

**Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 22-0374.01 Jason Gelender x4330

SENATE BILL 22-163

SENATE SPONSORSHIP

Coleman,

HOUSE SPONSORSHIP

Ricks,

Senate Committees

Business, Labor, & Technology
Appropriations

House Committees

A BILL FOR AN ACT

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

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

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.

underutilized businesses and the utilization of such businesses in state 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 implementation and administration; and
- 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".

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
3 103 of title 24 as follows:

4 PART 11

5 REMEDATION OF STATE PROCUREMENT DISPARITIES

6 THAT AFFECT HISTORICALLY UNDERUTILIZED BUSINESSES

7 **24-103-1101. Short title.** THE SHORT TITLE OF THIS PART 11 IS THE

1 "STATE PROCUREMENT DISPARITIES REMEDIATION ACT".

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

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

7 (b) AS REQUIRED BY SENATE BILL 19-135, THE DEPARTMENT
8 CONTRACTED WITH AN ENTITY INDEPENDENT OF THE DEPARTMENT TO
9 CONDUCT A STATE DISPARITY STUDY REGARDING THE PARTICIPATION OF
10 HISTORICALLY UNDERUTILIZED BUSINESSES, WHICH INCLUDED A REVIEW
11 OF MINORITY-OWNED BUSINESSES, WOMEN-OWNED BUSINESSES,
12 BUSINESSES OWNED BY PERSONS WITH DISABILITIES, AND BUSINESSES
13 OWNED BY MEMBERS OF THE LESBIAN, GAY, BISEXUAL, AND TRANSGENDER
14 COMMUNITY, IN STATE CONTRACTS ENTERED INTO BY ANY DEPARTMENT,
15 AGENCY, OR INSTITUTION OF THE EXECUTIVE BRANCH OF STATE
16 GOVERNMENT;

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

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

27 (I) MINORITY-OWNED AND WOMEN-OWNED BUSINESSES RECEIVED

1 ABOUT EIGHT PERCENT OF STATE CONTRACT DOLLARS, BELOW THE
2 TWENTY-EIGHT PERCENT EXPECTED FROM THE AVAILABILITY ANALYSIS;

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

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

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

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

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

27 (e) AS DETAILED IN THE STATE DISPARITY STUDY REPORT, THE

1 RESULTS OF THE STUDY INDICATE THAT DISPARITIES BETWEEN
2 AVAILABILITY OF HISTORICALLY UNDERUTILIZED BUSINESSES AND
3 UTILIZATION OF SUCH BUSINESSES EXISTS IN STATE CONTRACTING;

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

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

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

15 **24-103-1103. Definitions.** AS USED IN THIS PART 11, UNLESS THE
16 CONTEXT OTHERWISE REQUIRES:

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

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

22 (3) "DISPARITY INDEX" MEANS A MEASURE OF THE RELATIVE
23 DIFFERENCE BETWEEN AN OUTCOME, SUCH AS PERCENTAGE OF CONTRACT
24 DOLLARS RECEIVED BY A GROUP, AND A CORRESPONDING BENCHMARK,
25 SUCH AS THE PERCENTAGE OF CONTRACT DOLLARS THAT MIGHT BE
26 EXPECTED GIVEN THE RELATIVE AVAILABILITY OF THAT GROUP FOR THOSE
27 CONTRACTS. IN THIS EXAMPLE, DISPARITY INDEX IS CALCULATED BY

1 DIVIDING A NUMERATOR OF PERCENT UTILIZATION BY A DENOMINATOR OF
2 PERCENT AVAILABILITY AND THEN MULTIPLYING THE RESULT BY 100. A
3 DISPARITY INDEX OF 100 INDICATES "PARITY" OR UTILIZATION "ON PAR"
4 WITH AVAILABILITY. DISPARITY INDEX FIGURES CLOSER TO 0 INDICATE
5 LARGER DISPARITIES BETWEEN UTILIZATION AND AVAILABILITY.

