified. Businesses also reported non-monetary benefits to being certified such as an improved image. However, the majority of agencies (60%) did not meet the 42% goal and there was a broad range of SWaM spending from 4% to 87%. Axselle explained that there were several reasons for this. Some goods and services are not offered by many SWaM vendors and the number and size of procurements vary greatly between agencies.

Axselle's next slide outlined how the SWaM planning process historically did not help agencies meet the SWaM goal. Another option JLARC suggested was to direct each state agency to set an ambitious but achievable SWaM goal that accounts for the agency's procurements and the availability of SWaM businesses for their specific goods and services. This concluded the JLARC presentation.

Heslinga asked JLARC where the 42% goal came from. Axselle said the number did not seem to have a clear origin. Brown said it bounced around a few executive orders and Aselle followed up saying that there were some years when the percentage that was achieved was higher, but not in the last few years. Gill said when staff summarized the executive orders, there seemed to be some confusion as to whether the 42% was the goal of the Commonwealth as a whole or of each agency. Gill then reminded the Workgroup that they need to take that into consideration when reviewing this bill.

Jason Saunders asked if someone could remind the Workgroup of what goes into discretionary spend and how it is measured. Love explained that agencies look at their budget and take out certain items like utilities, mandatory source contracts and things of that nature. After those items are taken out, what agencies are left with is their discretionary spend. Gill asked if Love could provide the different categories that are exempt from discretionary spending, and Love said that yes, she could provide those.

Kim Dulaney asked if we have any data on what other states' goals are and how they stack up against the 42% Virginia goal. Love said there is data on that, and she can provide that information. Love said most other states have goals around women and minority-owned spend.

VII. Public Comment on HB 1404

Gwendolyn Davis of Minority Women Business Advisory Committee spoke in favor of the bill. She read comments from the chair of the committee, Laquisha Atkinson, who thanked the delegate who brought forth the bill and expressed the need to promote minority and women businesses. She thanked the committee, the governors who have supported this small business goal and the General Assembly.

Brandon Robinson with Associated General Contractors of Virginia said he has a neutral position on the bill but wanted to bring up a few questions for consideration. One, he said, is the realism of a 42% goal and the ability to be able to achieve that goal. Robinson also pointed out the availability of small, women and minority-owned businesses play a part in being able to achieve that goal. Two, he said his association has heard antidotally about the difficulties of getting SWaM certified and that there isn't a whole lot in the bill that speaks to helping businesses with this process. Three, Robinson pointed out, there is some language about disbarring contractors that can't live up to an aspirational goal, and he said AGC thinks that is a big mistake to use on a goal such as this one. Robinson concluded by saying that the goal should be ambitious, achievable and that support should be provided for small businesses.

William Bullock, a contractor living in the City of Richmond, spoke in support of the bill. He said he wants to see the state spend money with minority and African American contractors in the state. He said this is important because there is a lot of poverty in the state right now, people are suffering, and the money is not being spread around. He expressed that is hard for small businesses to compete at the lowest price on projects against big businesses.

Julianne Hammond on behalf of National Federation of Independent Businesses (NFIB), Virginia's small business trade association and the largest one in the nation. She opposes codifying the executive order because it locks it down and takes away the flexibility. She explained that some of the solutions presented are limiting in nature. She said the goal is to increase participation of small businesses, so creating more defined limits seems counter to the overall goal. Additionally, she continued, if Virginia is going to look at increasing certification, shouldn't it be done in discretionary fields so that it is compared apples to apples and not apples to oranges. This would be a much better way to figure out who is available in those fields. She added that if there is any way that Virginia could automatically accept small businesses that have already qualified at a federal level, this would make it much easier on the small business owners, so that they don't have to get certified nationally and again at the state level.

Chris Stone, past chair of the Hampton Roads Chamber of Commerce said he was here to tell his personal experience with the 42%. He said he does not believe the 42% is a one size fits all approach. Stone said he is a licensed engineer who was appointed by Governor Northam to sit on the DPOR licensure board architects, engineers, land surveyors, interior designers and landscape architects. He has served eight years on this board and what he learned is that you can't get a four-year accredited degree from any HBCU in Virginia. So, there is no pipeline for minorities to even become a small business in these fields, if they don't offer that at HBCU. This is one example of how we need to expand opportunities for minorities so that they can start businesses.

VIII. Discussion on HB 1404

Gill asked if there was any additional information that the Workgroup would like staff to gather for the next meeting in relation to HB 1404.

Heslinga said there is one thing he wanted to clarify. The bill as it was passed in 2024 had a reenactment clause. However, should the GA introduce a new bill in 2025, then unless that new bill was given a reenactment clause, that bill would take effect. In other words, if we recommended changes, and the GA took those changes and passed a new bill with those included, it would not delay the effectiveness of whatever legislation may pass. Schultz concurred that Heslinga was correct in his statement.

Gill said the bill as introduced last year defined SWaM business as a small, a small women-owned, small minority-owned or small service-disabled veteran owned. So, the small SWaM business set aside is still for small business, regardless of if they are women or minority-owned, correct, she asked. Schultz confirmed she was correct.

Gill then confirmed with Love that she would be available to provide additional information about the procurement programs. Love said yes and confirmed that the Workgroup wanted exemptions from discretionary spend and the goals from other states and how those compare to Virginia's 42% goal. Gill said that working with VITA and DGS, she would like to know how that ties to procurement.

