

SENATE BILL 715

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P2

2003 Regular Session
(31r0568)

ENROLLED BILL

-- Education, Health, and Environmental Affairs/Health and
Government Operations --

Introduced by **Senator Conway**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

President.

CHAPTER 402

1 AN ACT concerning

2 **Minority Business Enterprises - State Contracts**

3 FOR the purpose of requiring certain units of State government to comply with
4 certain provisions regarding State procurement from minority business
5 enterprises; requiring the Board of Public Works to keep a certain record and
6 submit a copy of the record to the General Assembly; establishing a Minority
7 Business Enterprises Goal Waiver Panel; authorizing the Panel to grant waivers
8 to units of State government from attaining certain procurement goals in
9 certain circumstances; requiring that units of State government that cannot
10 reasonably meet a certain goal submit a written request for a certain waiver to
11 the Panel; specifying the duration of the waivers; requiring the Board of Public
12 Works to adopt certain regulations relating to the appointment of an individual
13 to review certain waivers and make certain determinations; clarifying that the
14 Panel shall operate independently from any other State entity providing for the
15 termination of this Act; and generally relating to procurement contracts with
16 minority business enterprises.

1 BY repealing and reenacting, without amendments,
 2 Article - State Finance and Procurement
 3 Section 11-203(a) and 14-302(a)
 4 Annotated Code of Maryland
 5 (2001 Replacement Volume and 2002 Supplement)

6 BY repealing and reenacting, with amendments,
 7 Article - State Finance and Procurement
 8 Section 11-203(b) ~~and 14-302(a)~~ 14-303(b) and 14-303(a)(1)
 9 Annotated Code of Maryland
 10 (2001 Replacement Volume and 2002 Supplement)

11 ~~BY adding to~~
 12 ~~Article - State Finance and Procurement~~
 13 ~~Section 14-307.1~~
 14 ~~Annotated Code of Maryland~~
 15 ~~(2001 Replacement Volume and 2002 Supplement)~~

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 17 MARYLAND, That the Laws of Maryland read as follows:

18 **Article - State Finance and Procurement**

19 11-203.

20 (a) Except as provided in subsection (b) of this section, this Division II does
 21 not apply to:

22 (1) procurement by:

23 (i) the Blind Industries and Services of Maryland;

24 (ii) the Maryland State Arts Council, for the support of the arts;

25 (iii) the Maryland Health and Higher Educational Facilities
 26 Authority, if no State money is to be spent on a procurement contract;

27 (iv) the Maryland Higher Education Supplemental Loan Authority,
 28 if no State money is to be spent on a procurement contract;

29 (v) the Maryland Industrial Training Program or the Partnership
 30 for Workforce Quality Program in the Department of Business and Economic
 31 Development, for training services or programs for new or expanding businesses or
 32 industries or businesses or industries in transition;

33 (vi) the Maryland Food Center Authority, to the extent the
 34 Authority is exempt under Title 13, Subtitle 1 of Article 41 of the Code;

1 (vii) the Maryland Public Broadcasting Commission, for services of
2 artists for educational and cultural television productions;

3 (viii) public institutions of higher education, for cultural,
4 entertainment, and intercollegiate athletic procurement contracts;

5 (ix) the Maryland State Planning Council on Developmental
6 Disabilities, for services to support demonstration, pilot, and training programs;

7 (x) the Maryland Automobile Insurance Fund;

8 (xi) the Maryland Historical Trust for:

9 1. surveying and evaluating architecturally, archeologically,
10 historically, or culturally significant properties; and

11 2. other than as to architectural services, preparing historic
12 preservation planning documents and educational material;

13 (xii) the University of Maryland, for University College Overseas
14 Programs, if the University adopts regulations that:

15 1. establish policies and procedures governing procurement
16 for University College Overseas Programs; and

17 2. promote the purposes stated in § 11-201(a) of this subtitle;

18 (xiii) St. Mary's College of Maryland;

19 (xiv) the Department of Business and Economic Development, for
20 negotiating and entering into private sector cooperative marketing projects that
21 directly enhance promotion of Maryland and the tourism industry where there will be
22 a private sector contribution to the project if not less than 50% of the total cost of the
23 project, if the project is reviewed by the Attorney General and approved by the
24 Secretary of Business and Economic Development or the Secretary's designee;

