A BILL FOR AN ACT

CONCERNING ESTABLISHMENT OF A PROCUREMENT EQUITY PROGRAM 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
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
No later than November 1, 2022, present to the department a report of specific policy recommendations that includes, at a minimum:

- Prioritization of the recommendations in the state disparity study report;
- A preliminary estimate of the amount of initial and ongoing funding, personnel, information technology resources, and other resources needed to implement the policy recommendations in accordance with identified best practices;
- A step-by-step timeline for full implementation of the program;
- Suggested methodologies and metrics for evaluating the success of the program and ensuring program accountability on both the state agency and prime contractor sides; and
- 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.

The department is required to report on its preliminary implementation of the program, the progress and policy recommendations of the stakeholder group, the preliminary plans and recommendations of the department regarding full implementation of the program, and any recommendations that the department has regarding the need for related legislation during its 2023 annual presentation to legislative oversight committees required by the "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act".

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

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

3 PART 11

4 REMEDIATION OF DISPARITIES

5 IN STATE PROCUREMENT

6 24-103-1101. Short title. The short title of this part 11 is the

7 "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, titled "Concerning methods to determine whether disparities involving certain historically underutilized businesses exist within the state procurement process, and, in connection therewith, commissioning a study to make such determination, requiring the department of personnel to track contracts awarded to historically underutilized businesses, and, making an appropriation", the General Assembly found, determined, and declared that:

(I) It is imperative and the public policy of Colorado that the state procurement process be free from bias so that all qualified persons and entities may compete for state business;

(II) An equitable procurement process not only ensures justice and fairness in state contracting but will broaden the procurement contractor pool, which will result in efficiencies statewide and, as warranted, promote the growth of historically underutilized businesses, thereby creating jobs and stimulating the state's economy;

(III) Although studies establishing discrimination in procurement for certain industries or in certain localities have been conducted, a comprehensive analysis of state contracts awarded to historically underutilized businesses had not yet been commissioned;

(IV) The United States Supreme Court has recognized that disparity studies are tools that seek to qualify and quantify...
PAST DISCRIMINATION AND RECOMMEND CERTAIN CORRECTIVE MEASURES
AS MAY BE WARRANTED BY A STUDY'S FINDINGS;

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

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

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

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

(b) SENATE BILL 19-135 REQUIRED THE DEPARTMENT TO
CONTRACT WITH AN ENTITY INDEPENDENT OF THE DEPARTMENT TO
CONDUCT A STATE DISPARITY STUDY REGARDING THE PARTICIPATION OF
HISTORICALLY UNDERUTILIZED BUSINESSES, WHICH INCLUDE
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 DEPARTMENT, AGENCY, OR INSTITUTION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT;

(c) The independent entity completed the required state disparity study and issued the "2020 State of Colorado Disparity Study Final Report" in November 2020;

(d) As detailed in the state disparity study report, the results of the study indicate that substantial disparities between availability of historically underutilized businesses and utilization of such businesses exists in state contracting, with specific findings that:

(I) Based on an overall availability analysis, minority-owned and women-owned businesses would be expected to have received twenty-eight percent of state contract dollars but in fact only received eight percent of state contract dollars, yielding a disparity index score of thirty, which is considered by courts to be a substantial disparity;

(II) Based on an overall availability analysis, businesses owned by persons with disabilities would be expected to have received twelve percent of state contract dollars but in fact received less than one percent of state contract dollars, yielding a disparity index score of three, which is considered by courts to be a substantial disparity;

(III) Based on industry-specific availability analysis, substantial disparities also exist:

(A) Between availability of minority-owned businesses owned by African American persons, Hispanic American persons,
AND NATIVE AMERICAN PERSONS; WOMEN-OWNED BUSINESSES; AND
BUSINESSES OWNED BY PERSONS WITH DISABILITIES AND UTILIZATION OF
SUCH BUSINESSES FOR STATE CONTRACTS FOR CONSTRUCTION,
CONSTRUCTION-RELATED PROFESSIONAL SERVICES, OTHER PROFESSIONAL
SERVICES, AND GOODS AND OTHER SERVICES; AND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(I) ESTABLISH POLICY AND OVERALL ANNUAL ASPIRATION GOALS
FOR HISTORICALLY UNDERUTILIZED BUSINESSES TO COMPETE FOR AND BE
AWARDED ELIGIBLE STATE CONTRACTS;