IX. Discussion

No additional discussion.

X. Adjournment

Gill adjourned the meeting at 1:53 p.m. and noted that the Workgroup's next meeting is scheduled for October 22, 2024, at 1:00 p.m. and announced that an additional meeting had been added to the calendar for Wednesday, November 6 at 1 p.m. in the same location.

For more information, see the Workgroup's website or contact that Workgroup's staff at pwg@dgs.virginia.gov.

Appendix F: October 22, 2024, Meeting Materials

This appendix contains the meeting materials from the October 22, 2024, Workgroup meeting.

1. Agenda
2. Meeting Materials
    a. Department of Small Business and Supplier Diversity Presentation on HB 1404
3. Approved Meeting Minutes

Public Body Procurement Workgroup

https://dgs.virginia.gov/dgs/directors-office/pwg/

<u>Meeting # 7</u>
Tuesday, October 22, 2024, 1:00 p.m.
House South Subcommittee Room, 2nd floor
General Assembly Building
201 North 9th Street, Richmond, Virginia 23219

AGENDA

I. **Call to Order; Remarks by Chair**

II. **Approval of Meeting Minutes from the October 8, 2024, Workgroup Meeting**

III. **Presentation on HB 1524**
James Savage, Policy Development Director and
Ryan Cunningham, Senior Policy Analyst
Department of Taxation

IV. **Public Comment on HB 1524**

V. **Finalize Recommendations on HB 1524**

VI. **Presentation on HB 1404**
Verniece Love, Deputy Director
Department of Small Business and Supplier Diversity

VII. **Public Comment on HB 1404**

VIII. **Discussion on Possible Recommendations for HB 1404**

IX. **Discussion**

X. **Adjournment**

Members

Department of General Services
Virginia Information Technologies Agency
Department of Planning and Budget
Virginia Association of State Colleges and University Purchasing Professionals
Department of Small Business and Supplier Diversity
Virginia Department of Transportation
Virginia Association of Government Purchasing

Representatives

Office of the Attorney General
House Appropriations Committee

Senate Finance Committee | Division of Legislative Services

Staff

Killeen Wells, Deputy Director of Communications, DGS
Kimberly Freiberger, Legislative Analyst, DGS

The Virginia Department of Small Business and Supplier Diversity

VIRGINIA DEPARTMENT OF
SBSD
SMALL BUSINESS & SUPPLIER DIVERSITY

Set-Aside Award Priorities

2% of the Commonwealth's spend should be with certified SWaM usinesses

% of the Commonwealth's spend should be with certified SDV usinesses

/icro Business Set-Aside Award Priority (under $10,000)

- Micro business
- Small business
- Open to all

;mall Business Set-Aside Award Priority ($10,000 up to $100,000)

- Small business (including micro businesses)
- Open to all

/icro and small businesses shall have a price preference over ıoncertified businesses as long as the bid of the certified nicro/small business does not exceed the low bid by more than 5%.

DC.gov
Department of Small and
Local Business Development

Washington, DC

A Certified Business Enterprise (CBE) is a business headquartered in the District of Columbia and certified by the Department of Small and Local Business Development (DSLBD). Businesses with CBE certification receive preferred procurement and contracting opportunities.

Businesses with CBE certification receive preferred procurement and contracting opportunities. The District directs spending to these DC-based businesses that support and contribute to job creation and the city tax base, which in turn results in a much stronger local economy. Each agency must exercise its contracting and procurement authority, including an agency that contracts or procures through the Office of Contracting and Procurement (OCP). **In addition, it must meet, on an annual basis, the goal of procuring and contracting 50 percent of the dollar volume of its goods and services, including construction goods and services, to Small Business Enterprises (SBEs).**

DC.gov

Department of Small and
Local Business Development

Washington, DC

CBE Category	Proposal Points	Bid % Price Reduction
Local Business Enterprise	2	2%
Small Business Enterprise	3	3%
Disadvantaged Business Enterprise*	2	2%
Development Enterprise Zone	2	2%
Resident-Owned Business	5	5%
Longtime Resident Business	5	10%
Veteran-Owned Business Enterprise	2	2%
Local Manufacturing Business Enterprise	2	2%
Equity Impact Enterprise	5	10%

https://dslbd.dc.gov/page/cbe-certification-frequently-asked-questions-faqs

GOVERNOR'S OFFICE OF **SMALL, MINORITY & WOMEN BUSINESS AFFAIRS**

Maryland

Small Business Reserve (SBR) Program

Over 20% of all open solicitations are designated to Certified Small Businesses, providing access to over $500 million in state-funded contracts and receiving payments directly from the state as a prime contractor.

Under state procurement law, the SBR Program directs participating agencies/departments to spend at least 20% of its fiscal year procurement expenditures with Certified Small Businesses. Once a solicitation has been designated as "SBR," an award can only be made to a Certified Small Business.

Small Procurement Category 1 Sourcing Project: Less than $5,000

Small Procurement Category 2: More than $5,000 but not more than $15,000.

Small Procurement Category 3: More than $15,000 but not more than $50,000, and, if a construction procurement by the Department of General Services or Department of Transportation, not more than $100,000.

