

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 22-0374.01 Jason Gelender x4330

SENATE BILL 22-163

SENATE SPONSORSHIP

Coleman,

HOUSE SPONSORSHIP

Ricks,

Senate Committees

Business, Labor, & Technology

House Committees

A BILL FOR AN ACT

101 CONCERNING ESTABLISHMENT OF A PROCUREMENT EQUITY PROGRAM
102 TO REMEDIATE DISPARITIES IN STATE PROCUREMENT.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill establishes the state procurement equity program (program) in the department of personnel and administration (department) for the purpose of eliminating disparities, including the substantial disparities identified in the state disparity study report prepared as required by Senate Bill 19-135, between the availability of historically underutilized businesses and the utilization of such businesses in state

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

procurement.

For preliminary implementation of the program, the department, in line with recommendations made in the state disparity study report, is required to:

- Coordinate with the procurement technical assistance center to increase the number of historically underutilized businesses that have the registrations and certifications required to be eligible to apply for and positioned to compete for all state procurement opportunities that they are capable of performing and the number of opportunities available for such businesses;
- Provide solicitation assistance, defined by the bill as the provision of real-time responses to questions asked by potential contractors who seek guidance as to how best to respond to solicitations for state contracts, including guidance regarding availability of opportunities, interpretation of solicitation documents, and solicitation response procedures and best practices; and
- Create a bond assistance program to help historically underutilized businesses to offset all or a portion of the cost of obtaining a surety bond that is required for a solicitation for a state procurement opportunity. The bill transfers \$2 million from the general fund to a newly created bond assistance program cash fund, and the fund is continuously appropriated to the department to implement the bond assistance program.

The department is also required to convene and engage in robust consultation with a stakeholder group consisting of government employees with procurement expertise, an employee of the procurement technical assistance center, owners or high-ranking employees of various types of historically underutilized businesses, and owners or high-ranking employees of businesses that are not historically underutilized businesses but have a demonstrable record of successful engagement and contracting with small businesses and have competed for or been awarded state contracts. The stakeholder group also includes any other individuals who have a demonstrable commitment to furthering equity in government procurement and substantial knowledge of procurement equity best practices who the department deems necessary or appropriate to include. The stakeholder group is required to:

- Closely examine the findings, conclusions, and recommendations in the state disparity study report;
- Using the information in the state disparity study report as a baseline for studying procurement equity programs in other states and at the federal and large local government level, identify best practices for successful program

1 **24-103-1102. Legislative declaration.** (1) THE GENERAL
2 ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT:

3 (a) WHEN IT ENACTED SENATE BILL 19-135 IN 2019, TITLED
4 "CONCERNING METHODS TO DETERMINE WHETHER DISPARITIES INVOLVING
5 CERTAIN HISTORICALLY UNDERUTILIZED BUSINESSES EXIST WITHIN THE
6 STATE PROCUREMENT PROCESS, AND, IN CONNECTION THEREWITH,
7 COMMISSIONING A STUDY TO MAKE SUCH DETERMINATION, REQUIRING THE
8 DEPARTMENT OF PERSONNEL TO TRACK CONTRACTS AWARDED TO
9 HISTORICALLY UNDERUTILIZED BUSINESSES, AND, MAKING AN
10 APPROPRIATION", THE GENERAL ASSEMBLY FOUND, DETERMINED, AND
11 DECLARED THAT:

12 (I) IT IS IMPERATIVE AND THE PUBLIC POLICY OF COLORADO THAT
13 THE STATE PROCUREMENT PROCESS BE FREE FROM BIAS SO THAT ALL
14 QUALIFIED PERSONS AND ENTITIES MAY COMPETE FOR STATE BUSINESS;

15 (II) AN EQUITABLE PROCUREMENT PROCESS NOT ONLY ENSURES
16 JUSTICE AND FAIRNESS IN STATE CONTRACTING BUT WILL BROADEN THE
17 PROCUREMENT CONTRACTOR POOL, WHICH WILL RESULT IN EFFICIENCIES
18 STATEWIDE AND, AS WARRANTED, PROMOTE THE GROWTH OF
19 HISTORICALLY UNDERUTILIZED BUSINESSES, THEREBY CREATING JOBS AND
20 STIMULATING THE STATE'S ECONOMY;

21 (III) ALTHOUGH STUDIES ESTABLISHING DISCRIMINATION IN
22 PROCUREMENT FOR CERTAIN INDUSTRIES OR IN CERTAIN LOCALITIES HAVE
23 BEEN CONDUCTED, A COMPREHENSIVE ANALYSIS OF STATE CONTRACTS
24 AWARDED TO HISTORICALLY UNDERUTILIZED BUSINESSES HAD NOT YET
25 BEEN COMMISSIONED;

26 (IV) THE UNITED STATES SUPREME COURT HAS RECOGNIZED THAT
27 DISPARITY STUDIES ARE TOOLS THAT SEEK TO QUALIFY AND QUANTIFY

1 PAST DISCRIMINATION AND RECOMMEND CERTAIN CORRECTIVE MEASURES
2 AS MAY BE WARRANTED BY A STUDY'S FINDINGS;

3 (V) IF ANY DISPARITIES EXIST, SUCH A STUDY IS ESSENTIAL TO THE
4 ULTIMATE ACHIEVEMENT OF A MARKETPLACE IN WHICH HISTORICALLY
5 UNDERUTILIZED BUSINESSES ARE NOT SUBJECT TO DISCRIMINATION AND
6 CAN OBTAIN A FAIR MARKET SHARE OF CONTRACT EXPENDITURES; AND

7 (VI) THEREFORE, IT WAS THE INTENT OF THE GENERAL ASSEMBLY,
8 CONSISTENT WITH THE CODE'S STATED POLICIES OF ENSURING THE FAIR
9 AND EQUITABLE TREATMENT OF PERSONS WHO DEAL WITH THE
10 PROCUREMENT SYSTEM AND FOSTERING EFFECTIVE, BROAD-BASED
11 COMPETITION WITHIN THE FREE ENTERPRISE SYSTEM, THAT AN
12 INDEPENDENT STUDY BE COMMISSIONED TO:

