

1 HB396
2 204722-1
3 By Representatives Drummond, Jackson, Clarke, Warren, Daniels,
4 Gray, Lawrence, McCampbell and Hall
5 RFD: State Government
6 First Read: 05-MAR-20

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8 SYNOPSIS: Under current law, there is no priority for
9 women- or minority-owned businesses within the law
10 governing state contracts for goods or services.

11 This bill would create a statewide
12 disadvantaged business enterprise program. The
13 Chief Procurement Officer would create a
14 disadvantaged business enterprise certification
15 process, and would identify programs designed to
16 assist small and disadvantaged businesses.

17 This bill would create a priority for
18 disadvantaged business enterprises in bids for
19 state contracts for goods or services.

20 This bill would also create a Study
21 Commission on Disadvantaged Business Enterprises.

22
23 A BILL
24 TO BE ENTITLED
25 AN ACT
26

1 Relating to state contracts for goods or services;
2 to create a statewide disadvantaged business enterprise
3 program; to direct the Chief Procurement Officer to establish
4 a certification process by which a business may qualify as a
5 disadvantaged business enterprise; to create a bidding
6 priority for disadvantaged business enterprises; and to
7 establish a study commission on disadvantaged business
8 enterprises.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. Statement of Legislative Intent.

11 The Legislature hereby finds and declares all of the
12 following:

13 (1) It is the policy and continual commitment of the
14 State of Alabama to insure that all citizens, including
15 Blacks, Hispanics, Asians, Native Americans, women, and all
16 other minorities, are given equal participation opportunities
17 in all aspects of American life, and particularly in the
18 workings of the State of Alabama.

19 (2) Blacks, Hispanics, Asians, Native Americans,
20 women, and other minorities may not be proportionately
21 represented throughout state government in state contracts for
22 goods and services and a plan to reduce the imbalance is
23 desirable; however, business opportunity programs that favor
24 the use of quotas and preferential treatment have been
25 determined by the courts to be unconstitutional absent an
26 express finding of past discrimination and a program narrowly
27 tailored to address the effects of that past discrimination.

1 (3) The recognition and certification of an entity
2 as a minority business enterprise would promote involvement
3 and increase the level of minority participation in state
4 procurement and the contracting of goods and services.

5 (4) For the above reasons, it is the policy of the
6 State that the Chief Procurement Officer should provide
7 reasonable procurement assistance to small and disadvantaged
8 business in this state.

9 Section 2. This act shall be known and may be cited
10 as the "Equity in State Contracting Act of 2020."

11 Section 3. Definitions.

12 (1) ADECA. The Alabama Department of Economic and
13 Community Affairs.

14 (2) CHIEF PROCUREMENT OFFICER. The Director of the
15 Division of Purchasing of the Alabama Department of Finance.

16 (3) CONTROLLED. Exercising the power to make policy
17 decisions in a business.

18 (4) DISADVANTAGED BUSINESS ENTERPRISE. A business of
19 which more than 50 percent of the voting shares or interest in
20 the business is owned, controlled, and operated by a woman or
21 a minority person and with respect to which more than 50
22 percent of the net profit or loss attributable to the business
23 accrues to the women or minority shareholders.

24 (5) DEPARTMENT. The Alabama Department of Finance.

25 (6) DIVISION. The Division of Purchasing of the
26 Alabama Department of Finance.

1 (7) ENTITY. Any natural person or entity organized
2 under the laws of Alabama or the United States with the legal
3 power to enter into a binding contract which bids or applies
4 to bid on contracts let by a public entity, or which otherwise
5 transacts or applies to transact business with a public
6 entity.

7 (8) MINORITY. A person who is Black, Hispanic,
8 Asian, an American Indian as recognized by the Bureau of
9 Indian Affairs of the United States Department of the
10 Interior, or is a member of another demographic group which is
11 not a statistical majority.

12 (9) OPERATE. The activity of being involved in the
13 day-to-day management of a business.

14 (10) PERSON. An individual, sole proprietorship,
15 partnership, association, corporation, or other legal entity.

16 Section 4. (a) The Chief Procurement Officer shall
17 identify programs designed to assist disadvantaged business
18 enterprises in procurement activities governed by Chapter 16
19 of Title 41, Code of Alabama 1975. These programs may include,
20 but are not limited to, staff assistance, special
21 publications, source lists, solicitation mailing lists, and
22 training programs.

23 (b) The Chief Procurement Officer, in his or her
24 sole discretion, may make special provisions for progress
25 payments as he or she may deem reasonably necessary to
26 encourage procurement from disadvantaged business enterprises.

