

CHAPTER 433

GOVERNMENT - STATE

SENATE BILL 22-163

BY SENATOR(S) Coleman and Kolker, Bridges, Buckner, Donovan, Fields, Ginal, Jaquez Lewis, Lee, Winter, Zenzinger;
also REPRESENTATIVE(S) Ricks, Bacon, Exum, Gonzales-Gutierrez, Hooton, Jodeh, Lindsay, Snyder, Tipper, Valdez A.

AN ACT

**CONCERNING ESTABLISHMENT OF A PROCUREMENT EQUITY PROGRAM TO REMEDIATE DISPARITIES
IN STATE PROCUREMENT, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** part 11 to article 103 of title 24 as follows:

**PART 11
REMEDIATION OF STATE PROCUREMENT DISPARITIES
THAT AFFECT HISTORICALLY UNDERUTILIZED BUSINESSES**

24-103-1101. Short title. THE SHORT TITLE OF THIS PART 11 IS THE "STATE PROCUREMENT DISPARITIES REMEDIATION ACT".

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

(a) WHEN IT ENACTED SENATE BILL 19-135 IN 2019, IT FOUND, DETERMINED AND DECLARED, IN SECTION 24-103-1001, THE IMPORTANCE OF ENSURING AN EQUITABLE STATE PROCUREMENT PROCESS;

(b) AS REQUIRED BY SENATE BILL 19-135, THE DEPARTMENT CONTRACTED WITH AN ENTITY INDEPENDENT OF THE DEPARTMENT TO CONDUCT A STATE DISPARITY STUDY REGARDING THE PARTICIPATION OF HISTORICALLY UNDERUTILIZED BUSINESSES, WHICH INCLUDED A REVIEW OF MINORITY-OWNED BUSINESSES, WOMEN-OWNED BUSINESSES, BUSINESSES OWNED BY PERSONS WITH DISABILITIES, AND BUSINESSES OWNED BY MEMBERS OF THE LESBIAN, GAY, BISEXUAL, AND TRANSGENDER COMMUNITY, IN STATE CONTRACTS ENTERED INTO BY ANY

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

DEPARTMENT, AGENCY, OR INSTITUTION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT;

(c) THE STATE DISPARITY STUDY EXAMINED WHETHER A DISPARITY EXISTS BETWEEN THE PERCENTAGE OF STATE CONTRACT DOLLARS GOING TO HISTORICALLY UNDERUTILIZED BUSINESSES AND THE PERCENTAGE THAT MIGHT BE EXPECTED TO GO TO THOSE BUSINESSES BASED ON THE RELATIVE NUMBER OF THOSE BUSINESSES THAT ARE READY, WILLING AND ABLE TO PERFORM DIFFERENT TYPES, SIZES AND LOCATIONS OF STATE CONTRACTS;

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

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

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

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

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

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

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

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

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

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

(h) THE STATE DISPARITY STUDY REPORT RECOMMENDED THAT THE GENERAL ASSEMBLY CONSIDER ENACTING LEGISLATION TO AUTHORIZE AND FUND A PROCUREMENT EQUITY PROGRAM TO ADDRESS THE SPECIFIC DISPARITIES SHOWN IN THE STATE DISPARITY STUDY REPORT FOR HISTORICALLY UNDERUTILIZED BUSINESSES BASED ON INDUSTRY AND BUSINESS OWNERSHIP.

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

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

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

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

(4) "HISTORICALLY UNDERUTILIZED BUSINESS" MEANS AN ENTITY:

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

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

(II) ONE OR MORE OF THE FOLLOWING:

(A) MEMBERS OF A RACIAL OR ETHNIC MINORITY GROUP; EXCEPT THAT A BUSINESS OWNED BY ASIAN AMERICAN PERSONS IS A HISTORICALLY UNDERUTILIZED BUSINESS ONLY WITH RESPECT TO STATE PROCUREMENT FOR "OTHER PROFESSIONAL SERVICES CONTRACTS", AS THAT TERM IS DEFINED IN THE STATE DISPARITY STUDY.

(B) NON-HISPANIC CAUCASIAN WOMEN; OR

(C) PERSONS WITH DISABILITIES; AND

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

(5) "INDUSTRY" MEANS BUSINESSES WITHIN ONE OF THE FOLLOWING ECONOMIC SECTORS:

- (a) CONSTRUCTION;
- (b) CONSTRUCTION-RELATED PROFESSIONAL SERVICES;
- (c) BROKERAGE AND INVESTMENT;
- (d) OTHER PROFESSIONAL SERVICES; AND
- (e) GOODS AND OTHER SERVICES.