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

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

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

12 (II) ONE OR MORE OF THE FOLLOWING:

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

18 (B) NON-HISPANIC CAUCASIAN WOMEN; OR

19 (C) PERSONS WITH DISABILITIES; AND

20 ==

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

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

25 (a) CONSTRUCTION;

26 (b) CONSTRUCTION-RELATED PROFESSIONAL SERVICES;

27 (c) BROKERAGE AND INVESTMENT;

- 1 (d) OTHER PROFESSIONAL SERVICES; AND
- 2 (e) GOODS AND OTHER SERVICES.
- 3 (6) "MINORITY BUSINESS OFFICE" MEANS THE MINORITY BUSINESS
4 OFFICE CREATED IN SECTION 24-49.5-102.
- 5 (7) "OFFICE" MEANS THE OFFICE OF ECONOMIC DEVELOPMENT
6 CREATED IN SECTION 24-48.5-101 (1).
- 7 (8) "PERSONS WITH DISABILITIES" MEANS PERSONS WHO:
- 8 (a) HAVE PHYSICAL OR MENTAL IMPAIRMENTS, OR BOTH, THAT
9 SUBSTANTIALLY LIMIT ONE OR MORE MAJOR LIFE ACTIVITIES;
- 10 (b) ARE REGARDED GENERALLY BY THE COMMUNITY AS HAVING
11 A DISABILITY; AND
- 12 (c) WHOSE DISABILITIES SUBSTANTIALLY LIMIT THEIR ABILITIES TO
13 ENGAGE IN COMPETITIVE BUSINESS.
- 14 (9) "PRIME CONTRACT" MEANS A CONTRACT BETWEEN THE STATE
15 AND A BUSINESS.
- 16 (10) "PRIME CONTRACTOR" MEANS A CONSTRUCTION BUSINESS
17 THAT PERFORMS A PRIME CONTRACT FOR THE STATE.
- 18 (11) "PROCUREMENT TECHNICAL ASSISTANCE CENTER" MEANS THE
19 ENTITY THROUGH WHICH A PROCUREMENT TECHNICAL ASSISTANCE
20 PROGRAM IS PROVIDED.
- 21 (12) "PROCUREMENT TECHNICAL ASSISTANCE PROGRAM" HAS THE
22 SAME MEANING AS SET FORTH IN SECTION 24-48.5-121 (2)(d).
- 23 (13) "PROFESSIONAL SERVICES" MEANS TYPES OF WORK IN THE
24 SERVICE SECTOR REQUIRING SPECIAL TRAINING. SOME PROFESSIONAL
25 SERVICES SUCH AS ACCOUNTING AND LAW, REQUIRE HOLDING
26 PROFESSIONAL LICENSES.
- 27 (14) "PROGRAM" MEANS THE STATE PROCUREMENT EQUITY

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

2 (15) "RACIAL OR ETHNIC MINORITY GROUP" MEANS INDIVIDUALS
3 WHO BELONG TO ONE OR MORE RACIAL OR ETHNIC GROUPS IDENTIFIED IN
4 49 CFR SECTION 26.5:

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

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

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

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

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

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

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

27 (19) "SOLICITATION ASSISTANCE" MEANS THE PROVISION OF

1 REAL-TIME RESPONSES TO QUESTIONS ASKED BY POTENTIAL CONTRACTORS
2 WHO SEEK GUIDANCE AS TO HOW BEST TO RESPOND TO SOLICITATIONS FOR
3 STATE CONTRACTS, INCLUDING GUIDANCE REGARDING AVAILABILITY OF
4 OPPORTUNITIES, INTERPRETATION OF SOLICITATION DOCUMENTS, AND
5 SOLICITATION RESPONSE PROCEDURES AND BEST PRACTICES.
6 "SOLICITATION ASSISTANCE" DOES NOT INCLUDE GUIDANCE SPECIFIC TO
7 A PARTICULAR SOLICITATION FOR A STATE CONTRACT THAT COULD
8 REASONABLY BE EXPECTED TO PROVIDE AN UNFAIR ADVANTAGE TO THE
9 POTENTIAL CONTRACTOR OVER OTHER POTENTIAL CONTRACTORS
10 RESPONDING TO THE SOLICITATION.