13 (A) DETERMINE THE FREQUENCY WITH WHICH STATE CONTRACTS
14 ARE AWARDED TO HISTORICALLY UNDERUTILIZED BUSINESSES AND THE
15 SIZE OF CONTRACTS AWARDED COMPARED TO THE FREQUENCY AND SIZE
16 OF CONTRACTS AWARDED TO OTHER BUSINESSES; AND

17 (B) TO THE EXTENT THAT THE STUDY ESTABLISHED THAT
18 DISPARITIES ATTRIBUTABLE TO PAST OR PRESENT DISCRIMINATION EXIST
19 OR INHERE IN THE STATE PROCUREMENT PROCESS, TO RECOMMEND
20 REMEDIAL MEASURES TO ADDRESS THE EFFECTS OF THAT DISCRIMINATION;

21 (b) SENATE BILL 19-135 REQUIRED THE DEPARTMENT TO
22 CONTRACT WITH AN ENTITY INDEPENDENT OF THE DEPARTMENT TO
23 CONDUCT A STATE DISPARITY STUDY REGARDING THE PARTICIPATION OF
24 HISTORICALLY UNDERUTILIZED BUSINESSES, WHICH INCLUDE
25 MINORITY-OWNED BUSINESSES, WOMEN-OWNED BUSINESSES, BUSINESSES
26 OWNED BY PERSONS WITH DISABILITIES, AND BUSINESSES OWNED BY
27 MEMBERS OF THE LESBIAN, GAY, BISEXUAL, AND TRANSGENDER

1 COMMUNITY, IN STATE CONTRACTS ENTERED INTO BY ANY DEPARTMENT,
2 AGENCY, OR INSTITUTION OF THE EXECUTIVE BRANCH OF STATE
3 GOVERNMENT;

4 (c) 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;

7 (d) AS DETAILED IN THE STATE DISPARITY STUDY REPORT, THE
8 RESULTS OF THE STUDY INDICATE THAT SUBSTANTIAL DISPARITIES
9 BETWEEN AVAILABILITY OF HISTORICALLY UNDERUTILIZED BUSINESSES
10 AND UTILIZATION OF SUCH BUSINESSES EXISTS IN STATE CONTRACTING,
11 WITH SPECIFIC FINDINGS THAT:

12 (I) BASED ON AN OVERALL AVAILABILITY ANALYSIS,
13 MINORITY-OWNED AND WOMEN-OWNED BUSINESSES WOULD BE EXPECTED
14 TO HAVE RECEIVED TWENTY-EIGHT PERCENT OF STATE CONTRACT
15 DOLLARS BUT IN FACT ONLY RECEIVED EIGHT PERCENT OF STATE
16 CONTRACT DOLLARS, YIELDING A DISPARITY INDEX SCORE OF THIRTY,
17 WHICH IS CONSIDERED BY COURTS TO BE A SUBSTANTIAL DISPARITY;

18 (II) BASED ON AN OVERALL AVAILABILITY ANALYSIS, BUSINESSES
19 OWNED BY PERSONS WITH DISABILITIES WOULD BE EXPECTED TO HAVE
20 RECEIVED TWELVE PERCENT OF STATE CONTRACT DOLLARS BUT IN FACT
21 RECEIVED LESS THAN ONE PERCENT OF STATE CONTRACT DOLLARS,
22 YIELDING A DISPARITY INDEX SCORE OF THREE, WHICH IS CONSIDERED BY
23 COURTS TO BE A SUBSTANTIAL DISPARITY;

24 (III) BASED ON INDUSTRY-SPECIFIC AVAILABILITY ANALYSIS,
25 SUBSTANTIAL DISPARITIES ALSO EXIST:

26 (A) BETWEEN AVAILABILITY OF MINORITY-OWNED BUSINESSES
27 OWNED BY AFRICAN AMERICAN PERSONS, HISPANIC AMERICAN PERSONS,

1 AND NATIVE AMERICAN PERSONS; WOMEN-OWNED BUSINESSES; AND
2 BUSINESSES OWNED BY PERSONS WITH DISABILITIES AND UTILIZATION OF
3 SUCH BUSINESSES FOR STATE CONTRACTS FOR CONSTRUCTION,
4 CONSTRUCTION-RELATED PROFESSIONAL SERVICES, OTHER PROFESSIONAL
5 SERVICES, AND GOODS AND OTHER SERVICES; AND

6 (B) BETWEEN AVAILABILITY OF MINORITY-OWNED BUSINESSES
7 OWNED BY AFRICAN AMERICAN PERSONS, HISPANIC AMERICAN PERSONS,
8 AND NATIVE AMERICAN PERSONS AND BUSINESS OWNED BY WHITE WOMEN
9 AND UTILIZATION OF SUCH BUSINESSES FOR BROKERAGE AND INVESTMENT
10 CONTRACTS; AND

11 (IV) BETWEEN AVAILABILITY OF MINORITY-OWNED BUSINESSES
12 OWNED BY ASIAN AMERICAN PERSONS AND UTILIZATION OF SUCH
13 BUSINESSES FOR OTHER PROFESSIONAL SERVICES CONTRACTS;

14 (e) BASED ON THESE RESULTS, THE STATE DISPARITY STUDY
15 REPORT CONCLUDED THAT:

16 (I) ALTHOUGH THE STATE IS ALREADY ENDEAVORING TO HELP
17 SMALL BUSINESSES OBTAIN STATE CONTRACTS, IT IS DOING SO WITH
18 LIMITED TOOLS AND RESOURCES;

19 (II) THERE IS NOT A LEVEL STATE CONTRACTING PLAYING FIELD
20 FOR MINORITY-OWNED AND WOMEN-OWNED BUSINESSES AND BUSINESSES
21 OWNED BY PERSONS WITH DISABILITIES;