GOVERNOR'S OFFICE OF **SMALL, MINORITY & WOMEN BUSINESS AFFAIRS**

Maryland

Minority Business Enterprise (MBE) Program

Current regulations set the MBE Program's statewide aspirational goal at 29% across 70 participating agencies and departments.

https://gomdsmallbiz.maryland.gov/Pages/mbe-Program.aspx

Veteran-Owned Small Business Enterprise (VSBE) Program

Maryland's VSBE Program provides contracting opportunities on state-funded procurements for qualified veteran-owned small businesses. Designated agencies and departments are directed to spend at least 3% of the dollar value of their procurement contracts with certified VSBE firms.

https://gomdsmallbiz.maryland.gov/Pages/VSBE-Program.aspx

TN Department of General Services

Tennessee

Governor's Office of Diversity Business Enterprise (Go-DBE)

Each agency is given an annual goal by category: MBE, WBE, DSBE, SDVBE, and SBE. Go-DBE monitors agencies' efforts to achieve diversity in contracting throughout the year. Go- DBE uses spend history, current procurement opportunities, and other methods from each agency to establish diversity spend goals for the following fiscal year.

https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/go-dbe/go-dbe-certification.html

TN Department of General Services

Tennessee

Agency	Goal	Actual
Agriculture	10.00%	14.40%
Board of Regents	26.00%	45.53%
Children's Services	5.00%	14.21%
Commerce & Insurance	4.00%	4.43%
Correction	4.00%	4.75%
Economic & Community Development	10.00%	14.56%
Education	4.00%	10.08%
Environment & Conservation	7.00%	12.00%

Agency	Goal	Actual
Finance & Administration	4.00%	39.12%
Financial Institutions	6.28%	21.66%
General Services	18.00%	55.87%
Health	4.50%	6.99%
Higher Education (Commission)	7.00%	96.89%
Human Resources	13.00%	19.08%
Human Services	5.91%	8.20%
Intellectual & Developmental Disabilities	25.50%	14.38%
Labor & Workforce	7.00%	7.91%
Mental Health and Substance Abuse	14.00%	5.95%
Military	5.50%	16.20%
Revenue	10.75%	0.26%
Safety & Homeland Security	5.50%	6.05%
SBC/Capital Projects	10.00%	18.89%
TennCare	23.50%	77.71%
Tennessee Bureau of Investigation	12.83%	13.42%
Tennessee Department of Transportation	4.50%	4.57%
Tennessee Wildlife Resources Agency	7.00%	8.31%
Tourist Development	11.00%	3.77%
TRICOR	4.50%	4.87%
University of Tennessee	9.00%	14.34%
Veterans Services	15.50%	31.22%

https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/go-dbe/go-dbe-certification.html

Texas

HISTORICALLY UNDERUTILIZED BUSINESS (HUB) PROGRAM

The statewide HUB Annual Utilization Goals are often referred to as "HUB Goals" and are based on expenditures by procurement categories for the state agencies and state universities. Statewide HUB has set the following goals for total statewide expenditures with HUBs:

- 11.2% for heavy construction other than building contracts;
- 21.1% for all building construction, including general contractors and operative builders' contracts;
- 32.9% for all special trade construction contracts;
- 23.7% for professional services contracts;
- 26.0% for all other services contracts; and
- 21.1% for commodities contracts.

https://comptroller.texas.gov/purchasing/vendor/hub/disparity/#goals

New Jersey

Current Set-aside Initiatives

The State of New Jersey currently has two contract set aside programs – a 25 percent set aside for certified Small Business Enterprises and a three percent set aside for Disabled Veteran Owned Business Enterprises.

The state aims to award 25% of its contracts and purchase orders to small businesses.

https://www.nj.gov/treasury/revenue/business-cert-program.shtml

New York

Highest MWBE utilization rate in the country (32.3%)

Overall state goal of 30% MWBE utilization

The Office of Contractor and Supplier Diversity (“OCSD”) implements Empire State Development’s (“ESD”) Minority- and Women-owned (“MWBE”) Program (from NYS Executive Law Article 15-A) and Service-Disabled Veteran-owned Business (“SDVOB”) Program (from NYS Executive Law Article 17-B) by setting MWBE and SDVOB project goals and monitoring compliance for all ESD projects.

All ESD construction projects over $100,000 and all consulting, services and commodities projects over $25,000 will be reviewed for applicability under the MWBE and SDVOB programs. Based on OCSD’s analysis, MWBE and/or SDVOB goals may be established.

https://esd.ny.gov/office-contractor-and-supplier-diversity#overview

Thank you!

VIRGINIA DEPARTMENT OF SBSD SMALL BUSINESS & SUPPLIER DIVERSITY

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Verniece Love, Deputy Director

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APPROVED Meeting Minutes

Public Body Procurement Workgroup

Meeting # 7

Tuesday, October 22, 2024, 1:00 p.m.
House South Subcommittee Room, 2nd floor
General Assembly Building
201 North 9th Street, Richmond, Virginia 23219

http://dgs.virginia.gov/dgs/directors-office/pwg/

The Public Body Procurement Workgroup (the Workgroup) met in person in the House South Subcommittee Room in the General Assembly Building in Richmond, Virginia, with Sandra Gill, Deputy Director of the Department of General Services (DGS), presiding. The meeting included with approval of the previous meeting minutes, presentations by Virginia Department of Taxation (TAX) on HB 1524 and Virginia Department of Small Business and Supplier Diversity (DSBSD) on HB 1404, Workgroup discussion on recommendations for HB 1524, a vote on one recommendation for HB 1524, and Workgroup discussion on recommendations for HB 1404. Materials presented at the meeting are available through the Workgroup's website.