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

16 (21) "STATE DISPARITY STUDY REPORT" OR "REPORT" MEANS THE
17 "2020 STATE OF COLORADO DISPARITY STUDY FINAL REPORT" PUBLISHED
18 IN NOVEMBER 2020.

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

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

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

1 BUSINESSES.

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

5 **24-103-1104. State procurement equity program - established**
6 **- goal - preliminary implementation maximization of contracting**
7 **opportunities - expansion of historically underutilized business**
8 **registry - real-time solicitation assistance help desk - bond assistance**
9 **program - cash fund - report.** (1) (a) THE STATE PROCUREMENT EQUITY
10 PROGRAM IS ESTABLISHED IN THE DEPARTMENT. THE DEPARTMENT, IN
11 ACCORDANCE WITH ITS EXISTING STATE PROCUREMENT RELATED DUTIES
12 OF PROMULGATING STATE CONTRACTING FISCAL RULES AND PROVIDING
13 PROCUREMENT RELATED GUIDANCE AND MANAGEMENT, INCLUDING
14 CONTRACT FORMS AND THE CONTRACT MANAGEMENT SYSTEM, TO MOST
15 STATE EXECUTIVE BRANCH AGENCIES, SHALL ACT TO ENSURE THE
16 EXPEDITIOUS DEVELOPMENT AND FULL IMPLEMENTATION OF THE
17 PROGRAM AS REQUIRED BY THIS PART 11. THE DEPARTMENT SHALL ACT IN
18 CONSULTATION WITH, TO THE EXTENT REQUIRED BY THIS PART 11 OR AS
19 OTHERWISE DEEMED NECESSARY OR ADVISABLE BY THE DEPARTMENT, THE
20 OFFICE, THE PROCUREMENT TECHNICAL ASSISTANCE CENTER, THE SMALL
21 BUSINESS DEVELOPMENT CENTER, THE MINORITY BUSINESS OFFICE, THE
22 DEPARTMENT OF TRANSPORTATION, AND OTHER PERSONS OR ENTITIES
23 THAT HAVE EXPERTISE OR INTEREST IN PROCUREMENT GENERALLY OR IN
24 STATE PROCUREMENT EQUITY.

25 (b) THE GOAL OF THE PROGRAM IS TO REDUCE DISPARITIES
26 IDENTIFIED IN THE STATE DISPARITY STUDY REPORT BETWEEN THE
27 AVAILABILITY OF HISTORICALLY UNDERUTILIZED BUSINESSES AND THE

1 UTILIZATION OF SUCH BUSINESSES IN STATE PROCUREMENT.

2 (2) As IMPLEMENTATION OF THE PROGRAM, THE DEPARTMENT
3 SHALL:

4 =====

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

16 (b) (I) CREATE A BOND ASSISTANCE PROGRAM TO HELP
17 HISTORICALLY UNDERUTILIZED BUSINESSES THAT ARE SMALL BUSINESSES
18 TO OFFSET ALL OR A PORTION OF THE COST OF OBTAINING A SURETY BOND
19 THAT IS REQUIRED FOR A SOLICITATION FOR A STATE PROCUREMENT
20 OPPORTUNITY.

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

1 IN THE FUND IS CONTINUOUSLY APPROPRIATED TO THE DEPARTMENT FOR
2 THE IMPLEMENTATION OF THE BOND ASSISTANCE PROGRAM.

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

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

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

20 **24-103-1105. State procurement equity program**
21 **implementation - stakeholder group - recommendations - report -**
22 **legislative declaration.** (1) THE GENERAL ASSEMBLY HEREBY FINDS,
23 DETERMINES, AND DECLARES THAT:

24 (a) THE STATE SEEKS RECOMMENDATIONS FROM STATE
25 PROCUREMENT STAKEHOLDERS, AS CONVENED PURSUANT TO SUBSECTION
26 (2) OF THIS SECTION FOR THE IMPLEMENTATION OF REMEDIAL MEASURES,
27 INCLUDING REMEDIAL MEASURES USING PROCUREMENT EQUITY TOOLS,