22 (III) THE SUBSTANTIAL DISPARITIES IDENTIFIED IN THE REPORT ARE
23 LIKELY TO PERSIST UNLESS FURTHER ACTION IS TAKEN;

24 (IV) BASED ON AN EXAMINATION OF PROCUREMENT EQUITY
25 PROGRAMS OPERATED IN OTHER STATES, WHICH USE TOOLS SUCH AS
26 CONTRACT GOALS, PRICE OR POINT PREFERENCES, AND SHELTERED
27 MARKET OR RESTRICTIVE BIDDING PROGRAMS AND WHICH HAVE YIELDED

1 MUCH HIGHER RATES OF UTILIZATION OF MINORITY-OWNED AND
2 WOMEN-OWNED BUSINESSES IN STATE CONTRACTING THAN EXISTS IN
3 COLORADO, LEGISLATION AND RESOURCES CAN NARROW OR ELIMINATE
4 THE SUBSTANTIAL DISPARITIES; AND

5 (V) REMEDIATING THE SUBSTANTIAL DISPARITIES WILL REQUIRE
6 A SUSTAINED MULTI-YEAR PHASED EFFORT BECAUSE:

7 (A) IT WILL TAKE TIME TO PUT THE NEEDED TOOLS IN PLACE AND
8 LAUNCH AND REFINE NEW PROGRAMS;

9 (B) THE STATE'S PROCUREMENT FUNCTIONS ARE DECENTRALIZED
10 BY DEPARTMENT AND ARE NOT CURRENTLY INTEGRATED INTO AN
11 ELECTRONIC SYSTEM TO THE EXTENT THAT WOULD BE NECESSARY IN
12 ORDER TO SUCCESSFULLY IMPLEMENT A COMPREHENSIVE PROCUREMENT
13 EQUITY PROGRAM;

14 (C) BUILDING A VENDOR BASE OF HISTORICALLY UNDERUTILIZED
15 BUSINESSES AND CERTIFYING THOSE BUSINESSES, TO THE EXTENT
16 NECESSARY, FOR PARTICIPATION IN NEW PROCUREMENT EQUITY
17 PROGRAMS WILL TAKE YEARS, NOT MONTHS; AND

18 (D) SOME HISTORICALLY UNDERUTILIZED BUSINESSES MAY NOT
19 YET BE FULLY READY TO COMPETE FOR STATE CONTRACTS BUT WILL
20 BECOME READY IN THE FUTURE; AND

21 (f) BASED ON THESE CONCLUSIONS, THE STATE DISPARITY STUDY
22 REPORT RECOMMENDED THAT THE GENERAL ASSEMBLY ENACT
23 LEGISLATION TO AUTHORIZE AND FUND A PROCUREMENT EQUITY PROGRAM
24 TO ADDRESS THE DISPARITIES FOR HISTORICALLY UNDERUTILIZED
25 BUSINESSES THAT THE STUDY IDENTIFIED, WHICH PROGRAM WOULD:

26 (I) ESTABLISH POLICY AND OVERALL ANNUAL ASPIRATION GOALS
27 FOR HISTORICALLY UNDERUTILIZED BUSINESSES TO COMPETE FOR AND BE

1 AWARDED ELIGIBLE STATE CONTRACTS;

2 (II) REMOVE STRUCTURAL AND FINANCIAL BARRIERS TO SMALL
3 BUSINESS PARTICIPATION, AS MINORITY-OWNED AND WOMEN-OWNED
4 BUSINESSES AND BUSINESSES OWNED BY PERSONS WITH DISABILITIES
5 REPRESENT A HIGHER PROPORTION OF SMALL BUSINESSES THAN OF
6 MEDIUM-SIZED AND LARGE BUSINESSES;

7 (III) WORK WITH PARTNERS TO INCREASE THE READINESS OF
8 HISTORICALLY UNDERUTILIZED BUSINESSES; AND

9 (IV) AUTHORIZE AND IMPLEMENT NEW STATE PROCUREMENT
10 EQUITY TOOLS, INCLUDING A CONTRACT GOALS PROGRAM, A SHELTERED
11 MARKET PROGRAM, AND A PRICE AND EVALUATION PREFERENCE
12 PROGRAM; REGULARLY EVALUATE WHICH GROUPS OF BUSINESSES ARE
13 ELIGIBLE FOR EACH PROGRAM; AND PROVIDE FOR REVIEW OF EACH
14 PROGRAM.

15 (2) THE GENERAL ASSEMBLY FURTHER FINDS, DETERMINES, AND
16 DECLARES THAT:

17 (a) IN FURTHERANCE OF THE PUBLIC POLICY OF THE STATE THAT
18 THE STATE PROCUREMENT PROCESS BE FREE FROM BIAS SO THAT ALL
19 QUALIFIED PERSONS AND ENTITIES MAY COMPETE FOR STATE BUSINESS,
20 CONSISTENT WITH BOTH THE RESULTS OF THE STATE DISPARITY STUDY
21 SHOWING THAT SUBSTANTIAL DISPARITIES EXIST IN STATE PROCUREMENT
22 BETWEEN THE AVAILABILITY OF MINORITY-OWNED AND WOMEN-OWNED
23 BUSINESSES AND BUSINESSES OWNED BY PERSONS WITH DISABILITIES AND
24 THE UTILIZATION OF SUCH BUSINESSES AND THE CONCLUSIONS AND
25 RECOMMENDATIONS SET FORTH IN THE STATE DISPARITY STUDY REPORT,
26 AND ACKNOWLEDGING EXISTING RESOURCE AND TECHNOLOGY
27 LIMITATIONS THAT PRESENT CHALLENGES TO RAPID IMPLEMENTATION OF

