

HOUSE BILL 1388

P2

71r2874

By: **Delegates Vaughn, Benson, Carter, Kirk, Oaks, Robinson, and Tarrant**
Introduced and read first time: March 5, 2007
Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Minority Business Enterprise Program – Policy Statements**

3 FOR the purpose of requiring the certification agency for the minority business
4 enterprise program to ensure that units of State government implement a
5 certain policy; specifying that a unit may award a contract only to a bidder or
6 offeror who makes a good faith effort to meet certain minority business
7 enterprise program goals; requiring a bidder or offeror to document its efforts to
8 meet certain goals; requiring units to consider certain criteria in evaluating a
9 bidder's or offeror's good faith efforts to obtain participation under certain
10 contracts of socially and economically disadvantaged individuals or minority
11 business enterprises; requiring a unit to make a fair and reasonable judgment
12 about the effort of a contractor to meet a certain goal; specifying that if the
13 contract price for a contract longer than a certain period is modified or amended
14 by more than a certain amount, a unit shall undertake a certain review and
15 evaluation, make a certain determination, apply certain administrative
16 sanctions if a contractor has failed to comply with certain requirements, and
17 prepare and submit a certain report; requiring the Board of Public Works to
18 engage the services of certain entities to evaluate and document certain efforts
19 of certain entities to meet certain goals with regard to certain procurements for
20 school construction and to issue a report of their findings and recommendations
21 on or before a certain date; and generally relating to policies governing
22 contractors' utilization of socially and economically disadvantaged individuals
23 and minority business enterprises for certain procurement contracts.

24 BY adding to
25 Article – State Finance and Procurement

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 14-306
2 Annotated Code of Maryland
3 (2006 Replacement Volume and 2006 Supplement)

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

6 **Article - State Finance and Procurement**

7 **14-306.**

8 (A) THE CERTIFICATION AGENCY SHALL ENSURE THAT IT IS THE
9 POLICY OF EACH UNIT THAT MINORITY BUSINESS ENTERPRISES HAVE THE
10 MAXIMUM FEASIBLE OPPORTUNITY TO PARTICIPATE IN THE PERFORMANCE OF
11 CONTRACTS AWARDED BY OR ON BEHALF OF THE UNIT.

12 (B) A UNIT MAY AWARD A CONTRACT ONLY TO A BIDDER OR OFFEROR
13 THAT MAKES A GOOD FAITH EFFORT TO MEET THE GOALS OF THE MINORITY
14 BUSINESS ENTERPRISE PROGRAM AND AFTER THE UNIT DETERMINES THAT THE
15 BIDDER OR OFFEROR DOCUMENTS THAT:

16 (1) IT HAS OBTAINED SUFFICIENT PARTICIPATION OF SOCIALLY
17 AND ECONOMICALLY DISADVANTAGED INDIVIDUALS OR MINORITY BUSINESS
18 ENTERPRISES TO MEET THE GOALS SPECIFIED IN THIS SUBTITLE; OR

19 (2) IT MADE AN ADEQUATE GOOD FAITH EFFORT TO MEET THE
20 GOALS, EVEN THOUGH IT DID NOT SUCCEED IN OBTAINING THE SPECIFIED
21 PARTICIPATION RATE OF SOCIALLY AND ECONOMICALLY DISADVANTAGED
22 INDIVIDUALS OR MINORITY BUSINESS ENTERPRISES.

23 (C) (1) TO SHOW ITS GOOD FAITH EFFORT, A BIDDER OR OFFEROR
24 MUST DOCUMENT THAT IT TOOK ALL NECESSARY AND REASONABLE STEPS TO
25 ACHIEVE THE MINORITY BUSINESS ENTERPRISE PROGRAM GOALS.

26 (2) AT A MINIMUM, THE STATEMENT OF GOOD FAITH EFFORT
27 REQUIRED BY PARAGRAPH (1) OF THIS SUBSECTION SHALL INCLUDE:

28 (I) THE NAME, ADDRESS, DATE CONTACTED, AND
29 TELEPHONE NUMBER OF THE SOCIALLY AND ECONOMICALLY DISADVANTAGED
30 INDIVIDUALS AND MINORITY BUSINESS ENTERPRISES CONTACTED;

1 (II) THE DESCRIPTION OF THE INFORMATION PROVIDED TO
2 SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS AND MINORITY
3 BUSINESS ENTERPRISES REGARDING THE PLANS, SPECIFICATIONS, AND
4 ANTICIPATED TIME SCHEDULE FOR PORTIONS OF THE WORK TO BE
5 PERFORMED; AND

6 (III) A DETAILED STATEMENT OF THE REASONS WHY EACH
7 REJECTED QUOTATION SUBMITTED BY A SOCIALLY AND ECONOMICALLY
8 DISADVANTAGED INDIVIDUAL OR MINORITY BUSINESS ENTERPRISE WAS
9 DEEMED UNACCEPTABLE.