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

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

(8) "PERSONS WITH DISABILITIES" MEANS PERSONS WHO:

- (a) HAVE PHYSICAL OR MENTAL IMPAIRMENTS, OR BOTH, THAT SUBSTANTIALLY LIMIT ONE OR MORE MAJOR LIFE ACTIVITIES;
- (b) ARE REGARDED GENERALLY BY THE COMMUNITY AS HAVING A DISABILITY; AND
- (c) WHOSE DISABILITIES SUBSTANTIALLY LIMIT THEIR ABILITIES TO ENGAGE IN COMPETITIVE BUSINESS.

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

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

(11) "PROCUREMENT TECHNICAL ASSISTANCE CENTER" MEANS THE ENTITY THROUGH WHICH A PROCUREMENT TECHNICAL ASSISTANCE PROGRAM IS PROVIDED.

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

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

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

(15) "RACIAL OR ETHNIC MINORITY GROUP" MEANS INDIVIDUALS WHO BELONG TO ONE OR MORE RACIAL OR ETHNIC GROUPS IDENTIFIED IN 49 CFR SECTION 26.5:

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

(b) HISPANIC AMERICAN PERSONS, INCLUDING PERSONS OF MEXICAN, PUERTO RICAN, CUBAN, CENTRAL OR SOUTH AMERICAN, OR OTHER SPANISH OR PORTUGUESE CULTURE OR ORIGIN, REGARDLESS OF RACE;

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

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

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

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

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

(19) "SOLICITATION ASSISTANCE" MEANS 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. "SOLICITATION ASSISTANCE" DOES NOT INCLUDE GUIDANCE SPECIFIC TO A PARTICULAR SOLICITATION FOR A STATE CONTRACT THAT COULD REASONABLY BE EXPECTED TO PROVIDE AN UNFAIR ADVANTAGE TO THE POTENTIAL CONTRACTOR OVER OTHER POTENTIAL CONTRACTORS RESPONDING TO THE SOLICITATION.

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

(21) "STATE DISPARITY STUDY REPORT" OR "REPORT" MEANS THE "2020 STATE OF COLORADO DISPARITY STUDY FINAL REPORT" PUBLISHED IN NOVEMBER 2020.

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

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

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

(25) "WOMEN-OWNED BUSINESS" OR "WBE" MEANS A BUSINESS THAT IS AT LEAST FIFTY-ONE PERCENT OWNED AND CONTROLLED BY ONE OR MORE INDIVIDUALS THAT ARE NON-MINORITY WOMEN.

24-103-1104. State procurement equity program - established - goal - preliminary implementation maximization of contracting opportunities - expansion of historically underutilized business registry - real-time solicitation assistance help desk - bond assistance program - cash fund - report. (1) (a) THE STATE PROCUREMENT EQUITY PROGRAM IS ESTABLISHED IN THE DEPARTMENT. THE DEPARTMENT, IN ACCORDANCE WITH ITS EXISTING STATE PROCUREMENT RELATED DUTIES OF PROMULGATING STATE CONTRACTING FISCAL RULES AND PROVIDING PROCUREMENT RELATED GUIDANCE AND MANAGEMENT, INCLUDING CONTRACT FORMS AND THE CONTRACT MANAGEMENT SYSTEM, TO MOST STATE EXECUTIVE BRANCH AGENCIES, SHALL ACT TO ENSURE THE EXPEDITIOUS DEVELOPMENT AND FULL IMPLEMENTATION OF THE PROGRAM AS REQUIRED BY THIS PART 11. THE DEPARTMENT SHALL ACT IN CONSULTATION WITH, TO THE EXTENT REQUIRED BY THIS PART 11 OR AS OTHERWISE DEEMED NECESSARY OR ADVISABLE BY THE DEPARTMENT, THE OFFICE, THE PROCUREMENT TECHNICAL ASSISTANCE CENTER, THE SMALL BUSINESS DEVELOPMENT CENTER, THE MINORITY BUSINESS OFFICE, THE DEPARTMENT OF TRANSPORTATION, AND OTHER PERSONS OR ENTITIES THAT HAVE EXPERTISE OR INTEREST IN PROCUREMENT GENERALLY OR IN STATE PROCUREMENT EQUITY.