1 MANY OF THE RECOMMENDATIONS, IT IS NECESSARY, CRUCIAL, AND
2 APPROPRIATE TO TAKE TANGIBLE, SUSTAINED, ONGOING, AND
3 THOUGHTFUL STEPS TO IMPLEMENT A STATE PROCUREMENT EQUITY
4 PROGRAM THAT WILL REDUCE AND EVENTUALLY ELIMINATE DISPARITIES
5 IN STATE PROCUREMENT; AND

6 (b) THE STEPS TAKEN TOWARD IMPLEMENTATION OF A STATE
7 PROCUREMENT EQUITY PROGRAM IN SENATE BILL 22-____, ENACTED IN
8 2022, ARE JUST THAT, STEPS, AND IT IS THE INTENT OF THE GENERAL
9 ASSEMBLY TO CONTINUE TO ESTABLISH NECESSARY LEGAL REQUIREMENTS
10 AND AUTHORIZATIONS FOR AND PROVIDE THE NECESSARY FUNDING FOR
11 FULL IMPLEMENTATION OF A ROBUST AND COMPREHENSIVE STATE
12 PROCUREMENT EQUITY PROGRAM THAT THOUGHTFULLY, EFFICIENTLY,
13 ANDEFFECTIVELY INCORPORATES, AS NECESSARY AND APPROPRIATE, THE
14 RECOMMENDATIONS MADE IN THE STATE DISPARITY STUDY REPORT AS
15 SOON AS FEASIBLE SO THAT DISPARITIES IN STATE PROCUREMENT CAN BE
16 ELIMINATED.

17 **24-103-1103. Definitions.** AS USED IN THIS PART 11, UNLESS THE
18 CONTEXT OTHERWISE REQUIRES:

19 (1) "HISTORICALLY UNDERUTILIZED BUSINESS" MEANS AN ENTITY:

20 (a) THAT IS A PROFIT-MAKING CORPORATION, SOLE
21 PROPRIETORSHIP, PARTNERSHIP, OR JOINT VENTURE THAT IS MORE THAN
22 FIFTY PERCENT OWNED BY ONE OR MORE INDIVIDUALS WHO ARE:

23 (I) UNITED STATES CITIZENS OR PERMANENT RESIDENT ALIENS;

24 AND

25 (II) ONE OR MORE OF THE FOLLOWING:

26 (A) MEMBERS OF A RACIAL OR ETHNIC MINORITY GROUP;

27 (B) NON-HISPANIC CAUCASIAN WOMEN;

1 (C) PERSONS WITH DISABILITIES; OR

2 (D) MEMBERS OF THE LESBIAN, GAY, BISEXUAL, AND
3 TRANSGENDER COMMUNITY; AND

4 (b) FOR WHICH THE MINORITY OWNERSHIP CONTROLS BOTH THE
5 MANAGEMENT AND DAY-TO-DAY BUSINESS DECISIONS.

6 (2) "MINORITY BUSINESS OFFICE" MEANS THE MINORITY BUSINESS
7 OFFICE CREATED IN SECTION 24-49.5-102.

8 (3) "OFFICE" MEANS THE OFFICE OF ECONOMIC DEVELOPMENT
9 CREATED IN SECTION 24-48.5-101 (1).

10 (4) "PERSONS WITH DISABILITIES" MEANS PERSONS WHO:

11 (a) HAVE PHYSICAL OR MENTAL IMPAIRMENTS, OR BOTH, THAT
12 SUBSTANTIALLY LIMIT ONE OR MORE MAJOR LIFE ACTIVITIES;

13 (b) ARE REGARDED GENERALLY BY THE COMMUNITY AS HAVING
14 A DISABILITY; AND

15 (c) WHOSE DISABILITIES SUBSTANTIALLY LIMIT THEIR ABILITIES TO
16 ENGAGE IN COMPETITIVE BUSINESS.

17 (5) "PROCUREMENT TECHNICAL ASSISTANCE CENTER" MEANS THE
18 ENTITY THROUGH WHICH A PROCUREMENT TECHNICAL ASSISTANCE
19 PROGRAM IS PROVIDED.

20 (6) "PROCUREMENT TECHNICAL ASSISTANCE PROGRAM" HAS THE
21 SAME MEANING AS SET FORTH IN SECTION 24-48.5-121 (2)(d).

22 (7) "PROGRAM" MEANS THE STATE PROCUREMENT EQUITY
23 PROGRAM ESTABLISHED IN SECTION 24-103-1104 (1).

24 (8) "RACIAL OR ETHNIC MINORITY GROUP" MEANS:

25 (a) AFRICAN AMERICAN PERSONS, INCLUDING PERSONS HAVING
26 ORIGINS IN ANY OF THE BLACK RACIAL GROUPS OF AFRICA;

27 (b) HISPANIC AMERICAN PERSONS, INCLUDING PERSONS OF

1 MEXICAN, PUERTO RICAN, CUBAN, CENTRAL OR SOUTH AMERICAN, OR
2 OTHER SPANISH OR PORTUGUESE CULTURE OR ORIGIN, REGARDLESS OF
3 RACE;

4 (c) ASIAN AMERICAN PERSONS, INCLUDING PERSONS WHOSE
5 ORIGINS ARE FROM JAPAN, CHINA, TAIWAN, KOREA, VIETNAM, LAOS,
6 CAMBODIA, THE PHILIPPINES, SAMOA, THE UNITED STATES TERRITORIES
7 OF THE PACIFIC, OR THE NORTHERN MARIANA ISLANDS; OR PERSONS
8 WHOSE ORIGINS ARE FROM SUBCONTINENT ASIA, INCLUDING PERSONS
9 WHOSE ORIGINS ARE FROM INDIA, PAKISTAN, BANGLADESH, SRI LANKA,
10 BHUTAN, OR NEPAL; OR

11 (d) NATIVE AMERICAN PERSONS, INCLUDING PERSONS WHO ARE
12 AMERICAN INDIANS, ESKIMOS, ALEUTS, OR HAWAIIANS OF POLYNESIAN
13 DESCENT.