25 (xv) the Forvm for Rural Maryland;

26 (xvi) the Maryland State Lottery Agency, for negotiating and
27 entering into private sector cooperative marketing projects that directly enhance
28 promotion of the Maryland State Lottery and its products, if the cooperative
29 marketing project:

30 1. provides a substantive promotional or marketing value
31 that the lottery determines acceptable in exchange for advertising or other
32 promotional activities provided by the lottery;

33 2. does not involve the advertising or other promotion of
34 alcohol or tobacco products; and

1 (2) EXCEPT FOR PROCUREMENT UNDER SUBSECTION (A)(1)(I) AND (XII)
 2 AND (2)(I) AND (VI) OF THIS SECTION, THE PROVISIONS OF TITLE 14, SUBTITLE 3 OF
 3 THIS ARTICLE ("MINORITY BUSINESS PARTICIPATION") SHALL APPLY TO EACH
 4 PROCUREMENT ENUMERATED IN SUBSECTION (A) OF THIS SECTION.

5 ~~(2)~~ (3) A procurement by an entity listed in subsection (a)(1)(i) through
 6 (xv) of this section shall be made under procedures that promote the purposes stated
 7 in § 11-201(a) of this subtitle.

8 ~~(3)~~ (4) (i) A unit that procures human, social, or educational services
 9 from an entity enumerated in subsection (a)(2) of this section shall publish in the
 10 Contract Weekly notice of a procurement contract or an extension or renewal of a
 11 procurement contract if:

12 1. the procurement contract, extension, or renewal costs
 13 more than \$25,000; and

14 2. the procurement is made for 3rd party clients described in
 15 § 13-106 of this article.

16 (ii) The notice required under this paragraph shall be published not
 17 more than 30 days after the execution and approval of the procurement contract or
 18 the extension or renewal of the procurement contract.

19 ~~(4)~~ (5) The purchase of advisory services from the General Selection
 20 Board or the Transportation Selection Board under § 13-305 of this article shall be
 21 governed by the Maryland Architectural and Engineering Services Act.

22 14-302.

23 (a) (1) Except for leases of real property and except as provided in
 24 paragraphs (2) and (3) of this subsection, each unit shall structure procurement
 25 procedures, consistent with the purposes of this subtitle, to try to achieve the
 26 following results:

27 (i) a minimum of 7% of the unit's total dollar value of procurement
 28 contracts is to be made directly or indirectly from certified minority business
 29 enterprises classified by the certification agency as African American-owned
 30 businesses;

31 (ii) a minimum of 10% of the unit's total dollar value of
 32 procurement contracts is to be made directly or indirectly from certified minority
 33 business enterprises classified by the certification agency as women-owned
 34 businesses; and

35 (iii) an overall minimum of 25% of the unit's total dollar value of
 36 procurement contracts is to be made directly or indirectly from all certified minority
 37 business enterprises.

1 (2) (i) Except as provided in paragraph (3) of this subsection, in
2 procurement for construction, each unit shall structure procurement procedures,
3 consistent with the purposes of this subtitle, to try to achieve the following results:

4 1. a minimum of 7% of the unit's total dollar value of
5 construction contracts is to be made directly or indirectly from certified minority
6 business enterprises classified by the certification agency as African
7 American-owned businesses;

8 2. a minimum of 10% of the unit's total dollar value of
9 construction contracts is to be made directly or indirectly from certified minority
10 business enterprises classified by the certification agency as women-owned
11 businesses; and

12 3. an overall minimum of 25% of the unit's total dollar value
13 of construction contracts is to be made directly or indirectly from all certified minority
14 business enterprises.

15 (ii) The unit shall:

16 1. consider the practical severability of the construction
17 projects; and

18 2. implement a program that will enable the unit to evaluate
19 each contract to determine the appropriateness of the goal.

20 (3) With respect to the Maryland Department of Transportation, the
21 provisions of paragraph (2)(i) of this subsection shall apply only to construction
22 contracts in excess of \$50,000.

23 (4) Each unit shall meet the maximum feasible portion of the goals
24 stated in paragraphs (1), (2), and (3) of this subsection by using race-neutral
25 measures to facilitate minority business enterprise participation in the procurement
26 process.