1 (c) The Chief Procurement Officer shall develop and
2 implement a certification process by which an entity may
3 qualify through the division as a disadvantaged business
4 enterprise, and shall publish state certification criteria,
5 once established, as well as the names and dates of
6 certification of certified disadvantaged business enterprises.

7 (d) The Chief Procurement Officer shall identify and
8 implement programs and initiatives with the goal of ensuring
9 that 15% of all state contracts for goods and services are
10 awarded to disadvantaged business enterprises.

11 Section 5. Section 41-16-20, Code of Alabama 1975,
12 is amended to read as follows:

13 "§41-16-20.

14 "(a) With the exception of contracts for public
15 works whose competitive bidding requirements are governed
16 exclusively by Title 39, all contracts of whatever nature for
17 labor, services, work, or for the purchase or lease of
18 materials, equipment, supplies, other personal property or
19 other nonprofessional services, involving fifteen thousand
20 dollars (\$15,000) or more, made by or on behalf of any state
21 department, board, bureau, commission, committee, institution,
22 corporation, authority, or office shall, except as otherwise
23 provided in this article, be let by free and open competitive
24 bidding, on sealed bids, to the lowest responsible bidder.

25 "(b) A "preferred vendor" shall be a person, firm,
26 or corporation which is granted preference priority according
27 to the following, in no particular order:

1 "(1) PRIORITY #1. Produces or manufactures the
2 product within the state.

3 "(2) PRIORITY #2. Has an assembly plant or
4 distribution facility for the product within the state.

5 "(3) PRIORITY #3. Is organized for business under
6 the applicable laws of the state as a corporation,
7 partnership, or professional association and has maintained at
8 least one retail outlet or service center for the product or
9 service within the state for not less than one year prior to
10 the deadline date for the competitive bid.

11 "(4) PRIORITY #4. A business that is physically
12 located in the state and that is more than 50 percent owned by
13 a person who was discharged or released under conditions other
14 than dishonorable and who has at least 24 months' active
15 service in the United States' military, naval, or air service,
16 or who has less than 24 months of active service in any of the
17 foregoing and was separated with a service-connected
18 disability, or a national guardsman or reservist who completed
19 active federal service for purposes other than training or who
20 served at least 180 days of continuous service for purposes
21 other than training.

22 "(5) PRIORITY #5. A business that is physically
23 located in the state and that has been certified by the Chief
24 Procurement Officer as a disadvantaged business enterprise as
25 defined in Section 2 of the act adding this amendatory
26 language.

1 "(c) In the event a bid is received for the product
2 or service from a person, firm, or corporation deemed to be a
3 responsible bidder and a preferred vendor where any state
4 higher education institution, department, board, bureau,
5 commission, committee, institution, corporation, authority, or
6 office is the awarding authority and the bid is no more than
7 five percent greater than the bid of the lowest responsible
8 bidder, the awarding authority ~~may~~ shall award the contract to
9 the preferred vendor with the lowest bid."

10 Section 6. Study Commission; composition; duties.

11 (a) There is created a Study Commission on
12 Disadvantaged Business Enterprises in the State of Alabama, to
13 assess on what state initiatives could assist business
14 enterprises owned by women or members of a social or economic
15 minority.

16 (b) The commission shall consist of one members
17 appointed or designated by each of the following:

- 18 (1) The Chief Procurement Officer.
- 19 (2) The Speaker of the House of Representatives.
- 20 (3) The President of the Senate.
- 21 (4) The Director of ADECA.
- 22 (5) The Governor's Office of Minority Affairs.

23 (c) The commission shall hold its initial meeting no
24 later than three months following the effective date of this
25 act. At the first meeting, to be called by the Governor's
26 Office of Minority Affairs, the commission shall elect a chair

1 and other officers as determined by the commission, and shall
2 set dates, times, and locations for subsequent meetings.

3 (d) The members of the commission shall serve
4 without compensation other than travel reimbursement that may
5 be paid by the appointing authority according to state law or
6 existing policies or rules.

7 (e) The members of the commission shall meet at
8 least four times in the two years following the effective date
9 of this act. At the conclusion of that two-year period, the
10 commission shall report to the Legislature its findings
11 regarding actions desired or necessary for promoting
12 participation of disadvantaged business enterprises in
13 contracts awarded by the state for goods or services.

14 (f) Upon reporting its findings, the commission
15 shall be dissolved.

16 Section 7. The Division of Purchasing within the
17 Department of Finance may adopt rules to implement this act.

18 Section 8. This act, except for Section 5, shall
19 become effective on October 1, 2020, following its passage and
20 approval by the Governor, or its otherwise becoming law.

21 Section 5 shall become effective on October 1, 2022, following
22 the passage and approval by the Governor of this act, or its
23 otherwise becoming law.