14 (9) "SMALL BUSINESS" MEANS A BUSINESS THAT QUALIFIES AS A
15 SMALL BUSINESS PURSUANT TO 13 CFR 121.

16 (10) "SMALL BUSINESS DEVELOPMENT CENTER" HAS THE SAME
17 MEANING AS SET FORTH IN SECTION 24-48.5-121 (2)(f).

18 (11) "SOLICITATION ASSISTANCE" MEANS THE PROVISION OF
19 REAL-TIME RESPONSES TO QUESTIONS ASKED BY POTENTIAL CONTRACTORS
20 WHO SEEK GUIDANCE AS TO HOW BEST TO RESPOND TO SOLICITATIONS FOR
21 STATE CONTRACTS, INCLUDING GUIDANCE REGARDING AVAILABILITY OF
22 OPPORTUNITIES, INTERPRETATION OF SOLICITATION DOCUMENTS, AND
23 SOLICITATION RESPONSE PROCEDURES AND BEST PRACTICES.
24 "SOLICITATION ASSISTANCE" DOES NOT INCLUDE GUIDANCE SPECIFIC TO
25 A PARTICULAR SOLICITATION FOR A STATE CONTRACT THAT COULD
26 REASONABLY BE EXPECTED TO PROVIDE AN UNFAIR ADVANTAGE TO THE
27 POTENTIAL CONTRACTOR OVER OTHER POTENTIAL CONTRACTORS

1 RESPONDING TO THE SOLICITATION.

2 (12) "STATE DISPARITY STUDY" OR "STUDY" MEANS THE STUDY
3 REGARDING THE PARTICIPATION OF HISTORICALLY UNDERUTILIZED
4 BUSINESSES IN STATE CONTRACTS ENTERED INTO BY ALL PRINCIPAL
5 DEPARTMENTS OF STATE GOVERNMENT THAT WAS COMMISSIONED BY THE
6 EXECUTIVE DIRECTOR AS REQUIRED BY SECTION 24-103-1003.

7 (13) "STATE DISPARITY STUDY REPORT" OR "REPORT" MEANS THE
8 "2020 STATE OF COLORADO DISPARITY STUDY FINAL REPORT" PUBLISHED
9 IN NOVEMBER 2020.

10 (14) "SUBCONTRACTOR" MEANS ANY PERSON WHO IS A PARTY TO
11 AN AGREEMENT WITH A PRIME CONTRACTOR FOR THE PURPOSE OF
12 PERFORMING A PORTION OF THE WORK THAT THE PRIME CONTRACTOR IS
13 OBLIGED TO PERFORM OR HAVE PERFORMED UNDER A CONTRACT.

14 **24-103-1104. State procurement equity program - established**
15 **- goal - preliminary implementation maximization of contracting**
16 **opportunities - expansion of historically underutilized business**
17 **registry - real-time solicitation assistance help desk - bond assistance**
18 **program - cash fund - report.** (1) (a) THE STATE PROCUREMENT EQUITY
19 PROGRAM IS ESTABLISHED IN THE DEPARTMENT. THE DEPARTMENT, IN
20 ACCORDANCE WITH ITS EXISTING STATE PROCUREMENT RELATED DUTIES
21 OF PROMULGATING STATE CONTRACTING FISCAL RULES AND PROVIDING
22 PROCUREMENT RELATED GUIDANCE AND MANAGEMENT, INCLUDING
23 CONTRACT FORMS AND THE CONTRACT MANAGEMENT SYSTEM, TO MOST
24 STATE EXECUTIVE BRANCH AGENCIES, SHALL ACT TO ENSURE THE
25 EXPEDITIOUS DEVELOPMENT AND FULL IMPLEMENTATION OF THE
26 PROGRAM AS REQUIRED BY THIS PART 11. THE DEPARTMENT SHALL ACT IN
27 CONSULTATION WITH, TO THE EXTENT REQUIRED BY THIS PART 11 OR AS

1 OTHERWISE DEEMED NECESSARY OR ADVISABLE BY THE DEPARTMENT, THE
2 OFFICE, THE PROCUREMENT TECHNICAL ASSISTANCE CENTER, THE SMALL
3 BUSINESS DEVELOPMENT CENTER, THE MINORITY BUSINESS OFFICE, THE
4 DEPARTMENT OF TRANSPORTATION, AND OTHER PERSONS OR ENTITIES
5 THAT HAVE EXPERTISE OR INTEREST IN PROCUREMENT GENERALLY OR IN
6 STATE PROCUREMENT EQUITY.

7 (b) THE GOAL OF THE PROGRAM IS TO ELIMINATE DISPARITIES,
8 INCLUDING THE SUBSTANTIAL DISPARITIES IDENTIFIED IN THE STATE
9 DISPARITY STUDY REPORT, BETWEEN THE AVAILABILITY OF HISTORICALLY
10 UNDERUTILIZED BUSINESSES AND THE UTILIZATION OF SUCH BUSINESSES
11 IN STATE PROCUREMENT. TO ACHIEVE THE GOAL, IT IS THE INTENT OF THE
12 GENERAL ASSEMBLY THAT THE PROGRAM BE IMPLEMENTED IN A WAY
13 THAT:

14 (I) MAXIMIZES CONTRACTING OPPORTUNITIES;

15 (II) ELIMINATES BARRIERS TO ENTRY; AND

16 (III) LEVELS THE PLAYING FIELD.

17 (2) AS PRELIMINARY IMPLEMENTATION OF THE PROGRAM, THE
18 DEPARTMENT SHALL:

19 (a) COORDINATE WITH THE PROCUREMENT TECHNICAL ASSISTANCE
20 CENTER TO INCREASE THE NUMBER OF HISTORICALLY UNDERUTILIZED
21 BUSINESSES THAT HAVE ANY REGISTRATIONS OR CERTIFICATIONS
22 REQUIRED TO BE ELIGIBLE TO APPLY FOR AND POSITIONED TO COMPETE
23 FOR ALL STATE PROCUREMENT OPPORTUNITIES THAT THEY ARE CAPABLE
24 OF PERFORMING. THE DEPARTMENT SHALL TRACK THE INCREASE
25 QUARTERLY AND ON A YEAR OVER YEAR BASIS.