Workgroup members and representatives present at the meeting included Sandra Gill (Department of General Services), Verniece Love (Department of Small Business and Supplier Diversity), Joshua Heslinga (Virginia Information Technologies Agency), Lisa Pride (Virginia Department of Transportation), Jason Saunders (Department of Planning and Budget), Patricia Innocenti (Virginia Association of Governmental Procurement), Kimberly Dulaney (Virginia Association of State Colleges and University Purchasing Professionals), Andrea Peeks (House Appropriations Committee), Mike Tweedy (Senate Finance and Appropriations), Leslie Allen (Office of the Attorney General), and Rebecca Schultz (Division of Legislative Services).

I. Call to Order; Remarks by Chair

Gill called the meeting to order and moved into the second agenda item.

II. Approval of Meeting Minutes from the October 8, 2024, Workgroup Meeting

Jason Saunders made a motion to approve the meeting minutes from the October 8, 2024, meeting of the Workgroup. The motion was seconded, and unanimously approved by the Workgroup.

III. Presentation on HB 1524

Ryan Cunningham, Senior Policy Analyst with Virginia Department of Taxation, presented on the Recyclable Materials Processing Equipment Tax Credit. He shared that this credit is a nonrefundable individual and corporate income tax credit valued at 20% of the purchase price of machinery and equipment predominantly used in or on the premises of a manufacturing facility of plant which manufactures, processes, compounds, or produces items of tangible personal property from recyclable materials for sale OR facilities that are predominantly engaged in advanced recycling. The limits to the credit include 40% of the taxpayer's income tax liability and an annual aggregate cap of $2 million. Additionally, there is a 10-year carryover period for unused tax credits.

Cunningham then gave a brief history of the tax credit and the different iterations it has gone through. Next, he showed a graph of the credits requested and claimed per fiscal year, pointing out that every year, the requests have exceeded the aggregate cap.

He then talked about the similarities and differences between the HB 1524 tax credit and the Recyclable Materials Processing Equipment Tax Credit. Cunningham they are very similar but the main difference is the equipment that can qualify for the credit. HB 1524 would allow equipment used to reclaim, recycle or reprocess existing asphalt materials for pavements and roadways to qualify for the credit. Previously, these types of devices did not qualify because they were not located on site at a facility. The limits between the two tax credits are very similar—they both have the 40% of the taxpayer's income tax liability and the 10-year carryover period for unused tax credits. However, HB 1524 has an annual aggregate cap at $3 million, instead of the $2 million for the Recyclable Materials Processing Equipment Tax Credit. The other difference is that the HB 1524 has an effective date of 2025-2030, and the Materials Processing Equipment Tax Credit is set to expire in 2025, unless extended. This concluded the presentation and Cunningham asked if there were any questions.

Mike Tweedy, Senate Finance and Appropriations, asked if there was a bill in this past Session to extend the Recyclable Materials Processing Equipment Tax Credit. Cunningham answered that there was not. He then asked if the people claiming the existing credit are all doing asphalt or if others outside the asphalt industry are claiming the credit as well. Cunningham replied that he does not know everyone who claims the current credit, but he did say not a lot of companies are claiming the current credit (15-25 taxpayers) and that it is not so much asphalt as it is traditional recycling materials.

Andrea Peeks, House Appropriations Committee, asked for Cunningham to confirm that there was not any crossover between the two credits. Cunningham said he was not aware of any crossover, but explained there might be some asphalt recycling, but it would all be done on site instead of mobile. She followed up, asking if Cunningham had any sort of gauge for the demand for the HB 1524 tax credit and why it would need to have a different threshold than the first one. Cunningham said he does not have a lot of data on that. He suggested having someone from the industry speak to how in-demand the credit is and how much it would cost because that is a big driver of deciding on the threshold amount.

IV. Public Comment on HB 1524

Sandra Gill said the Workgroup would move into public comment of HB 1524.

Trenton Clark with Virginia Asphalt Association spoke to provide some context around Tweedy and Peeks' questions. He said the reason for this legislation is because as of now, the equipment has to exist at a fixed facility, it can't be mobile. So a lot of the equipment that would be covered under HB 1524, is work that would be done out on the project site. He explained further, saying that as the industry moves to a more sustainable economy, a lot of our work is being done out in the field, so recycling is happening in the field. This cuts down on the trucking costs. He then addressed Peeks's second question about cost, saying that most of this equipment cost between ¾ of a $1 million and $3 million+.

Peeks asked if it would work to expand the existing bill to include the type of work covered as onsite work too. Clark said there was some discussion around that last year and it was decided to keep them separate because of the different natures of the bills.

Clark finished by thanking the Workgroup and saying he thinks this will have a positive impact on the public.

V. Finalize Recommendations on HB 1524

Gill announced the Workgroup would move into finalizing recommendations for HB 1524. She pointed attention to the drafted recommendation in the meeting materials and said the Workgroup would vote on that recommendation today and discuss any others. Gill then asked if there were any additional comments to the drafted recommendation and if the Workgroup would like it read aloud. Lisa Pride, VDOT, said she had an additional comment but would express it after the recommendation was read aloud.