10 (D) EACH UNIT SHALL CONSIDER THE FOLLOWING CRITERIA WHEN
11 EVALUATING WHETHER A BIDDER OR OFFEROR MADE A GOOD FAITH EFFORT TO
12 OBTAIN SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS OR
13 MINORITY BUSINESS ENTERPRISES FOR THE CONTRACT:

14 (1) WHETHER THE BIDDER OR OFFEROR EXERCISED ALL
15 REASONABLE AND AVAILABLE MEANS, SOLICITED IN A TIMELY MANNER, AND
16 CONDUCTED APPROPRIATE FOLLOW-UP TO EXPRESSIONS OF INTEREST;

17 (2) WHETHER THE BIDDER OR OFFEROR APPORTIONED THE
18 WORK TO BE PERFORMED IN A MANNER THAT WOULD INCREASE THE
19 LIKELIHOOD THAT THE GOAL FOR PARTICIPATION BY SOCIALLY AND
20 ECONOMICALLY DISADVANTAGED INDIVIDUALS OR MINORITY BUSINESS
21 ENTERPRISES WOULD BE ACHIEVED;

22 (3) WHETHER THE BIDDER OR OFFEROR PROVIDED SOCIALLY
23 AND ECONOMICALLY DISADVANTAGED INDIVIDUALS OR MINORITY BUSINESS
24 ENTERPRISES WITH ADEQUATE INFORMATION ABOUT THE PLANS,
25 SPECIFICATIONS, AND REQUIREMENTS OF THE CONTRACT IN A TIMELY MANNER
26 TO ASSIST THEM IN RESPONDING TO THE SOLICITATION;

27 (4) WHETHER THE BIDDER OR OFFEROR NEGOTIATED IN GOOD
28 FAITH WITH INTERESTED SOCIALLY AND ECONOMICALLY DISADVANTAGED
29 INDIVIDUALS OR MINORITY BUSINESS ENTERPRISES TO:

1 (I) MAKE A PORTION OF THE WORK AVAILABLE TO
2 SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS OR MINORITY
3 BUSINESS ENTERPRISES;

4 (II) SELECT THOSE PORTIONS OF THE WORK OR MATERIAL
5 NEEDS IN A MANNER CONSISTENT WITH THE AVAILABILITY OF SOCIALLY AND
6 ECONOMICALLY DISADVANTAGED INDIVIDUALS OR MINORITY BUSINESS
7 ENTERPRISES; AND

8 (III) EVALUATE IN A FAIR AND OBJECTIVE MANNER ANY
9 ADDITIONAL COSTS THAT MIGHT BE INVOLVED IN FINDING AND USING
10 SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS OR MINORITY
11 BUSINESS ENTERPRISES;

12 (5) WHETHER THE BIDDER OR OFFEROR REJECTED SOCIALLY
13 AND ECONOMICALLY DISADVANTAGED INDIVIDUALS OR MINORITY BUSINESS
14 ENTERPRISES AS UNQUALIFIED WITHOUT SOUND REASONS BASED ON A
15 THOROUGH INVESTIGATION OF THEIR CAPABILITIES;

16 (6) WHETHER THE BIDDER OR OFFEROR UNDERTOOK EFFORTS
17 TO ASSIST INTERESTED SOCIALLY AND ECONOMICALLY DISADVANTAGED
18 INDIVIDUALS OR MINORITY BUSINESS ENTERPRISES TO OBTAIN BONDING,
19 LINES OF CREDIT, OR INSURANCE AS REQUIRED BY THE UNIT OR THE
20 CONTRACTOR;

21 (7) WHETHER THE BIDDER OR OFFEROR UTILIZED THE SERVICES
22 OF MINORITY OR WOMEN COMMUNITY ORGANIZATIONS, CONTRACTOR GROUPS,
23 STATE OR LOCAL GOVERNMENT MINORITY BUSINESS ENTERPRISE ASSISTANCE
24 OFFICES, AND SIMILAR ORGANIZATIONS TO HELP RECRUIT SOCIALLY AND
25 ECONOMICALLY DISADVANTAGED INDIVIDUALS OR MINORITY BUSINESS
26 ENTERPRISES;

27 (8) WHETHER THE BIDDER OR OFFEROR ENTERED INTO JOINT
28 VENTURE ARRANGEMENTS OR PARTNERSHIPS WITH SOCIALLY AND
29 ECONOMICALLY DISADVANTAGED INDIVIDUALS OR MINORITY BUSINESS
30 ENTERPRISES TO ENHANCE THE OPPORTUNITY FOR THEIR PARTICIPATION IN
31 THE CONTRACT;

1 **(9) WHETHER THE BIDDER OR OFFEROR HAS A MENTOR**
2 **PROGRAM TO FOSTER LONG-TERM RELATIONSHIPS AND INCREASE ITS**
3 **BUSINESS INVOLVEMENT WITH SOCIALLY AND ECONOMICALLY DISADVANTAGED**
4 **INDIVIDUALS OR MINORITY BUSINESS ENTERPRISES;**