27 (5) To achieve the result specified in paragraph (1) or (2) of this
28 subsection, a contractor, including a contractor that is a certified minority business
29 enterprise, shall:

30 (i) identify specific work categories appropriate for subcontracting;

31 (ii) at least 10 days before bid opening, solicit minority business
32 enterprises, through written notice that:

33 1. describes the categories of work under item (i) of this
34 subparagraph; and

35 2. provides information regarding the type of work being
36 solicited and specific instructions on how to submit a bid;

1 (iii) attempt to make personal contact with the firms in item (ii) of
2 this paragraph;

3 (iv) assist minority business enterprises to fulfill bonding
4 requirements or to obtain a waiver of those requirements;

5 (v) in order to publicize contracting opportunities to minority
6 business enterprises, attend prebid meetings or other meetings scheduled by the unit;
7 and

8 (vi) upon acceptance of a bid, provide the unit with a list of minority
9 businesses with whom the contractor negotiated, including price quotes from
10 minority and nonminority firms.

11 (6) (i) The unit shall make a finding whether the contractor complied,
12 in good faith, with paragraph (5) of this subsection.

13 (ii) If the unit finds the contractor complied with paragraph (5) of
14 this subsection, the unit may not require the contractor to renegotiate any
15 subcontract in order to achieve a different result.

16 ~~(7) EACH UNIT THAT CANNOT REASONABLY MEET THE MINORITY
17 BUSINESS ENTERPRISE GOALS SET FORTH IN THIS SUBSECTION SHALL SUBMIT A
18 WRITTEN REQUEST FOR A WAIVER OF THE ACHIEVEMENT OF THE MINORITY
19 BUSINESS ENTERPRISE GOALS TO THE MINORITY BUSINESS ENTERPRISE GOAL
20 WAIVER REVIEW PANEL IN ACCORDANCE WITH § 14-307.1 OF THIS SUBTITLE.~~

21 ~~14-307.1.~~

22 ~~(A) THERE IS A MINORITY BUSINESS ENTERPRISE GOAL WAIVER REVIEW
23 PANEL.~~

24 ~~(B) THE PANEL CONSISTS OF:~~

25 ~~(1) ONE REPRESENTATIVE FROM THE CERTIFICATION AGENCY,
26 DESIGNATED BY THE HEAD OF THE AGENCY;~~

27 ~~(2) THE SECRETARY OF THE DEPARTMENT OF GENERAL SERVICES, OR A
28 DESIGNEE; AND~~

29 ~~(3) ONE REPRESENTATIVE FROM THE MARYLAND MINORITY
30 CONTRACTORS ASSOCIATION, DESIGNATED BY THE MARYLAND MINORITY
31 CONTRACTORS ASSOCIATION.~~

32 ~~(C) IN ACCORDANCE WITH § 14-302(A)(7) OF THIS SUBTITLE, THE PANEL SHALL
33 REVIEW WRITTEN REQUESTS FROM UNITS FOR A WAIVER OF THE ACHIEVEMENT OF
34 THE MINORITY BUSINESS ENTERPRISE GOALS SET FORTH IN § 14-302(A) OF THIS
35 SUBTITLE.~~

1 ~~(D) THE PANEL SHALL GRANT A WAIVER IF IT DETERMINES THAT THE UNIT~~
2 ~~CANNOT REASONABLY MEET THE MINORITY BUSINESS ENTERPRISE GOALS SET~~
3 ~~FORTH IN § 14-302(A) OF THIS SUBTITLE.~~

4 ~~(E) A WAIVER SHALL LAST FOR 12 MONTHS AND IS RENEWABLE.~~

5 ~~(F) THE PANEL SHALL OPERATE INDEPENDENTLY FROM ANY OTHER STATE~~
6 ~~ENTITY.~~

7 ~~(G) THE BOARD SHALL ADOPT REGULATIONS TO IMPLEMENT THE~~
8 ~~PROVISIONS OF THIS SECTION.~~

9 ~~14-303.~~

10 ~~(b) These regulations shall include:~~

11 ~~(1) provisions designating one agency to certify and decertify minority~~
12 ~~business enterprises for all units through a single process that meets applicable~~
13 ~~federal requirements;~~