(b) THE GOAL OF THE PROGRAM IS TO REDUCE DISPARITIES IDENTIFIED IN THE STATE DISPARITY STUDY REPORT BETWEEN THE AVAILABILITY OF HISTORICALLY UNDERUTILIZED BUSINESSES AND THE UTILIZATION OF SUCH BUSINESSES IN STATE PROCUREMENT.

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

(a) PROVIDE, AT ALL TIMES DURING REGULAR STATE BUSINESS HOURS, SOLICITATION ASSISTANCE THROUGH A HELP DESK. THE DEPARTMENT SHALL TRACK USAGE OF SOLICITATION ASSISTANCE AND, TO THE EXTENT FEASIBLE, FOLLOW UP WITH RECIPIENTS OF SOLICITATION ASSISTANCE TO DETERMINE AND TRACK THE EXTENT TO WHICH THEY HAVE SUCCEEDED IN BEING AWARDED STATE CONTRACTS. THE DEPARTMENT SHALL ALSO CONTINUOUSLY MONITOR USAGE OF THE SOLICITATION ASSISTANCE HELP DESK TO DETERMINE WHETHER THE AMOUNT OF HUMAN AND FINANCIAL RESOURCES DEDICATED TO THE PROVISION OF SOLICITATION ASSISTANCE IS OPTIMAL TO MEET DEMAND WHILE STEWARDING STATE RESOURCES.

(b) (I) CREATE A BOND ASSISTANCE PROGRAM TO HELP HISTORICALLY UNDERUTILIZED BUSINESSES THAT ARE SMALL 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.

(II) THE BOND ASSISTANCE PROGRAM CASH FUND IS HEREBY CREATED IN THE STATE TREASURY. THE FUND CONSISTS OF GENERAL FUND MONEY TRANSFERRED TO THE FUND AS REQUIRED BY SUBSECTION (2)(c)(III) OF THIS SECTION AND ANY OTHER MONEY THAT THE GENERAL ASSEMBLY MAY APPROPRIATE OR TRANSFER TO THE FUND. THE STATE TREASURER SHALL CREDIT ALL INTEREST AND INCOME DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE FUND TO THE FUND. MONEY IN THE FUND IS CONTINUOUSLY APPROPRIATED TO THE DEPARTMENT FOR THE IMPLEMENTATION OF THE BOND ASSISTANCE PROGRAM.

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

(c) CAREFULLY CONSIDER ALL OF THE RECOMMENDATIONS IN THE STATE DISPARITY STUDY REPORT THAT ARE NOT REQUIRED TO BE IMPLEMENTED PURSUANT TO SUBSECTIONS (2)(a) TO (2)(c) OF THIS SECTION TO DETERMINE WHETHER, USING ONLY EXISTING RESOURCES, IT CAN IMPLEMENT OR MAKE MEANINGFUL PROGRESS TOWARDS IMPLEMENTING ANY OF THE RECOMMENDATIONS. IF THE DEPARTMENT DETERMINES THAT IT CAN IMPLEMENT OR MAKE MEANINGFUL PROGRESS TOWARDS IMPLEMENTING ANY SUCH RECOMMENDATION USING ONLY EXISTING RESOURCES, IT SHALL DO SO.

(3) THE DEPARTMENT SHALL REPORT TO THE GENERAL ASSEMBLY REGARDING ITS PRELIMINARY IMPLEMENTATION OF THE PROGRAM DURING THE DEPARTMENT'S JANUARY 2025 DEPARTMENTAL PRESENTATION TO LEGISLATIVE COMMITTEES OF REFERENCE REQUIRED BY SECTION 2-7-203 (2)(a).

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

(a) THE STATE SEEKS RECOMMENDATIONS FROM STATE PROCUREMENT STAKEHOLDERS, AS CONVENED PURSUANT TO SUBSECTION (2) OF THIS SECTION FOR THE IMPLEMENTATION OF REMEDIAL MEASURES, INCLUDING REMEDIAL MEASURES USING PROCUREMENT EQUITY TOOLS, AND QUANTIFICATION OF THE AMOUNT OF ADDITIONAL FUNDING AND PERSONNEL REQUIRED TO BOTH IMPLEMENT SPECIFIC REMEDIAL MEASURES AND FULLY IMPLEMENT THE PROGRAM; AND

