

SENATE COMMITTEE OF REFERENCE REPORT

Chair of Committee

Date

April 20, 2022

Committee on Business, Labor, & Technology.

After consideration on the merits, the Committee recommends the following:

SB22-163 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

- 1 Amend printed bill, page 3, strike lines 5 and 6 and substitute:
 - 2 "REMEDICATION OF STATE PROCUREMENT DISPARITIES
 - 3 THAT AFFECT HISTORICALLY UNDERUTILIZED BUSINESSES".
- 4 Page 4, line 3, strike "TITLED".
- 5 Page 4, strikes lines 4 through 27.
- 6 Strike pages 5 through 9.
- 7 Page 10, strike lines 1 through 16 and substitute: "IT FOUND, DETERMINED
- 8 AND DECLARED, IN SECTION 24-103-1001, THE IMPORTANCE OF ENSURING
- 9 AN EQUITABLE STATE PROCUREMENT PROCESS;
- 10 (b) AS REQUIRED BY SENATE BILL 19-135, THE DEPARTMENT
- 11 CONTRACTED WITH AN ENTITY INDEPENDENT OF THE DEPARTMENT TO
- 12 CONDUCT A STATE DISPARITY STUDY REGARDING THE PARTICIPATION OF
- 13 HISTORICALLY UNDERUTILIZED BUSINESSES, WHICH INCLUDED A REVIEW
- 14 OF MINORITY-OWNED BUSINESSES, WOMEN-OWNED BUSINESSES,
- 15 BUSINESSES OWNED BY PERSONS WITH DISABILITIES, AND BUSINESSES
- 16 OWNED BY MEMBERS OF THE LESBIAN, GAY, BISEXUAL, AND TRANSGENDER
- 17 COMMUNITY, IN STATE CONTRACTS ENTERED INTO BY ANY DEPARTMENT,
- 18 AGENCY, OR INSTITUTION OF THE EXECUTIVE BRANCH OF STATE
- 19 GOVERNMENT;
- 20 (c) THE STATE DISPARITY STUDY EXAMINED WHETHER A DISPARITY
- 21 EXISTS BETWEEN THE PERCENTAGE OF STATE CONTRACT DOLLARS GOING
- 22 TO HISTORICALLY UNDERUTILIZED BUSINESSES AND THE PERCENTAGE
- 23 THAT MIGHT BE EXPECTED TO GO TO THOSE BUSINESSES BASED ON THE

1 RELATIVE NUMBER OF THOSE BUSINESSES THAT ARE READY, WILLING AND
2 ABLE TO PERFORM DIFFERENT TYPES, SIZES AND LOCATIONS OF STATE
3 CONTRACTS;

4 (d) THE INDEPENDENT ENTITY COMPLETED THE REQUIRED STATE
5 DISPARITY STUDY AND ISSUED THE "2020 STATE OF COLORADO DISPARITY
6 STUDY FINAL REPORT" IN NOVEMBER 2020, WHICH FOUND THAT:

7 (I) MINORITY-OWNED AND WOMEN-OWNED BUSINESSES RECEIVED
8 ABOUT EIGHT PERCENT OF STATE CONTRACT DOLLARS, BELOW THE
9 TWENTY-EIGHT PERCENT EXPECTED FROM THE AVAILABILITY ANALYSIS;

10 (II) UTILIZATION OF FIRMS OWNED BY PERSONS WITH DISABILITIES
11 WAS LESS THAN ONE PERCENT OF CONTRACT DOLLARS, BELOW THE
12 TWELVE PERCENT EXPECTED FROM THE AVAILABILITY ANALYSIS,

13 (III) A VERY SMALL PERCENTAGE OF CONTRACT DOLLARS WENT TO
14 BUSINESSES CERTIFIED AS BEING OWNED BY MEMBERS OF THE LESBIAN,
15 GAY, BISEXUAL, AND TRANSGENDER COMMUNITY (LGBT-CERTIFIED
16 BUSINESSES), BUT BECAUSE A VERY SMALL NUMBER OF BUSINESSES IN THE
17 AVAILABILITY ANALYSIS WERE LGBT-CERTIFIED BUSINESSES, THAT
18 UTILIZATION IS COMPARABLE TO THE AVAILABILITY BENCHMARK FOR
19 LGBT-CERTIFIED BUSINESSES;