Killeen Wells, staff, then read the drafted recommendation aloud: "The Workgroup recommends that the General Assembly consider a section 1 bill to require the Virginia Department of Transportation (VDOT) to report in 2026 on the analysis and study of their pilot projects that have already begun as part of continuous improvement efforts. VDOT's Transportation Research Council is leading these 12 pilot projects at various locations throughout the state to determine the performance of mixes with RAP contents higher than currently allowed in VDOT specifications."

Pride said she had one edit, to put "December of 2026" to clarify the timing of when in 2026. Gill said staff would incorporate that change of December 1, 2026, since reports are due on the first of December. Verniece Love, DSBSD, had one follow up clarification. She asked if the report was to be done by December of 2026 or if the pilot projects were to be completed by that time. Pride said that the projects would be completed throughout the year and the report due at that time. The Workgroup voted in support of the recommendation, 6-0 with DPB abstaining.

Gill then asked if there were any other recommendations the Workgroup wanted to bring forth for discussion. She reminded the Workgroup that they had paused on item one in Speaker Scott's letter until they heard from the Department of Taxation. She asked if there were any suggestions, now that they had heard from Tax, for item one. Heslinga said he had a recommendation, that was really broken out into two parts.

Heslinga said, "The General Assembly should consider (i) continuing the current tax credit until VDOT completes its pending pilot studies in 2026 and reports on them, and (ii) implementing any altered or expanded tax credit language to coincide with any changes that may be made after the pilot studies."

Gill said she had a question for the Department of Taxation. She asked, "If we were to include in our report that the Workgroup would recommend that the General Assembly consider extending the current tax credit are the funds available or the revenue stream to fund those tax credits available?" Cunningham said his understanding is that in the revenue projections they always assume the extension of all expiring tax credits so that funding would already be baked in, we would assume the General Assembly is going to extend this tax credit as well.

Love questioned, "So extending the current tax credit still does not solve the issue that the recycling that happens off site and not at the facilities would not be eligible, right?" Gill replied that is correct. She then clarified that Heslinga's second recommendation was aimed at addressing thc in-place credit. Heslinga responded that he's trying to address two things in his recommendations from the presentations. One is that there will be a gap in time between the expiration of the current tax credit and when VDOT is done with its pilot study in December of 2026. So given the long history of the current tax credit, it seems appropriate to continue it until there is some clarity from the VDOT report about future direction. The second part, he explained, was to address the issue of trying to coordinate with the data VDOT develops through their pilot project study, so that decisions can be made with that data in mind.

Gill asked if there were any additional comments on those two recommendations and if the Workgroup wanted to vote during this meeting on them or at the next meeting. Heslinga said he would be fine withholding the vote until the next meeting. Gill agreed, saying they will be brought forward for a vote at the next meeting.

VI. Presentation on HB 1404

Verniece Love, Deputy Director of the Department of Small Business and Supplier Diversity (DSBSD) gave a presentation on HB 1404. She reminded the Workgroup that at the last meeting she was requested to bring forth some more information around the small business goal in Virginia and other states. She said she provided additional information included in the Workgroup's packets, and that she was asked to speak to the discretionary spend and exemptions, so she included the DOA reportable object codes and an additional handout about what discretionary spending is and how it is determined.

With that, she began her presentation. Love restated the Commonwealth of Virginia's goal is 42% for SWaM spending. She added that Virginia also has a 3% spending goal with certified veteran-disabled businesses. Next she covered that Virginia's set-asides are gender neutral and that we have micro-business set-asides (any purchase under $10,000) and small business set-asides ($10,000 to $100,000). Love also pointed out that micro and small businesses shall have a price preference over noncertified businesses as long as the bid of the certified micro/small business does not exceed the low bid by more than 5%.

Next, Love began covering other states, with the first being Washington D.C. D.C. has a CBE program that has a variety of categories included. They have a goal of procuring and contracting 50% of the dollar volume of goods and services, including construction goods and services, to Small Business Enterprises (SBEs). They award points to businesses based on the categories.

Love moved on to Maryland next, stating that Maryland has a Small Business Reserve (SBR) Program for spend with small businesses. Over 20% of all open solicitations are designated to Certified Small Businesses. They have three categories: less than $5,000, $5,000-$15,000, and more than $15,000 but not more than $50,000. If there is a construction procurement, it should not exceed $100,000. Maryland also offers a Minority Business Enterprise Program with an aspirational goal of 29% spend and a Veteran-owned Small Business Enterprise Program with a goal of 3%.

Love outlined Tennessee next. She said in Tennessee, each agency is given specific goals by category—MBE, WBE, DSBE, SDVBE and SBE. These are monitored by the Governor's Office of Diversity Business Enterprise, which is the office that sets these goals per agency, factoring in spend history, procurement opportunities, etc.

In Texas, explained Love, there is the Historically Underutilized Business (HUB) Program, which has annual goals for different industries, and they are based on expenditures for the state agencies and state universities.

She explained that in New Jersey there are two contract set-aside programs. One is a 25% set aside for certified Small Business Enterprises, and the other is a 3% set aside for Disabled Veteran-Owned Business Enterprises. Furthermore, the state aims to award 25% of its contracts and purchase orders to small businesses.

Love finished her presentation overview of states with New York, which she said has the highest MWBE utilization rate in the country at 32.3%. The overall state goal for MWBE utilization is 30%. The Office of Contractor and Supplier Diversity sets the MWBE and SDVOB project goals and monitors them. This concluded her presentation, and she opened it up for questions.