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

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

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

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

(a) IN FURTHERANCE OF THE PUBLIC POLICY OF THE STATE THAT THE STATE PROCUREMENT PROCESS BE FREE FROM BIAS SO THAT ALL QUALIFIED PERSONS AND ENTITIES MAY COMPETE FOR STATE BUSINESS, CONSISTENT WITH BOTH THE RESULTS OF THE STATE DISPARITY STUDY SHOWING THAT SUBSTANTIAL DISPARITIES EXIST IN STATE PROCUREMENT BETWEEN THE AVAILABILITY OF MINORITY-OWNED AND WOMEN-OWNED BUSINESSES AND BUSINESSES OWNED BY PERSONS WITH DISABILITIES AND THE UTILIZATION OF SUCH BUSINESSES AND THE CONCLUSIONS AND RECOMMENDATIONS SET FORTH IN THE STATE DISPARITY STUDY REPORT, AND ACKNOWLEDGING EXISTING RESOURCE AND TECHNOLOGY LIMITATIONS THAT PRESENT CHALLENGES TO RAPID IMPLEMENTATION OF
MANY OF THE RECOMMENDATIONS, IT IS NECESSARY, CRUCIAL, AND APPROPRIATE TO TAKE TANGIBLE, SUSTAINED, ONGOING, AND THOUGHTFUL STEPS TO IMPLEMENT A STATE PROCUREMENT EQUITY PROGRAM THAT WILL REDUCE AND EVENTUALLY ELIMINATE DISPARITIES IN STATE PROCUREMENT; AND

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

24-103-1103. Definitions. As used in this part 11, unless the context otherwise requires:

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

(a) THAT IS A PROFIT-MAKING 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;

(B) NON-HISPANIC CAUCASIAN WOMEN;
(C) PERSONS WITH DISABILITIES; OR

(D) MEMBERS OF THE LESBIAN, GAY, BISEXUAL, AND

TRANSGENDER COMMUNITY; AND

(b) FOR WHICH THE MINORITY OWNERSHIP CONTROLS BOTH THE

MANAGEMENT AND DAY-TO-DAY BUSINESS DECISIONS.

(2) "MINORITY BUSINESS OFFICE" MEANS THE MINORITY BUSINESS

OFFICE CREATED IN SECTION 24-49.5-102.

(3) "OFFICE" MEANS THE OFFICE OF ECONOMIC DEVELOPMENT

CREATED IN SECTION 24-48.5-101 (1).

(4) "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.

(5) "PROCUREMENT TECHNICAL ASSISTANCE CENTER" MEANS THE

ENTITY THROUGH WHICH A PROCUREMENT TECHNICAL ASSISTANCE

PROGRAM IS PROVIDED.

(6) "PROCUREMENT TECHNICAL ASSISTANCE PROGRAM" HAS THE

SAME MEANING AS SET FORTH IN SECTION 24-48.5-121 (2)(d).

(7) "PROGRAM" MEANS THE STATE PROCUREMENT EQUITY

PROGRAM ESTABLISHED IN SECTION 24-103-1104 (1).

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

(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.

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

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

(11) "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.

(12) "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.

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

(14) "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.

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 eliminate disparities,
including the substantial disparities identified in the State
Disparity Study Report, between the availability of historically
underutilized businesses and the utilization of such businesses
in state procurement. To achieve the goal, it is the intent of the
General Assembly that the program be implemented in a way
that:

   (I) maximizes contracting opportunities;
   (II) eliminates barriers to entry; and
   (III) levels the playing field.

(2) As preliminary implementation of the program, the
Department shall:

   (a) coordinate with the procurement technical assistance
   center to increase the number of historically underutilized
   businesses that have any registrations or certifications
   required to be eligible to apply for and positioned to compete
   for all state procurement opportunities that they are capable
   of performing. The department shall track the increase
   quarterly and on a year over year basis.
   
   (b) 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. THE HELP DESK MUST RELY ON THE BEST
AVAILABLE RESOURCES, INCLUDING BUT NOT LIMITED TO EXISTING
WOMEN-OWNED AND MINORITY-OWNED BUSINESS CERTIFICATIONS, ITS
OWN SMALL BUSINESS REGISTRATION LIST, VOLUNTARY TAX DISCLOSURES,
AND THE SMALL BUSINESS ADMINISTRATION'S HUBZONE PROGRAM MAP
TO ENSURE TARGETED ASSISTANCE TO SMALL BUSINESSES.