20 (IV) THERE WAS A SUBSTANTIAL DISPARITY BETWEEN UTILIZATION
21 AND AVAILABILITY FOR FIRMS OWNED BY AFRICAN AMERICAN PERSONS,
22 HISPANIC AMERICAN PERSONS, NATIVE AMERICAN PERSONS, WHITE
23 WOMEN, AND PERSONS WITH DISABILITIES FOR STATE CONSTRUCTION,
24 CONSTRUCTION-RELATED PROFESSIONAL SERVICES, OTHER PROFESSIONAL
25 SERVICES, GOODS AND OTHER SERVICES CONTRACTS;

26 (V) THERE WAS A SUBSTANTIAL DISPARITY FOR BUSINESSES
27 OWNED BY ASIAN-AMERICAN PERSONS FOR OTHER PROFESSIONAL
28 SERVICES CONTRACTS;

29 (VI) FOR STATE BROKERAGE AND INVESTMENT CONTRACTS, THERE
30 WERE SUBSTANTIAL DISPARITIES BETWEEN UTILIZATION AND
31 AVAILABILITY OF BUSINESSES OWNED BY AFRICAN AMERICAN PERSONS,
32 HISPANIC AMERICAN PERSONS, NATIVE AMERICAN PERSONS, AND WHITE
33 WOMEN;

34 (e) AS DETAILED IN THE STATE DISPARITY STUDY REPORT, THE
35 RESULTS OF THE STUDY INDICATE THAT DISPARITIES BETWEEN
36 AVAILABILITY OF HISTORICALLY UNDERUTILIZED BUSINESSES AND
37 UTILIZATION OF SUCH BUSINESSES EXISTS IN STATE CONTRACTING;

38 (f) ALTHOUGH THE STATE IS ALREADY ENDEAVORING TO HELP
39 SMALL BUSINESSES OBTAIN STATE CONTRACTS, IT IS DOING SO WITH
40 LIMITED TOOLS AND RESOURCES;

41 (g) THE DISPARITIES IDENTIFIED IN THE STATE DISPARITY REPORT
42 ARE LIKELY TO PERSIST UNLESS FURTHER ACTION IS TAKEN; AND

43 (h) THE STATE DISPARITY STUDY REPORT RECOMMENDED THAT

1 THE GENERAL ASSEMBLY CONSIDER ENACTING LEGISLATION TO
2 AUTHORIZE AND FUND A PROCUREMENT EQUITY PROGRAM TO ADDRESS
3 THE SPECIFIC DISPARITIES SHOWN IN THE STATE DISPARITY STUDY REPORT
4 FOR HISTORICALLY UNDERUTILIZED BUSINESSES BASED ON INDUSTRY AND
5 BUSINESS OWNERSHIP."

6 Page 10, after line 18 insert:

7 "(1) "CONSTRUCTION-RELATED PROFESSIONAL SERVICES" MEANS
8 SERVICES WITH ARCHITECTURE AND ENGINEERING, SURVEYING, REAL
9 ESTATE CONSULTING, AND RELATED WORK.

10 (2) "DISPARITY" MEANS AN INEQUALITY, DIFFERENCE, OR GAP
11 BETWEEN AN ACTUAL OUTCOME AND A REFERENCE POINT OR BENCHMARK.

12 (3) "DISPARITY INDEX" MEANS A MEASURE OF THE RELATIVE
13 DIFFERENCE BETWEEN AN OUTCOME, SUCH AS PERCENTAGE OF CONTRACT
14 DOLLARS RECEIVED BY A GROUP, AND A CORRESPONDING BENCHMARK,
15 SUCH AS THE PERCENTAGE OF CONTRACT DOLLARS THAT MIGHT BE
16 EXPECTED GIVEN THE RELATIVE AVAILABILITY OF THAT GROUP FOR THOSE
17 CONTRACTS. IN THIS EXAMPLE, DISPARITY INDEX IS CALCULATED BY
18 DIVIDING A NUMERATOR OF PERCENT UTILIZATION BY A DENOMINATOR OF
19 PERCENT AVAILABILITY AND THEN MULTIPLYING THE RESULT BY 100. A
20 DISPARITY INDEX OF 100 INDICATES "PARITY" OR UTILIZATION "ON PAR"
21 WITH AVAILABILITY. DISPARITY INDEX FIGURES CLOSER TO 0 INDICATE
22 LARGER DISPARITIES BETWEEN UTILIZATION AND AVAILABILITY."