Heslinga asked where the cardinal categories and codes came from. Love said they come from the Department of Accounts website, and DSBSD is required to keep the list on its website as well.

Rebecca Schultz, Legislative Services, asked if the Texas HUB program was geared toward small businesses or women and minority-owned businesses. Love clarified that it is women and minority-owned businesses.

Gill asked if the subcontracting was prime awards or all-inclusive subcontracting. Love said she did not know.

VII. Public Comment on HB 1404

There was no public comment for HB 1404.

VIII. Discussion on Possible Recommendations for HB 1404

Gill opened the meeting to Workgroup discussion on possible recommendations for HB 1404. She said she had a few notes based on the many presentations given by Love and the public and stakeholder testimony. She mentioned the topic of the definition and the questions around the goal being codified and the question of whether it is a Commonwealth of Virginia goal or an agency goal. She reminded the Workgroup that the Disparity Study currently underway is different from previous disparity studies because it is looking at small and micro-businesses in relation to the commodities that the commonwealth is buying. She continued saying that thc Workgroup has heard there need to be some technical amendments, that other states have made remedial plans based on outcomes of their own disparity studies that are specific to women and minorities. She questioned: "If the disparity study shows a need for a remedial or enhancement plan around women and minorities, if we codify the bill as it is today, would we have challenges in implementing that?" Gill said she would like to discuss that a little bit.

Love said she agreed with Gill and that the Workgroup could look at it two ways. Either you could say that the 2020 Disparity Study showed disparity and that recommendations were made from that study to implement programs and remedial measures to address the disparities, and you could use that data. Or, she continued, you could wait until the new disparity study report comes out in 2026 and make recommendations based on it.

Rebecca Schultz with DLS asked to make a few comments. She said that the bill in its current form is doing a lot of different things, so as the Workgroup thinks about and goes forward with recommendations to make sure they are clear on what the goal of the bill is. She said the bill will likely need to be a brand-new draft. She then highlighted all the different things the bill does—sets up a new enhancement program, sets up a new division within DSBSD—she thinks there may be some difficulty in implementation. She brought up what the Workgroup wants to do around the definition of small business. She asked if the division is supposed to be geared for women and minorities? Do we want a program? Do we want a division? She said getting some clarity on the focus of the bill would be a good place to start.

Gill asked Verniece to speak to the questions around the division. Verniece said based on her understanding, the division was to be created to implement whatever measures or programming to enhance the utilization of women and minority-owned businesses in state procurement contracting. So that division would be working directly with our state agencies, she clarified, to help them set their goals and source and find small women and minority-owned businesses.

Gill said her interpretation of the bill was to codify EO35. She clarified that the bill is different from EO35 in that it creates a new definition of small SWaM business and currently the VPPA does not contain that definition. So if the bill is to move forward, those type of amendments would need to happen, said Gill. Gill stated that the intent as she understood it, was that it was a small business enhancement plan, as opposed to doing anything specific for women or minority businesses.

Schultz followed up that in regard to the definition in the bill, she said it could be added but does not appear to be any different than the definition of SWaM, so adding that into the procurement code is a decision that will need to be made on whether it is necessary.

Gill said that an appropriate recommendation would be for the General Assembly to consider if reintroducing the bill, that they address the technical amendments to remove potential interpretation conflicts of definitions.

Schultz responded that as technical amendments, she could go ahead and make those changes to make those definitions between the VPPA and DSBSD terms the same, and she thinks it would be a good idea.

Gill asked if there were any other amendments. Heslinga responded that he would recommend that we consider that future changes/legislation continue to take into account the differences between state agencies and their procurements. We have seen in the JLARC report that it is significant, he said.

Gill restated his thoughts asking, "the General Assembly should consider setting a goal in code and providing clarity if it is a Commonwealth goal or an agency goal and base it on the commodities that they buy?"

Heslinga said that the federal government does it by agency and that different states also have different ways to do it. He said the phrasing he would use is, "future SWaM legislation take into account differences between state agencies and what they procure." Gill added, "and the commodities."

Schultz suggested that the new division being set up in this bill would perhaps be a good place to include this language.

Patti Innocenti pointed out that in enactment clause 3, it requires DGS to provide recommendations prior to the delivery to the disparity study, and she suggested altering the timing of that so that the disparity study could influence the recommendations. Gill suggested doing a similar recommendation as was just done for HB 1524.

Kim Dulaney pointed out that the fiscal impact of higher education was not taken into consideration, and she would like to see it be considered. So, one of the recommendations should be to review the fiscal impacts to higher education since they will be included in the bill, confirmed Gill. Mike Tweedy added that maybe the recommendation is a request that DPB gather information from the institutions with fiscal impact.

Gill followed up with Dulaney asking her to provide the fiscal impact to us, so we can include it as an attachment and use it to draft the recommendation language.

IX. Discussion

No additional discussion.

X. Adjournment

Gill adjourned the meeting at 1:50 p.m. and noted that the Workgroup's next and final meeting is scheduled for Wednesday, November 6 at 1 p.m. in the same location.

For more information, see the Workgroup's website or contact that Workgroup's staff at pwg@dgs.virginia.gov.

Appendix G: November 6, 2024, Meeting Materials

This appendix contains the meeting materials from the November 6, 2024, Workgroup meeting.