1 AND QUANTIFICATION OF THE AMOUNT OF ADDITIONAL FUNDING AND
2 PERSONNEL REQUIRED TO BOTH IMPLEMENT SPECIFIC REMEDIAL MEASURES
3 AND FULLY IMPLEMENT THE PROGRAM; AND

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

1 CONSULTATION WITH A STAKEHOLDER GROUP, WHICH, TO THE EXTENT
2 PRACTICABLE MAY CONSIST OF:

3 (a) THE FOLLOWING STATE GOVERNMENT EMPLOYEES:

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

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

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

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

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

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

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

- 1 (I) A BUSINESS OWNED BY ONE OR MORE WOMEN;
- 2 (II) A BUSINESS OWNED BY ONE OR MORE AFRICAN AMERICAN
- 3 PERSONS;
- 4 (III) A BUSINESS OWNED BY ONE OR MORE ASIAN AMERICAN
- 5 PERSONS;
- 6 (IV) A BUSINESS OWNED BY ONE OR MORE HISPANIC AMERICAN
- 7 PERSONS;
- 8 (V) A BUSINESS OWNED BY ONE OR MORE NATIVE AMERICAN
- 9 PERSONS; AND
- 10 (VI) A BUSINESS OWNED BY ONE OR MORE PERSONS WITH
- 11 DISABILITIES; AND

12 ==
13 (e) TO THE EXTENT PRACTICABLE, AN OWNER OR HIGH-LEVEL
14 EMPLOYEE OF EACH OF THE FOLLOWING TYPES OF BUSINESSES THAT ARE
15 NOT HISTORICALLY UNDERUTILIZED BUSINESSES AND THAT HAVE
16 COMPETED FOR OR BEEN 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; ==

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

1 (f) ANY OTHER INDIVIDUALS WHO HAVE A DEMONSTRABLE
2 COMMITMENT TO FURTHERING EQUITY IN GOVERNMENT PROCUREMENT
3 AND SUBSTANTIAL KNOWLEDGE OF PROCUREMENT EQUITY BEST
4 PRACTICES WHO THE DEPARTMENT DEEMS NECESSARY OR APPROPRIATE
5 TO INCLUDE IN THE STAKEHOLDER GROUP.

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

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

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

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

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

27 (II) CONFIRMATION OR REFUTATION OF THE DISPARITY STUDY

1 REPORT FINDING OF NO SUBSTANTIAL DISPARITY BETWEEN AVAILABLE AND
2 UTILIZED LESBIAN, GAY, BISEXUAL, AND TRANSGENDER BUSINESSES;

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

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

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

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

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

22 (4) THE DEPARTMENT SHALL REPORT ON THE PROGRESS AND
23 POLICY RECOMMENDATIONS AND ANY SUGGESTED REMEDIAL MEASURES
24 OF THE STAKEHOLDER GROUP, THE PRELIMINARY PLANS,
25 RECOMMENDATIONS, AND REMEDIAL MEASURES THAT THE DEPARTMENT
26 HAS TAKEN REGARDING THE FULL IMPLEMENTATION OF THE PROGRAM,
27 AND ANY RECOMMENDATIONS THAT THE DEPARTMENT HAS REGARDING

1 THE NEED FOR RELATED LEGISLATION DURING ITS JANUARY 2025 ANNUAL
2 PRESENTATION TO LEGISLATIVE OVERSIGHT COMMITTEES REQUIRED BY
3 SECTION 2-7-203 (2)(a). IN PREPARATION FOR THE PRESENTATION, THE
4 DEPARTMENT SHALL GIVE STRONG CONSIDERATION TO THE POLICY
5 RECOMMENDATIONS REPORT PROVIDED BY THE STAKEHOLDER GROUP AS
6 REQUIRED BY SUBSECTION (3)(c) OF THIS SECTION.

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

9 **24-101-301. Definitions.** The terms defined in this section shall
10 have the following meanings whenever they appear in this code, unless
11 the context in which they are used clearly requires a different meaning or
12 a different definition is prescribed for a particular article or portion
13 thereof:

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

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

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

27 (b) \$400,556 for use by the division of human resources for

1 liability claims; and

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

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

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