23 Renumber succeeding subsections accordingly.

24 Page 10, line 20, strike "PROFIT-MAKING" and substitute "BUSINESS,
25 FOR-PROFIT".

26 Page 10, line 26, strike "GROUP" and substitute "GROUP; EXCEPT THAT A
27 BUSINESS OWNED BY ASIAN AMERICAN PERSONS IS A HISTORICALLY
28 UNDERUTILIZED BUSINESS ONLY WITH RESPECT TO STATE PROCUREMENT
29 FOR "OTHER PROFESSIONAL SERVICES CONTRACTS", AS THAT TERM IS
30 DEFINED IN THE STATE DISPARITY STUDY."

31 Page 10, line 27, after "WOMEN;" insert "OR".

32 Page 11, line 1 strike "DISABILITIES; OR" and substitute "DISABILITIES;
33 AND".

34 Page 11, strike lines 2 and 3.

35 Page 11, after line 5 insert:

1 "(5) "INDUSTRY" MEANS BUSINESSES WITHIN ONE OF THE
2 FOLLOWING ECONOMIC SECTORS:
3 (a) CONSTRUCTION;
4 (b) CONSTRUCTION-RELATED PROFESSIONAL SERVICES;
5 (c) BROKERAGE AND INVESTMENT;
6 (d) OTHER PROFESSIONAL SERVICES; AND
7 (e) GOODS AND OTHER SERVICES."

8 Renumber succeeding subsections accordingly.

9 Page 11, after line 16 insert:

10 "(9) "PRIME CONTRACT" MEANS A CONTRACT BETWEEN THE STATE
11 AND A BUSINESS.

12 (10) "PRIME CONTRACTOR" MEANS A CONSTRUCTION BUSINESS
13 THAT PERFORMS A PRIME CONTRACT FOR THE STATE."

14 Renumber succeeding subsections accordingly.

15 Page 11, after line 21 insert:

16 "(13) "PROFESSIONAL SERVICES" MEANS TYPES OF WORK IN THE
17 SERVICE SECTOR REQUIRING SPECIAL TRAINING. SOME PROFESSIONAL
18 SERVICES SUCH AS ACCOUNTING AND LAW, REQUIRE HOLDING
19 PROFESSIONAL LICENSES."

20 Renumber succeeding subsections accordingly.

21 Page 11, line 24, strike "MEANS:" and substitute "MEANS INDIVIDUALS
22 WHO BELONG TO ONE OR MORE RACIAL OR ETHNIC GROUPS IDENTIFIED IN
23 49 CFR SECTION 26.5:".

24 Page 12, after line 13 insert:

25 "(16) "REMEDIATIONAL MEASURE" MEANS AN ACTION DESIGNED TO
26 ADDRESS BARRIERS TO FULL PARTICIPATION OF A TARGETED GROUP."

27 Renumber succeeding subsections accordingly.

28 Page 13, after line 13 insert:

29 "(23) "SUBSTANTIAL DISPARITY" MEANS A DISPARITY WHERE THE
30 DISPARITY INDEX IS LESS THAN 80, WHICH CAN INDICATE EVIDENCE OF
31 DISCRIMINATION AFFECTING THE OUTCOME.

32 (24) "UTILIZATION" MEANS THE PERCENTAGE OF TOTAL CONTRACT
33 DOLLARS OF A PARTICULAR TYPE OF WORK GOING TO A SPECIFIC GROUP OF
34 BUSINESSES.