1. Agenda
2. Meeting Materials
    a. HB 1404 Final Recommendations
3. Approved Meeting Minutes

Public Body Procurement Workgroup

https://dgs.virginia.gov/dgs/directors-office/pwg/

Meeting #8
Wednesday, November 6, 2024, 1:00 p.m.
House South Subcommittee Room, 2nd floor
General Assembly Building
201 North 9th Street, Richmond, Virginia 23219

AGENDA

I. **Call to Order; Remarks by Chair**

II. **Approval of Meeting Minutes from the October 22, 2024, Workgroup Meeting**

III. **Public Comment on HB 1524**

IV. **Finalize Recommendations on HB 1524**

V. **Public Comment on HB 1404**

VI. **Finalize Recommendations for HB 1404**

VII. **Discussion**

VIII. **Adjournment**

Members

Department of General Services
Virginia Information Technologies Agency
Department of Planning and Budget
Virginia Association of State Colleges and University Purchasing Professionals
Department of Small Business and Supplier Diversity
Virginia Department of Transportation
Virginia Association of Government Purchasing

Representatives

Office of the Attorney General
Senate Finance Committee
House Appropriations Committee
Division of Legislative Services

Staff

Killeen Wells, Deputy Director of Communications, DGS
Kimberly Freiberger, Legislative Analyst, DGS

Public Body Procurement Workgroup

Recommendations for HB 1404

Recommendation 1: The Workgroup recommends that the General Assembly consider not reenacting Chapter 834 enacting Clause 1 in the upcoming session and consider a section 1 bill to require the Virginia Department of Small Business and Supplier Diversity to report on December 1, 2026, on the outcome of the disparity study currently being performed as required by 2024 Acts of Assembly Chapter 834 enacting Clause 4. This disparity study differs from previous studies in that it expanded to study the availability and utilization of small and micro-owned businesses in addition to previously studied women-owned and minority-owned businesses. It also specifically looks at the utilization and differences between categories of state procurement, such as by the types of goods and services needed or procured by state agencies.

Recommendation 2: The Workgroup recommends that the General Assembly consider directing a study of the small business definition before codifying any enhancement plan. The Workgroup further suggests that the General Assembly direct the study to be based explicitly on Virginia business with the intent of benefiting Virginia businesses, similar to the policy the state of Maryland implemented. Additionally, the General Assembly, as part of the study, could consider directing Virginia Department of Small Business and Supplier Diversity, in collaboration with the Department of General Services, Virginia Information Technologies Agency and Virginia Department of Transportation, to review the DSBSD certification processes, including outreach practices. Finally, the Workgroup recommends that the General Assembly consider incorporating this recommendation into the disparity study report.

Recommendation 3: The Workgroup recommends that the General Assembly consider not codifying a goal for the utilization rate of small SWaM businesses. An accurate goal for utilization cannot be set until the current disparity study is complete. The study being performed should provide data by commodity, detailing availability, participation and utilization. This will enable the Commonwealth of Virginia to establish a more appropriate goal. Additionally, if the General Assembly studies and changes the definition of a small business, the goal will need to be reevaluated once it is implemented.

Recommendation 4: The Workgroup recommends that if the General Assembly intends to reenact Clause 1, then the General Assembly may consider technical amendments to address the concerns mentioned in the Workgroup meetings. Items discussed included confusion over terminology and conflicts with existing definitions found in the Virginia Public Procurement Act.

DRAFT Meeting Minutes

Public Body Procurement Workgroup

Meeting #8

Tuesday, November 6, 2024, 1:00 p.m.
House South Subcommittee Room, 2nd floor
General Assembly Building
201 North 9th Street, Richmond, Virginia 23219

http://dgs.virginia.gov/dgs/directors-office/pwg/

The Public Body Procurement Workgroup (the Workgroup) met in person in the House South Subcommittee Room in the General Assembly Building in Richmond, Virginia, with Sandra Gill, Deputy Director of the Department of General Services (DGS), presiding. The meeting included with approval of the previous meeting minutes, Workgroup discussion on recommendations for HB 1524, voting on two recommendations for HB 1524, Workgroup discussion on recommendations for HB 1404, voting on recommendations for HB 1404, and public commentary about the Workgroup's recommendations on HB 1404. Materials presented at the meeting are available through the Workgroup's website.

Workgroup members and representatives present at the meeting included Sandra Gill (Department of General Services), Dr. Jo'Wanda Rollins-Fells (Department of Small Business and Supplier Diversity), Joshua Heslinga (Virginia Information Technologies Agency), Lisa Pride (Virginia Department of Transportation), Charles Quagliato (Department of General Services), Patricia Innocenti (Virginia Association of Governmental Procurement), Kimberly Dulaney (Virginia Association of State Colleges and University Purchasing Professionals), Mike Tweedy (Senate Finance and Appropriations), Leslie Allen (Office of the Attorney General), and Rebecca Schultz (Division of Legislative Services).

I. Call to Order; Remarks by Chair

Gill called the meeting to order at 1:01 p.m. and moved into the second agenda item.

II. Approval of Meeting Minutes from the October 22, 2024, Workgroup Meeting

Kimberly Dulaney commented that on the fiscal impact for higher education mentioned in the meeting minutes. She said she assumed there was information available on that topic, but there was not. So, she will not be providing that information.

Kimberly Dulaney made a motion to approve the meeting minutes from the October 22, 2024, meeting of the Workgroup. The motion was seconded by Lisa Pride and unanimously approved by the Workgroup.