(b) TO SUPPORT THE INTENT OF THE GENERAL ASSEMBLY IN ENACTING THIS PART 11, THE REMEDIATION OF DISPARITIES IN STATE PROCUREMENT, THROUGH THOUGHTFUL, EFFICIENT, AND EFFECTIVE IMPLEMENTATION OF THE PROGRAM THAT TAKES INTO ACCOUNT THE PROFESSIONAL EXPERTISE AND LIVED EXPERIENCE OF STATE PROCUREMENT STAKEHOLDERS AS CONVENED PURSUANT TO SUBSECTION (2) OF THIS SECTION, IT IS NECESSARY, APPROPRIATE, AND IN THE BEST INTEREST OF THE STATE TO REQUIRE THE DEPARTMENT TO CONVENE, CONTRACT WITH A FACILITATOR TO FACILITATE DISCUSSION AMONG, ENGAGE IN CONSULTATION WITH, AND STRONGLY CONSIDER THE FORMAL POLICY RECOMMENDATIONS OF A STAKEHOLDER GROUP THAT MAY BE COMPRISED, TO THE EXTENT PRACTICABLE, OF REPRESENTATIVES OF HISTORICALLY UNDERUTILIZED BUSINESSES AND SMALL BUSINESSES, GOVERNMENTAL ENTITIES, FEDERAL AND LOCAL ORGANIZATIONS THAT PROVIDE PROCUREMENT TECHNICAL ASSISTANCE OR OUTREACH TO HISTORICALLY UNDERUTILIZED BUSINESSES AND SMALL BUSINESSES, AND SUCH OTHER PERSONS

WITH RELEVANT PROFESSIONAL EXPERIENCE, INCLUDING GOVERNMENT PROCUREMENT AND GOVERNMENT CONTRACTING EXPERIENCE AS THE DEPARTMENT DEEMS APPROPRIATE.

(2) THE DEPARTMENT SHALL CONVENE, CONTRACT WITH A FACILITATOR TO FACILITATE DISCUSSION AMONG, AND ENGAGE IN CONSULTATION WITH A STAKEHOLDER GROUP, WHICH, TO THE EXTENT PRACTICABLE MAY CONSIST OF:

(a) THE FOLLOWING STATE GOVERNMENT EMPLOYEES:

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

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

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

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

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

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

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

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

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

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

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

(V) A BUSINESS OWNED BY ONE OR MORE NATIVE AMERICAN PERSONS; AND

(VI) A BUSINESS OWNED BY ONE OR MORE PERSONS WITH DISABILITIES; AND

(e) TO THE EXTENT PRACTICABLE, AN OWNER OR HIGH-LEVEL EMPLOYEE OF EACH

OF THE FOLLOWING TYPES OF BUSINESSES THAT ARE NOT HISTORICALLY UNDERUTILIZED BUSINESSES AND THAT HAVE COMPETED FOR OR BEEN AWARDED STATE CONTRACTS:

(I) A SMALL BUSINESS;

(II) A BUSINESS THAT IS NOT A SMALL BUSINESS BUT THAT HAS FEWER THAN FIVE HUNDRED EMPLOYEES AND A DEMONSTRABLE RECORD OF SUCCESSFUL ENGAGEMENT AND CONTRACTING WITH SMALL BUSINESSES;

(III) A BUSINESS THAT HAS MORE THAN FIVE HUNDRED EMPLOYEES AND A DEMONSTRABLE RECORD OF SUCCESSFUL ENGAGEMENT AND CONTRACTING WITH SMALL BUSINESSES; AND

(IV) WITH CONSIDERATION FOR THE VOLUME OF CONSTRUCTION CONTRACTS AWARDED ANNUALLY BY THE STATE, A REPRESENTATIVE OF THE ASSOCIATED GENERAL CONTRACTORS; AND

(f) 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 IN THE STAKEHOLDER GROUP.

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

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

(b) 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 PROCUREMENT EQUITY PROGRAM IMPLEMENTATION AND ADMINISTRATION; AND

(c) NO LATER THAN NOVEMBER 1, 2023, PRESENT TO THE DEPARTMENT A REPORT OF SPECIFIC FINDINGS, REMEDIAL MEASURES, AND RECOMMENDATIONS THAT INCLUDES, AT A MINIMUM:

(I) PRIORITIZATION OF THE RECOMMENDATIONS OUTLINED IN THE STATE DISPARITY STUDY REPORT. THE PRIORITIZATION MAY INCLUDE WRITTEN EXPLANATIONS OF RECOMMENDATIONS THAT SPECIFY WHETHER RECOMMENDATIONS IN THE REPORT WILL BE IMPLEMENTED AND THE REMEDIAL MEASURES THAT WILL BE TAKEN TO SUPPORT PROGRAM IMPLEMENTATION IN A MANNER THAT IS SUFFICIENTLY COMPREHENSIVE TO MEET THE STATE'S GOAL OF REDUCING DISPARITIES BETWEEN THE AVAILABILITY OF HISTORICALLY UNDERUTILIZED BUSINESSES AND THEIR UTILIZATION IN STATE PROCUREMENT AND INCREASING SUCH UTILIZATION.