- 1 (25) "WOMEN-OWNED BUSINESS" OR "WBE" MEANS A BUSINESS
2 THAT IS AT LEAST FIFTY-ONE PERCENT OWNED AND CONTROLLED BY ONE
3 OR MORE INDIVIDUALS THAT ARE NON-MINORITY WOMEN."
- 4 Page 14, strike lines 7 through 16 and substitute:
5 "(b) THE GOAL OF THE PROGRAM IS TO REDUCE DISPARITIES
6 IDENTIFIED IN THE STATE DISPARITY STUDY REPORT BETWEEN THE
7 AVAILABILITY OF HISTORICALLY UNDERUTILIZED BUSINESSES AND THE
8 UTILIZATION OF SUCH BUSINESSES IN STATE PROCUREMENT."
- 9 Page 14, line 17, strike "PRELIMINARY".
- 10 Page 14, strike lines 19 through 25.
- 11 Reletter succeeding paragraphs accordingly.
- 12 Page 15, line 14, strike "SMALL" and substitute "HISTORICALLY
13 UNDERUTILIZED".
- 14 Page 15, strike lines 19 through 23 and substitute "OPPORTUNITY".
- 15 Page 16, line 10, strike "IT IS NOT REQUIRED TO IMPLEMENT" and
16 substitute "ARE NOT REQUIRED TO BE IMPLEMENTED".
- 17 Page 16, strike lines 26 and 27.
- 18 Page 17, strike lines 1 through 8 and substitute:
19 "(a) THE STATE SEEKS RECOMMENDATIONS FROM STATE
20 PROCUREMENT STAKEHOLDERS, AS CONVENED PURSUANT TO SUBSECTION
21 (2) OF THIS SECTION FOR THE IMPLEMENTATION OF REMEDIAL MEASURES,
22 INCLUDING REMEDIAL MEASURES USING PROCUREMENT EQUITY TOOLS,
23 AND QUANTIFICATION OF THE AMOUNT OF ADDITIONAL FUNDING AND
24 PERSONNEL REQUIRED TO BOTH IMPLEMENT SPECIFIC REMEDIAL MEASURES
25 AND FULLY IMPLEMENT THE PROGRAM; AND".
26
- 27 Page 17, line 9, strike "ENSURE THAT" and substitute "SUPPORT".
- 28 Page 17, line 11, strike "IS ACHIEVED".
- 29 Page 17, line 14, strike "STAKEHOLDERS," and substitute "STAKEHOLDERS
30 AS CONVENED PURSUANT TO SUBSECTION (2) OF THIS SECTION,".
- 31 Page 17, line 15, strike "DEPARTMENT" and substitute "MINORITY

- 1 BUSINESS OFFICE".
- 2 Page 17, line 16, strike "ROBUST".
- 3 Page 17, line 18, strike "COMPRISED" and substitute "THAT MAY BE
4 COMPRISED, TO THE EXTENT PRACTICABLE,".
- 5 Page 17, line 22, after "BUSINESSES," insert "GOVERNMENTAL ENTITIES,
6 FEDERAL AND LOCAL ORGANIZATIONS THAT PROVIDE PROCUREMENT
7 TECHNICAL ASSISTANCE OR OUTREACH TO HISTORICALLY UNDERUTILIZED
8 BUSINESSES AND SMALL BUSINESSES,".
- 9 Page 17, line 24, strike "DEPARTMENT" and substitute "MINORITY
10 BUSINESS OFFICE".
- 11 Page 17, strike lines 26 and 27 and substitute:
12 "(2) THE MINORITY BUSINESS OFFICE SHALL CONVENE AND
13 ENGAGE IN CONSULTATION WITH A STAKEHOLDER GROUP, WHICH, TO THE
14 EXTENT PRACTICABLE MAY CONSIST OF:".
- 15 Page 18, line 9, after "24-48.5-127;" add "AND".
- 16 Page 18, strike line 10.
- 17 Renumber succeeding subparagraph accordingly.
- 18 Page 18, after line 23 insert:
19 "(d) A REPRESENTATIVE OF A STATEWIDE TRADE ASSOCIATION
20 WHOSE MEMBERSHIP INCLUDES GENERAL AND SPECIALITY COMMERCIAL
21 CONTRACTORS THAT CONSTRUCT STATE PROJECTS;".
- 22 Reletter succeeding paragraphs accordingly.
- 23 Page 18, line 24, strike "AN" and substitute "TO THE EXTENT
24 PRACTICABLE, AN".
- 25 Page 19, line 7, after "PERSONS;" add "AND".
- 26 Page 19, strike lines 10 through 12.
- 27 Page 19, lines 13, strike "AN" and substitute "TO THE EXTENT
28 PRACTICABLE, AN".