26 (b) PROVIDE, AT ALL TIMES DURING REGULAR STATE BUSINESS
27 HOURS, SOLICITATION ASSISTANCE THROUGH A HELP DESK. THE

1 DEPARTMENT SHALL TRACK USAGE OF SOLICITATION ASSISTANCE AND, TO
2 THE EXTENT FEASIBLE, FOLLOW UP WITH RECIPIENTS OF SOLICITATION
3 ASSISTANCE TO DETERMINE AND TRACK THE EXTENT TO WHICH THEY HAVE
4 SUCCEEDED IN BEING AWARDED STATE CONTRACTS. THE DEPARTMENT
5 SHALL ALSO CONTINUOUSLY MONITOR USAGE OF THE SOLICITATION
6 ASSISTANCE HELP DESK TO DETERMINE WHETHER THE AMOUNT OF HUMAN
7 AND FINANCIAL RESOURCES DEDICATED TO THE PROVISION OF
8 SOLICITATION ASSISTANCE IS OPTIMAL TO MEET DEMAND WHILE
9 STEWARDING STATE RESOURCES. THE HELP DESK MUST RELY ON THE BEST
10 AVAILABLE RESOURCES, INCLUDING BUT NOT LIMITED TO EXISTING
11 WOMEN-OWNED AND MINORITY-OWNED BUSINESS CERTIFICATIONS, ITS
12 OWN SMALL BUSINESS REGISTRATION LIST, VOLUNTARY TAX DISCLOSURES,
13 AND THE SMALL BUSINESS ADMINISTRATION'S HUBZONE PROGRAM MAP
14 TO ENSURE TARGETED ASSISTANCE TO SMALL BUSINESSES.

15 (c) (I) CREATE A BOND ASSISTANCE PROGRAM TO HELP
16 HISTORICALLY UNDERUTILIZED BUSINESSES THAT ARE SMALL BUSINESSES
17 TO OFFSET ALL OR A PORTION OF THE COST OF OBTAINING A SURETY BOND
18 THAT IS REQUIRED FOR A SOLICITATION FOR A STATE PROCUREMENT
19 OPPORTUNITY. IN DEVELOPING THE BOND ASSISTANCE PROGRAM, THE
20 DEPARTMENT SHALL CONSIDER THE EXTENT TO WHICH THE BOND
21 ASSISTANCE PROGRAM CURRENTLY ADMINISTERED BY THE DEPARTMENT
22 OF TRANSPORTATION PROVIDES A USEFUL MODEL FOR THE DEPARTMENT
23 TO FOLLOW.

24 (II) THE BOND ASSISTANCE PROGRAM CASH FUND IS HEREBY
25 CREATED IN THE STATE TREASURY. THE FUND CONSISTS OF GENERAL FUND
26 MONEY TRANSFERRED TO THE FUND AS REQUIRED BY SUBSECTION
27 (2)(c)(III) OF THIS SECTION AND ANY OTHER MONEY THAT THE GENERAL

1 ASSEMBLY MAY APPROPRIATE OR TRANSFER TO THE FUND. THE STATE
2 TREASURER SHALL CREDIT ALL INTEREST AND INCOME DERIVED FROM THE
3 DEPOSIT AND INVESTMENT OF MONEY IN THE FUND TO THE FUND. MONEY
4 IN THE FUND IS CONTINUOUSLY APPROPRIATED TO THE DEPARTMENT FOR
5 THE IMPLEMENTATION OF THE BOND ASSISTANCE PROGRAM.

6 (III) ON JULY 1, 2022, THE STATE TREASURER SHALL TRANSFER
7 TWO MILLION DOLLARS FROM THE GENERAL FUND TO THE BOND
8 ASSISTANCE PROGRAM CASH FUND.

9 (d) CAREFULLY CONSIDER ALL OF THE RECOMMENDATIONS IN THE
10 STATE DISPARITY STUDY REPORT THAT IT IS NOT REQUIRED TO IMPLEMENT
11 PURSUANT TO SUBSECTIONS (2)(a) TO (2)(c) OF THIS SECTION TO
12 DETERMINE WHETHER, USING ONLY EXISTING RESOURCES, IT CAN
13 IMPLEMENT OR MAKE MEANINGFUL PROGRESS TOWARDS IMPLEMENTING
14 ANY OF THE RECOMMENDATIONS. IF THE DEPARTMENT DETERMINES THAT
15 IT CAN IMPLEMENT OR MAKE MEANINGFUL PROGRESS TOWARDS
16 IMPLEMENTING ANY SUCH RECOMMENDATION USING ONLY EXISTING
17 RESOURCES, IT SHALL DO SO.

18 (3) THE DEPARTMENT SHALL REPORT TO THE GENERAL ASSEMBLY
19 REGARDING ITS PRELIMINARY IMPLEMENTATION OF THE PROGRAM DURING
20 THE DEPARTMENT'S 2023 DEPARTMENTAL PRESENTATION TO LEGISLATIVE
21 COMMITTEES OF REFERENCE REQUIRED BY SECTION 2-7-203 (2)(a).