III. Public Comment on HB 1524

There was no public comment on HB 1524.

IV. Finalize Recommendations on HB 1524

Sandra Gill directed the Workgroup members' attention to the drafted recommendations provided in their meeting materials packets and asked staff member Killeen Wells to read the first of the two recommendations drafted.

Wells read draft Recommendation 2 for HB 1524 aloud: "The Workgroup recommends that the General Assembly may consider continuing the current tax credit until VDOT completes its pending pilot studies in 2026 and reports on those pilot studies." Gill asked if there were any edits or changes to the recommendation and Heslinga pointed out that the "may" was superfluous. Staff struck the "may" wording from the recommendation. The Workgroup voted in favor of the recommendation, 6-0, with DPB absent.

Wells read draft Recommendation 3 for HB 1524 aloud: "The Workgroup recommends that the General Assembly consider implementing any altered or expanded tax credit language, including RAP in-place equipment, to coincide with any changes that may be made after the completion of the pilot studies." The Workgroup voted in favor of the recommendation, 6-0, with DPB absent.

Gill thanked everyone in the Workgroup and all stakeholders who presented on HB 1524.

V. Public Comment on HB 1404

Gill announced the Workgroup would move into public comment for HB 1404.

Local businesswoman Melissa Ball thanked the Workgroup for their efforts on HB 1404. She urged the Workgroup to consider using the federal small business standard in Virginia. She explained that the federal size standards are based on number of employees or revenue based on the category. She said in Virginia, her business is not able to participate under the Virginia categories. She thinks the federal standards will provide more economic development and inclusivity of the minority and women-owned businesses that have been excluded.

VI. Finalize Recommendations for HB 1404

Gill prefaced the finalization of recommendations of HB 1404 by saying that the Workgroup developed draft recommendations over the past two weeks via email exchange. She invited discussion of the recommendations.

Josh Heslinga pointed out a superfluous comment in the fourth line from the bottom of the first recommendation. Staff struck out this comma.

Lisa Pride asked if the Workgroup needed to provide clarity to the General Assembly on the benefits mentioned in Recommendation 2 of HB 1404. Gill explained that Verniece Love will provide additional information on the Maryland study and that information will be incorporated in.

Wells read Recommendation 1 aloud: "The Workgroup recommends that the General Assembly consider not reenacting Chapter 834 enacting Clause 1 in the upcoming session and consider a section 1 bill to require the Virginia Department of Small Business and Supplier Diversity to report on December 1, 2026, on the outcome of the disparity study currently being performed as required by 2024 Acts of Assembly Chapter 834 enacting Clause 4. This disparity study differs from previous studies in that it expanded to study the availability and utilization of small and micro-owned businesses in addition to previously studied women-owned and minority-owned businesses. It also specifically looks at the utilization and differences between categories of state procurement, such as by the types of goods and services needed or procured by state agencies." The Workgroup voted in support of the recommendation, 6-0 with DBP absent.

Well read Recommendation 2 aloud: "The Workgroup recommends that the General Assembly consider directing a study of the small business definition before codifying any enhancement plan. The Workgroup further suggests that the General Assembly direct the study to be based explicitly on Virginia business with the intent of benefiting Virginia businesses, similar to the policy the state of Maryland implemented. Additionally, the General Assembly, as part of the study, could consider directing Virginia Department of Small Business and Supplier Diversity, in collaboration with the Department of General Services, Virginia Information Technologies Agency and Virginia Department of Transportation, to review the DSBSD certification processes, including outreach practices. Finally, the Workgroup recommends that the General Assembly consider incorporating this recommendation into the disparity study report." The Workgroup voted in support of the recommendation, 6-0 with DPB absent.

Wells read Recommendation 3 aloud: "The Workgroup recommends that the General Assembly consider not codifying a goal for the utilization rate of small SWaM businesses. An accurate goal for utilization cannot be set until the current disparity study is complete. The study being performed should provide data by commodity, detailing availability, participation and utilization. This will enable the Commonwealth of Virginia to establish a more appropriate goal. Additionally, if the General Assembly studies and changes the definition of a small business, the goal will need to be reevaluated once it is implemented." The Workgroup voted in support of the recommendation, 6-0 with DPB absent.

Wells read Recommendation 4 aloud: "The Workgroup recommends that if the General Assembly intends to reenact Clause 1, then the General Assembly may consider technical amendments to address the concerns mentioned in the Workgroup meetings. Items discussed included confusion over terminology and conflicts with existing definitions found in the Virginia Public Procurement Act." The Workgroup voted in support of the recommendation, 6-0 with DPB absent.

VII. Discussion

Gwendolyn Davis spoke to the Workgroup's approved recommendations for HB 1404. She said these recommendations are asking women and minority-owned businesses to wait again. She explained that the state has already commissioned multiple disparity studies, and they all say the same thing. Davis said they don't think the recommendations are fair. She said that the 42% number was based on what agencies recommended and the disparity studies. She furthered that the definition of small business has nothing to do with the bill. She continued that women and minority-businesses should have the same opportunities as other businesses and these recommendations do not help them. She finished with saying she hoped the recommendations will be reconsidered.

VIII. Adjournment

Gill adjourned the meeting at 1:20 p.m. She thanked the Workgroup members and staff for their time and resources.

For more information, see the Workgroup's website or contact that Workgroup's staff at pwg@dgs.virginia.gov.