- 1 Page 19, line 21, strike "AND".
- 2 Page 19, after line 24 insert:
3 "(IV) WITH CONSIDERATION FOR THE VOLUME OF CONSTRUCTION
4 CONTRACTS AWARDED ANNUALLY BY THE STATE, A REPRESENTATIVE OF
5 THE ASSOCIATED GENERAL CONTRACTORS; AND".
- 6 Page 20, line 1, strike "DEPARTMENT" and substitute "MINORITY BUSINESS
7 OFFICE".
- 8 Page 20, line 13, strike "POLICY RECOMMENDATIONS" and substitute
9 "FINDINGS, REMEDIAL MEASURES, AND RECOMMENDATIONS".
- 10 Page 20, line 15, strike "RECOMMENDATIONS IN" and substitute
11 "RECOMMENDATIONS OUTLINED IN".
- 12 Page 20, lines 16 and 17, strike "INCLUDE, WITH WRITTEN EXPLANATIONS,
13 POLICY RECOMMENDATIONS" and substitute "INCLUDE WRITTEN
14 EXPLANATIONS OF RECOMMENDATIONS".
- 15 Page 20, line 18, strike "IMPLEMENTED, AND".
- 16 Page 20, strike lines 19 through 24 and substitute: "IMPLEMENTED AND
17 THE REMEDIAL MEASURES THAT WILL BE TAKEN TO SUPPORT PROGRAM
18 IMPLEMENTATION IN A MANNER THAT IS SUFFICIENTLY COMPREHENSIVE
19 TO MEET THE STATE'S GOAL OF REDUCING DISPARITIES BETWEEN THE
20 AVAILABILITY OF HISTORICALLY UNDERUTILIZED BUSINESSES AND THEIR
21 UTILIZATION IN STATE PROCUREMENT AND INCREASING SUCH UTILIZATION.
22 (II) CONFIRMATION OR REFUTATION OF THE DISPARITY STUDY
23 REPORT FINDING OF NO SUBSTANTIAL DISPARITY BETWEEN AVAILABLE AND
24 UTILIZED LESBIAN, GAY, BISEXUAL, AND TRANSGENDER BUSINESSES;
25 (III) CONFIRMATION OR REFUTATION OF THE DISPARITY STUDY
26 REPORT FINDING OF NO SUBSTANTIAL DISPARITY BETWEEN AVAILABILITY
27 AND UTILIZATION OF BUSINESSES OWNED BY ASIAN AMERICAN PERSONS
28 FOR CONSTRUCTION, CONSTRUCTION-RELATED PROFESSIONAL SERVICES,
29 GOODS AND OTHER SERVICES CONTRACTS, BROKERAGE, AND
30 INVESTMENT;"
- 31 Renumber succeeding subparagraphs accordingly.
- 32 Page 21, strike line 1.
- 33 Page 21, line 2, strike "REQUIRED BY" and substitute "RECOMMENDATIONS

- 1 AND REMEDIAL MEASURES IN ACCORDANCE WITH".
- 2 Page 21, line 13, after "RECOMMENDATIONS" insert "AND ANY SUGGESTED
- 3 REMEDIAL MEASURES".
- 4 Page 21, line 14, "strike "PLANS AND RECOMMENDATIONS OF THE
- 5 DEPARTMENT" and substitute "PLANS, RECOMMENDATIONS, AND REMEDIAL
- 6 MEASURES THAT THE DEPARTMENT HAS TAKEN".
- 7 Page 21, line 17, strike "2023" and substitute "2024".

** ** ** ** **