22 **24-103-1105. State procurement equity program**
23 **implementation - stakeholder group - recommendations - report -**
24 **legislative declaration.** (1) THE GENERAL ASSEMBLY HEREBY FINDS,
25 DETERMINES, AND DECLARES THAT:

26 (a) THE STATE DISPARITY STUDY REPORT RECOMMENDATIONS ARE
27 EXTENSIVE; SOME OF THE RECOMMENDATIONS CAN BE IMPLEMENTED IN A

1 VARIETY OF DIFFERENT WAYS; AND PRIORITIZATION OF THE
2 RECOMMENDATIONS, SPECIFIC DETAILS ABOUT POLICY CHOICES TO BE
3 MADE REGARDING THE RECOMMENDATIONS SUCH AS BEST PRACTICES FOR
4 THE USE OF RECOMMENDED PROCUREMENT EQUITY TOOLS, AND
5 QUANTIFICATION OF THE AMOUNT OF ADDITIONAL FUNDING AND
6 PERSONNEL REQUIRED TO BOTH IMPLEMENT SPECIFIC RECOMMENDATIONS
7 AND FULLY IMPLEMENT THE PROGRAM WERE BEYOND THE SCOPE OF THE
8 REPORT; AND

9 (b) TO ENSURE THAT THE INTENT OF THE GENERAL ASSEMBLY IN
10 ENACTING THIS PART 11, THE REMEDIATION OF DISPARITIES IN STATE
11 PROCUREMENT, IS ACHIEVED THROUGH THOUGHTFUL, EFFICIENT, AND
12 EFFECTIVE IMPLEMENTATION OF THE PROGRAM THAT TAKES INTO
13 ACCOUNT THE PROFESSIONAL EXPERTISE AND LIVED EXPERIENCE OF STATE
14 PROCUREMENT STAKEHOLDERS, IT IS NECESSARY, APPROPRIATE, AND IN
15 THE BEST INTEREST OF THE STATE TO REQUIRE THE DEPARTMENT TO
16 CONVENE, ENGAGE IN ROBUST CONSULTATION WITH, AND STRONGLY
17 CONSIDER THE FORMAL POLICY RECOMMENDATIONS OF A STAKEHOLDER
18 GROUP COMPRISED OF REPRESENTATIVES OF HISTORICALLY
19 UNDERUTILIZED BUSINESSES AND SMALL BUSINESSES, GOVERNMENTAL
20 ENTITIES, ORGANIZATIONS THAT PROVIDE PROCUREMENT TECHNICAL
21 ASSISTANCE OR OUTREACH TO HISTORICALLY UNDERUTILIZED BUSINESSES
22 AND SMALL BUSINESSES, AND SUCH OTHER PERSONS WITH RELEVANT
23 PROFESSIONAL EXPERIENCE, INCLUDING GOVERNMENT PROCUREMENT AND
24 GOVERNMENT CONTRACTING EXPERIENCE AS THE DEPARTMENT DEEMS
25 APPROPRIATE.

26 (2) THE DEPARTMENT SHALL CONVENE AND ENGAGE IN ROBUST
27 CONSULTATION WITH A STAKEHOLDER GROUP CONSISTING OF:

1 (a) THE FOLLOWING STATE GOVERNMENT EMPLOYEES:

2 (I) AN EMPLOYEE OF THE DEPARTMENT WHO HAS EXTENSIVE
3 EXPERIENCE AND EXPERTISE IN STATE PROCUREMENT;

4 (II) AN EMPLOYEE OF THE OFFICE WHO HAS BEEN INVOLVED IN THE
5 OFFICE'S ADMINISTRATION OF OR IS OTHERWISE KNOWLEDGEABLE ABOUT
6 THE PROCUREMENT TECHNICAL ASSISTANCE PROGRAM, THE SMALL
7 BUSINESS COVID-19 GRANT PROGRAM CREATED IN SECTION 24-48.5-126,
8 OR THE COVID-19 RELIEF FOR DISPROPORTIONATELY IMPACTED
9 BUSINESSES PROGRAM CREATED IN SECTION 24-48.5-127;

10 (III) AN EMPLOYEE OF THE MINORITY BUSINESS OFFICE; AND

11 (IV) AN EMPLOYEE OF THE DEPARTMENT OF TRANSPORTATION
12 WHO HAS SIGNIFICANT EXPERIENCE AND EXPERTISE REGARDING THE
13 DEPARTMENT OF TRANSPORTATION'S CIVIL RIGHTS PROGRAMS THAT
14 ESTABLISH, ADMINISTER, AND ENFORCE THE DEPARTMENT OF
15 TRANSPORTATION'S DIVERSITY, EQUITY, AND INCLUSION REQUIREMENTS
16 FOR ENGINEERS, CONTRACTORS, CONSULTANTS, LOCAL AGENCIES, AND
17 TRANSIT PROVIDERS;

18 (b) AN EMPLOYEE OF THE CITY AND COUNTY OF DENVER'S
19 DIVISION OF SMALL BUSINESS OPPORTUNITY WHO HAS SIGNIFICANT
20 EXPERIENCE AND EXPERTISE REGARDING THE PROGRAMS AND OPERATION
21 OF THE DIVISION;

22 (c) AN EMPLOYEE OF THE PROCUREMENT TECHNICAL ASSISTANCE
23 CENTER;

24 (d) AN OWNER OR HIGH-LEVEL EMPLOYEE OF EACH OF THE
25 FOLLOWING TYPES OF HISTORICALLY UNDERUTILIZED BUSINESSES:

26 (I) A BUSINESS OWNED BY ONE OR MORE WOMEN;

27 (II) A BUSINESS OWNED BY ONE OR MORE AFRICAN AMERICAN

1 PERSONS;

2 (III) A BUSINESS OWNED BY ONE OR MORE ASIAN AMERICAN

3 PERSONS;

4 (IV) A BUSINESS OWNED BY ONE OR MORE HISPANIC AMERICAN

5 PERSONS;

6 (V) A BUSINESS OWNED BY ONE OR MORE NATIVE AMERICAN

7 PERSONS;

8 (VI) A BUSINESS OWNED BY ONE OR MORE PERSONS WITH

9 DISABILITIES; AND

10 (VII) A BUSINESS OWNED BY ONE OR MORE PERSONS WHO ARE

11 MEMBERS OF THE LESBIAN, GAY, BISEXUAL, AND TRANSGENDER

12 COMMUNITY;

13 (e) AN OWNER OR HIGH-LEVEL EMPLOYEE OF EACH OF THE

14 FOLLOWING TYPES OF BUSINESSES THAT ARE NOT HISTORICALLY

15 UNDERUTILIZED BUSINESSES AND THAT HAVE COMPETED FOR OR BEEN

16 AWARDED STATE CONTRACTS:

17 (I) A SMALL BUSINESS;