(II) CONFIRMATION OR REFUTATION OF THE DISPARITY STUDY REPORT FINDING OF NO SUBSTANTIAL DISPARITY BETWEEN AVAILABLE AND UTILIZED LESBIAN, GAY, BISEXUAL, AND TRANSGENDER BUSINESSES;

(III) CONFIRMATION OR REFUTATION OF THE DISPARITY STUDY REPORT FINDING OF NO SUBSTANTIAL DISPARITY BETWEEN AVAILABILITY AND UTILIZATION OF BUSINESSES OWNED BY ASIAN AMERICAN PERSONS FOR CONSTRUCTION, CONSTRUCTION-RELATED PROFESSIONAL SERVICES, GOODS AND OTHER SERVICES CONTRACTS, BROKERAGE, AND INVESTMENT;

(IV) A PRELIMINARY ESTIMATE OF THE AMOUNT OF INITIAL AND ONGOING FUNDING, PERSONNEL, INFORMATION TECHNOLOGY RESOURCES, AND OTHER RESOURCES NEEDED TO IMPLEMENT THE POLICY RECOMMENDATIONS AND REMEDIAL MEASURES IN ACCORDANCE WITH SUBSECTION (3)(b) OF THIS SECTION;

(V) A STEP-BY-STEP TIMELINE FOR FULL IMPLEMENTATION OF THE PROGRAM;

(VI) SUGGESTED METHODOLOGIES AND METRICS FOR MONITORING AND EVALUATING THE SUCCESS OF THE PROGRAM AND ENSURING PROGRAM ACCOUNTABILITY; AND

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

(4) THE DEPARTMENT SHALL REPORT ON THE PROGRESS AND POLICY RECOMMENDATIONS AND ANY SUGGESTED REMEDIAL MEASURES OF THE STAKEHOLDER GROUP, THE PRELIMINARY PLANS, RECOMMENDATIONS, AND REMEDIAL MEASURES THAT THE DEPARTMENT HAS TAKEN REGARDING THE FULL IMPLEMENTATION OF THE PROGRAM, AND ANY RECOMMENDATIONS THAT THE DEPARTMENT HAS REGARDING THE NEED FOR RELATED LEGISLATION DURING ITS JANUARY 2025 ANNUAL PRESENTATION TO LEGISLATIVE OVERSIGHT COMMITTEES REQUIRED BY SECTION 2-7-203 (2)(a). IN PREPARATION FOR THE PRESENTATION, THE DEPARTMENT SHALL GIVE STRONG CONSIDERATION TO THE POLICY RECOMMENDATIONS REPORT PROVIDED BY THE STAKEHOLDER GROUP AS REQUIRED BY SUBSECTION (3)(c) OF THIS SECTION.

SECTION 2. In Colorado Revised Statutes, 24-101-301, **amend** (31) as follows:

24-101-301. Definitions. The terms defined in this section shall have the following meanings whenever they appear in this code, unless the context in which they are used clearly requires a different meaning or a different definition is prescribed for a particular article or portion thereof:

(31) EXCEPT AS OTHERWISE PROVIDED IN SECTION 24-103-1103 (13), "professional services" means services of accountants, clergy, physicians, lawyers, and dentists and such other services as may be procured through agents of those services, excluding those professional services as defined in section 24-30-1402, as the executive director may by rule designate as professional services.

SECTION 3. Appropriation. (1) For the 2022-23 state fiscal year, \$2,007,707 is appropriated to the department of personnel. This appropriation is from the general fund. To implement this act, the department may use this appropriation as follows:

(a) \$1,046,345 for use by the executive director's office for the state procurement equity program, which amount is based on an assumption that the program will require an additional 4.6 FTE;

(b) \$400,556 for use by the division of human resources for liability claims; and

(c) \$560,806 for use by the division of human resources for liability legal services.

(2) For the 2022-23 state fiscal year, \$114,824 is appropriated to the office of the governor for use by the office of information technology. This appropriation is from reappropriated funds received from the department of personnel under subsection (1)(a) of this section. To implement this act, the office may use this appropriation to provide information technology services for the department of personnel.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: June 8, 2022