(c) (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. IN DEVELOPING THE BOND ASSISTANCE PROGRAM, THE
DEPARTMENT SHALL CONSIDER THE EXTENT TO WHICH THE BOND
ASSISTANCE PROGRAM CURRENTLY ADMINISTERED BY THE DEPARTMENT
OF TRANSPORTATION PROVIDES A USEFUL MODEL FOR THE DEPARTMENT
TO FOLLOW.

(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.

(d) CAREFULLY CONSIDER ALL OF THE RECOMMENDATIONS IN THE STATE DISPARITY STUDY REPORT THAT IT IS NOT REQUIRED TO IMPLEMENT 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 2023 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 DISPARITY STUDY REPORT RECOMMENDATIONS ARE EXTENSIVE; SOME OF THE RECOMMENDATIONS CAN BE IMPLEMENTED IN A
VARIETY OF DIFFERENT WAYS; AND PRIORITIZATION OF THE
RECOMMENDATIONS, SPECIFIC DETAILS ABOUT POLICY CHOICES TO BE
MADE REGARDING THE RECOMMENDATIONS SUCH AS BEST PRACTICES FOR
THE USE OF RECOMMENDED PROCUREMENT EQUITY TOOLS, AND
QUANTIFICATION OF THE AMOUNT OF ADDITIONAL FUNDING AND
PERSONNEL REQUIRED TO BOTH IMPLEMENT SPECIFIC RECOMMENDATIONS
AND FULLY IMPLEMENT THE PROGRAM WERE BEYOND THE SCOPE OF THE
REPORT; AND

(b) TO ENSURE THAT THE INTENT OF THE GENERAL ASSEMBLY IN
ENACTING THIS PART 11, THE REMEDIATION OF DISPARITIES IN STATE
PROCUREMENT, IS ACHIEVED THROUGH THOUGHTFUL, EFFICIENT, AND
EFFECTIVE IMPLEMENTATION OF THE PROGRAM THAT TAKES INTO
ACCOUNT THE PROFESSIONAL EXPERTISE AND LIVED EXPERIENCE OF STATE
PROCUREMENT STAKEHOLDERS, IT IS NECESSARY, APPROPRIATE, AND IN
THE BEST INTEREST OF THE STATE TO REQUIRE THE DEPARTMENT TO
CONVENE, ENGAGE IN ROBUST CONSULTATION WITH, AND STRONGLY
CONSIDER THE FORMAL POLICY RECOMMENDATIONS OF A STAKEHOLDER
GROUP COMPRISED OF REPRESENTATIVES OF HISTORICALLY
UNDERUTILIZED BUSINESSES AND SMALL BUSINESSES, GOVERNMENTAL
ENTITIES, 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 AND ENGAGE IN ROBUST
CONSULTATION WITH A STAKEHOLDER GROUP CONSISTING 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;

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

(VII) A BUSINESS OWNED BY ONE OR MORE PERSONS WHO ARE MEMBERS OF THE LESBIAN, GAY, BISEXUAL, AND TRANSGENDER COMMUNITY;

(e) 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; AND

(III) A BUSINESS THAT HAS MORE THAN FIVE HUNDRED EMPLOYEES AND A DEMONSTRABLE RECORD OF SUCCESSFUL ENGAGEMENT AND CONTRACTING WITH SMALL BUSINESSES; 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, 2022, PRESENT TO THE DEPARTMENT A REPORT OF SPECIFIC POLICY RECOMMENDATIONS THAT INCLUDES, AT A MINIMUM:

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

(II) A PRELIMINARY ESTIMATE OF THE AMOUNT OF INITIAL AND ONGOING FUNDING, PERSONNEL, INFORMATION TECHNOLOGY RESOURCES, AND OTHER RESOURCES NEEDED TO IMPLEMENT THE POLICY
RECOMMENDATIONS IN ACCORDANCE WITH BEST PRACTICES IDENTIFIED AS
REQUIRED BY SUBSECTION (3)(b) OF THIS SECTION;

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

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

(V) 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 OF THE STAKEHOLDER GROUP, THE
PRELIMINARY PLANS AND RECOMMENDATIONS OF THE DEPARTMENT
REGARDING THE FULL IMPLEMENTATION OF THE PROGRAM, AND ANY
RECOMMENDATIONS THAT THE DEPARTMENT HAS REGARDING THE NEED
FOR RELATED LEGISLATION DURING ITS 2023 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. 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.