18 (II) A BUSINESS THAT IS NOT A SMALL BUSINESS BUT THAT HAS

19 FEWER THAN FIVE HUNDRED EMPLOYEES AND A DEMONSTRABLE RECORD

20 OF SUCCESSFUL ENGAGEMENT AND CONTRACTING WITH SMALL

21 BUSINESSES; AND

22 (III) A BUSINESS THAT HAS MORE THAN FIVE HUNDRED EMPLOYEES

23 AND A DEMONSTRABLE RECORD OF SUCCESSFUL ENGAGEMENT AND

24 CONTRACTING WITH SMALL BUSINESSES; AND

25 (f) ANY OTHER INDIVIDUALS WHO HAVE A DEMONSTRABLE

26 COMMITMENT TO FURTHERING EQUITY IN GOVERNMENT PROCUREMENT

27 AND SUBSTANTIAL KNOWLEDGE OF PROCUREMENT EQUITY BEST

1 PRACTICES WHO THE DEPARTMENT DEEMS NECESSARY OR APPROPRIATE TO
2 INCLUDE IN THE STAKEHOLDER GROUP.

3 (3) THE STAKEHOLDER GROUP CONVENE AS REQUIRED BY
4 SUBSECTION (2) OF THIS SECTION SHALL:

5 (a) CLOSELY EXAMINE THE FINDINGS, CONCLUSIONS, AND
6 RECOMMENDATION IN THE STATE DISPARITY STUDY REPORT;

7 (b) USING THE INFORMATION IN THE STATE DISPARITY STUDY
8 REPORT AS A BASELINE FOR STUDYING PROCUREMENT EQUITY PROGRAMS
9 IN OTHER STATES AND AT THE FEDERAL AND LARGE LOCAL GOVERNMENT
10 LEVEL, IDENTIFY BEST PRACTICES FOR SUCCESSFUL PROCUREMENT EQUITY
11 PROGRAM IMPLEMENTATION AND ADMINISTRATION; AND

12 (c) NO LATER THAN NOVEMBER 1, 2022, PRESENT TO THE
13 DEPARTMENT A REPORT OF SPECIFIC POLICY RECOMMENDATIONS THAT
14 INCLUDES, AT A MINIMUM:

15 (I) PRIORITIZATION OF THE RECOMMENDATIONS IN THE STATE
16 DISPARITY STUDY REPORT. THE PRIORITIZATION MAY INCLUDE, WITH
17 WRITTEN EXPLANATIONS, POLICY RECOMMENDATIONS THAT SPECIFY
18 WHETHER RECOMMENDATIONS IN THE REPORT WILL BE IMPLEMENTED, AND
19 THE POLICY RECOMMENDATIONS SHALL BE MADE WITH THE GOAL OF
20 ENSURING THAT THE PROGRAM, WHEN FULLY IMPLEMENTED, WILL BE
21 SUFFICIENTLY COMPREHENSIVE AND ROBUST TO MEET THE STATE'S GOAL
22 OF ELIMINATING DISPARITIES BETWEEN THE AVAILABILITY OF
23 HISTORICALLY UNDERUTILIZED BUSINESSES AND THE UTILIZATION OF SUCH
24 BUSINESSES IN STATE PROCUREMENT.

25 (II) A PRELIMINARY ESTIMATE OF THE AMOUNT OF INITIAL AND
26 ONGOING FUNDING, PERSONNEL, INFORMATION TECHNOLOGY RESOURCES,
27 AND OTHER RESOURCES NEEDED TO IMPLEMENT THE POLICY

1 RECOMMENDATIONS IN ACCORDANCE WITH BEST PRACTICES IDENTIFIED AS
2 REQUIRED BY SUBSECTION (3)(b) OF THIS SECTION;

3 (III) A STEP-BY-STEP TIMELINE FOR FULL IMPLEMENTATION OF THE
4 PROGRAM;

5 (IV) SUGGESTED METHODOLOGIES AND METRICS FOR MONITORING
6 AND EVALUATING THE SUCCESS OF THE PROGRAM AND ENSURING
7 PROGRAM ACCOUNTABILITY; AND

8 (V) IDENTIFICATION OF ANY PUBLIC OR PRIVATE SOURCES OF
9 FUNDING OR OTHER RESOURCES THAT MAY BE AVAILABLE TO EXPEDITE
10 THE IMPLEMENTATION OR ONGOING ADMINISTRATION OF THE PROGRAM
11 AND REDUCE COSTS TO THE STATE.

12 (4) THE DEPARTMENT SHALL REPORT ON THE PROGRESS AND
13 POLICY RECOMMENDATIONS OF THE STAKEHOLDER GROUP, THE
14 PRELIMINARY PLANS AND RECOMMENDATIONS OF THE DEPARTMENT
15 REGARDING THE FULL IMPLEMENTATION OF THE PROGRAM, AND ANY
16 RECOMMENDATIONS THAT THE DEPARTMENT HAS REGARDING THE NEED
17 FOR RELATED LEGISLATION DURING ITS 2023 ANNUAL PRESENTATION TO
18 LEGISLATIVE OVERSIGHT COMMITTEES REQUIRED BY SECTION 2-7-203
19 (2)(a). IN PREPARATION FOR THE PRESENTATION, THE DEPARTMENT SHALL
20 GIVE STRONG CONSIDERATION TO THE POLICY RECOMMENDATIONS REPORT
21 PROVIDED BY THE STAKEHOLDER GROUP AS REQUIRED BY SUBSECTION
22 (3)(c) OF THIS SECTION.

23 **SECTION 2. Safety clause.** The general assembly hereby finds,
24 determines, and declares that this act is necessary for the immediate
25 preservation of the public peace, health, or safety.