14 ~~(2) a requirement that the solicitation document accompanying each~~
15 ~~solicitation set forth the expected degree of minority business enterprise participation~~
16 ~~based, in part, on:~~

17 ~~(i) the potential subcontract opportunities available in the prime~~
18 ~~procurement contract; and~~

19 ~~(ii) the availability of certified minority business enterprises to~~
20 ~~respond competitively to the potential subcontract opportunities;~~

21 ~~(3) a requirement that the unit provide a current list of certified~~
22 ~~minority business enterprises to each prospective contractor;~~

23 ~~(4) provisions to ensure the uniformity of requests for bids on~~
24 ~~subcontracts;~~

25 ~~(5) provisions relating to the timing of requests for bids on subcontracts~~
26 ~~and of submission of bids on subcontracts;~~

27 ~~(6) provisions designed to ensure that a fiscal disadvantage to the State~~
28 ~~does not result from an inadequate response by minority business enterprises to a~~
29 ~~request for bids;~~

30 ~~(7) provisions relating to joint ventures, under which a bidder may count~~
31 ~~toward meeting its minority business enterprise participation goal, the minority~~
32 ~~business enterprise portion of the joint venture;~~

33 ~~(8) consistent with § 14-302(a)(5) of this subtitle, provisions relating to:~~

34 ~~(i) any circumstances under which a unit may waive obligations of~~
35 ~~the contractor relating to minority business enterprise participation; AND~~

1 ~~(H) THE APPOINTMENT OF A NEUTRAL NONGOVERNMENTAL~~
 2 ~~INDIVIDUAL WHO SHALL:~~

3 ~~1. REVIEW EACH WAIVER GRANTED UNDER THE WAIVER~~
 4 ~~PROCESS ESTABLISHED IN ACCORDANCE WITH SUBITEM (I) OF THIS ITEM; AND~~

5 ~~2. DETERMINE WHETHER THE WAIVER COMPLIES WITH ALL~~
 6 ~~RELEVANT STATUTORY AND REGULATORY REQUIREMENTS;~~

7 ~~(9) Provisions requiring a monthly submission to the unit by minority~~
 8 ~~business enterprises acknowledging all payments received in the preceding 30 days~~
 9 ~~under a contract governed by this subtitle;~~

10 ~~(10) A requirement that a unit shall verify and maintain data concerning~~
 11 ~~payments received by minority business enterprises, including a requirement that,~~
 12 ~~upon completion of a project, the unit shall compare the total dollar value actually~~
 13 ~~received by minority business enterprises with the amount of contract dollars initially~~
 14 ~~awarded, and an explanation of any discrepancies therein;~~

15 ~~(11) a requirement that a unit verify that minority business enterprises~~
 16 ~~listed in a successful bid are actually participating to the extent listed in the project~~
 17 ~~for which the bid was submitted;~~

18 ~~(12) provisions establishing a graduation program based on the financial~~
 19 ~~viability of the minority business enterprise, using annual gross receipts or other~~
 20 ~~economic indicators as may be determined by the Board; and~~

21 ~~(13) other provisions that the Board considers necessary or appropriate to~~
 22 ~~encourage participation by minority business enterprises and to protect the integrity~~
 23 ~~of the procurement process.~~

24 14-303.

25 (a) (1) (I) In accordance with Title 10, Subtitle 1 of the State Government
 26 Article, the Board shall adopt regulations consistent with the purposes of this Division
 27 II to carry out the requirements of this subtitle.

28 (II) THE BOARD SHALL KEEP A RECORD OF THE NUMBER OF
 29 WAIVERS REQUESTED AND THE NUMBER OF WAIVERS GRANTED EACH YEAR UNDER
 30 SUBSECTION (B)(8) OF THIS SECTION AND SUBMIT A COPY OF THE RECORD TO THE
 31 GENERAL ASSEMBLY ON OR BEFORE OCTOBER 1 OF EACH YEAR, IN ACCORDANCE
 32 WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE.

33 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
 34 effect October 1, 2003. It shall remain effective until the expiration of Title 14,
 35 Subtitle 3 of the State Finance and Procurement Article, as enacted by Section 1 of
 36 Chapter 339 of the Acts of the General Assembly of 2001.