5 **(10) WHETHER THE BIDDER OR OFFEROR ASSISTS SOCIALLY AND**
6 **ECONOMICALLY DISADVANTAGED INDIVIDUALS OR MINORITY BUSINESS**
7 **ENTERPRISES IN ACQUIRING MINORITY BUSINESS ENTERPRISE PROGRAM**
8 **CERTIFICATION;**

9 **(11) WHETHER THE BIDDER OR OFFEROR PROVIDES TECHNICAL**
10 **SUPPORT TO SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS OR**
11 **MINORITY BUSINESS ENTERPRISES TO ASSIST THEM IN THEIR OPERATIONS;**

12 **(12) WHETHER THE BIDDER OR OFFEROR PROVIDES LONG-TERM**
13 **SUPPORT IN BUSINESS DEVELOPMENT TO COMPANIES WITH WHICH IT HAS**
14 **CONTRACTED IN ORDER TO INCREASE OPPORTUNITIES IN A VARIETY OF WORK**
15 **SPECIALTIES AND THEREBY STRENGTHEN ITS ABILITY TO CONTRACT FOR**
16 **SIGNIFICANT PROJECTS; AND**

17 **(13) WHETHER THE BIDDER OR OFFEROR HAS A RECORD OF**
18 **EXCEEDING MINORITY BUSINESS ENTERPRISE PROGRAM GOALS ON PRIOR**
19 **CONTRACTS.**

20 **(E) IF THE CONTRACT TERM FOR A CONTRACT ADMINISTERED BY A**
21 **UNIT IS LONGER THAN 2 YEARS AND THE CONTRACT PRICE IS MODIFIED OR**
22 **AMENDED BY MORE THAN 35% OF ITS ORIGINAL COST, EVERY 2 YEARS THE UNIT**
23 **SHALL:**

24 **(1) REVIEW THE CONTRACTOR'S COMPLIANCE WITH THE**
25 **MINORITY BUSINESS ENTERPRISE PROGRAM GOALS SPECIFIED UNDER THIS**
26 **SUBTITLE;**

27 **(2) REPORT AND VERIFY THE CONTRACTOR'S ACTUAL PAYMENTS**
28 **TO SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS OR MINORITY**
29 **BUSINESS ENTERPRISES TO DETERMINE THE PRIME CONTRACTOR'S LEVEL OF**
30 **COMPLIANCE WITH THOSE GOALS;**

1 **(3) HAVE ITS PROCUREMENT REVIEW TEAM EXAMINE THE**
2 **CONTRACTOR'S GOALS FOR THE UTILIZATION OF SOCIALLY AND ECONOMICALLY**
3 **DISADVANTAGED INDIVIDUALS OR MINORITY BUSINESS ENTERPRISES UNDER**
4 **THE ORIGINAL CONTRACT AND DETERMINE WHETHER NEW OR REVISED GOALS**
5 **SHOULD BE ESTABLISHED FOR THE CONTRACTOR;**

6 **(4) APPLY ADMINISTRATIVE SANCTIONS IF A CONTRACTOR HAS**
7 **FAILED TO COMPLY WITH SOCIALLY AND ECONOMICALLY DISADVANTAGED**
8 **INDIVIDUALS OR MINORITY BUSINESS ENTERPRISE PROGRAM REQUIREMENTS;**
9 **AND**

10 **(5) BY JUNE 30 OF EACH YEAR, REPORT THE RESULTS OF ANY**
11 **CONTRACT MODIFICATION PROCEDURES IT UNDERTAKES UNDER THIS**
12 **SUBSECTION TO THE SPECIAL SECRETARY FOR THE OFFICE OF MINORITY**
13 **AFFAIRS.**

14 **(F) A UNIT SHALL MAKE A FAIR AND REASONABLE JUDGMENT**
15 **WHETHER A BIDDER OR OFFEROR WHO FAILS TO MEET THE GOALS FOR**
16 **MINORITY BUSINESS ENTERPRISE PARTICIPATION UNDER THIS SUBTITLE MADE**
17 **AN ADEQUATE GOOD FAITH EFFORT TO DO SO.**

18 SECTION 2. AND BE IT FURTHER ENACTED, That the Board of Public
19 Works shall designate a State entity and engage the services of an independent
20 nonprofit entity jointly to evaluate and document the good faith effort of units,
21 bidders, and offerors to meet the goals of the Minority Business Enterprise Program
22 under Title 14, Subtitle 3 of the State Finance and Procurement Article with respect to
23 fiscal 2008 procurements for school construction. On or before December 1, 2008, the
24 designated State entity and the independent nonprofit entity shall issue a report of
25 their findings and recommendations to the Governor and, in accordance with § 2-1246
26 of the State Government Article, the General Assembly.

27 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 July 1, 2007.