

Chapter 254

(Senate Bill 558)

AN ACT concerning

Minority Business Enterprise Program – Amendments to MBE Participation Schedule and Extension of Task Force ~~and Termination Extension~~

FOR the purpose of requiring a certain bidder or offeror to notify a certain unit of State government ~~at a certain~~ within a certain period of time if, after submission of a bid or proposal and before the execution of a certain contract, the bidder or offeror determines that a certain minority business enterprise identified in a certain MBE participation schedule has become or will become unavailable or is determined to be ineligible to perform the work required under the contract; authorizing a certain bidder or offeror to submit a written request to a unit to amend a certain MBE participation schedule under certain circumstances; requiring a certain written request to include certain information; prohibiting an MBE participation schedule from being amended unless the amendment is approved by certain persons; prohibiting an MBE participation schedule from being amended after the date of contract execution unless approved by a certain person and by contract amendment; defining a certain term; extending the termination date of the Task Force on the Minority Business Enterprise Program and Equity Investment Capital; altering the year of the legislative session for which the Task Force is required to develop draft legislation; altering a certain reporting date; continuing until a certain date ~~certain provisions of the State Procurement Law relating to procurement from minority business enterprises; requiring a certain study and a final report on the study by a certain date; providing for the application of certain provisions of this Act; providing for the effective dates of this Act~~ making this Act an emergency measure; and generally relating to minority business enterprise participation in procurement contracts and the Task Force on the Minority Business Enterprise Program and Equity Investment Capital.

BY repealing and reenacting, with amendments,
 Article – State Finance and Procurement
 Section 14-302 ~~and 14-309~~
 Annotated Code of Maryland
 (2009 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, without amendments,
Chapter 513 of the Acts of the General Assembly of 2010
Section 1(a)

BY repealing and reenacting, with amendments,

Chapter 513 of the Acts of the General Assembly of 2010
Section 1(f) and (g) and 2

BY repealing and reenacting, without amendments,
Chapter 514 of the Acts of the General Assembly of 2010
Section 1(a)

BY repealing and reenacting, with amendments,
Chapter 514 of the Acts of the General Assembly of 2010
Section 1(f) and (g) and 2

~~BY repealing and reenacting, with amendments,~~
~~Chapter 116 of the Acts of the General Assembly of 1995, as amended by~~
~~Chapters 495 and 496 of the Acts of the General Assembly of 2000,~~
~~Chapter 339 of the Acts of the General Assembly of 2001, and Chapter~~
~~359 of the Acts of the General Assembly of 2006~~
~~Section 2~~

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

Article – State Finance and Procurement

14–302.

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

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

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

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

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

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

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

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

(ii) The unit shall:

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

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

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

(4) (i) A woman who is also a member of an ethnic or racial minority group may be certified in that category in addition to the gender category.

(ii) For purposes of achieving the goals in this subsection, a certified minority business enterprise may participate in a procurement contract and be counted as a woman-owned business, or as a business owned by a member of an ethnic or racial group, but not both, if the business has been certified in both categories.

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

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

(i) identify specific work categories appropriate for subcontracting;

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

1. describes the categories of work under item (i) of this paragraph; and

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

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

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

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

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

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

(ii) If the unit finds the contractor complied with paragraph (6) of this subsection, the unit may not require the contractor to renegotiate any subcontract in order to achieve a different result.

(8) **(I) IN THIS PARAGRAPH, “MBE PARTICIPATION SCHEDULE” MEANS A SCHEDULE INCLUDED IN THE SUBMISSION OF A BID OR OFFER THAT IDENTIFIES:**

1. ~~IDENTIFIES~~ THE CERTIFIED MINORITY BUSINESS ENTERPRISES THAT A BIDDER OR OFFEROR AGREES TO USE IN THE PERFORMANCE OF THE CONTRACT; AND

2. THE PERCENTAGE OF CONTRACT VALUE ATTRIBUTED TO EACH CERTIFIED MINORITY BUSINESS ENTERPRISE.

~~(II) A BIDDER OR OFFEROR SHALL IMMEDIATELY NOTIFY THE UNIT IF,~~

1. THIS PARAGRAPH APPLIES TO A BIDDER OR OFFEROR AFTER SUBMISSION OF A BID OR PROPOSAL AND BEFORE THE EXECUTION OF A CONTRACT WITH AN EXPECTED DEGREE OF MINORITY BUSINESS ENTERPRISE PARTICIPATION.

2. IF THE BIDDER OR OFFEROR DETERMINES THAT A MINORITY BUSINESS ENTERPRISE IDENTIFIED IN THE MBE PARTICIPATION SCHEDULE HAS BECOME OR WILL BECOME UNAVAILABLE OR IS INELIGIBLE TO PERFORM THE WORK REQUIRED UNDER THE CONTRACT, THE BIDDER OR OFFEROR SHALL NOTIFY THE UNIT WITHIN 72 HOURS OF MAKING THE DETERMINATION.

(III) 1. IF A MINORITY BUSINESS ENTERPRISE IDENTIFIED IN THE MBE PARTICIPATION SCHEDULE SUBMITTED WITH A BID OR OFFER HAS BECOME OR WILL BECOME UNAVAILABLE OR IS INELIGIBLE TO PERFORM THE WORK REQUIRED UNDER THE CONTRACT, THE BIDDER OR OFFEROR MAY SUBMIT A WRITTEN REQUEST WITH THE UNIT TO AMEND THE MBE PARTICIPATION SCHEDULE.

2. THE REQUEST TO AMEND THE MBE PARTICIPATION SCHEDULE SHALL INDICATE THE BIDDER'S OR OFFEROR'S EFFORTS TO SUBSTITUTE ANOTHER CERTIFIED MINORITY BUSINESS ENTERPRISE TO PERFORM THE WORK THAT THE UNAVAILABLE OR INELIGIBLE MINORITY BUSINESS ENTERPRISE WOULD HAVE PERFORMED.

3. EXCEPT AS PROVIDED IN SUBSUBPARAGRAPH 4 OF THIS SUBPARAGRAPH, AN MBE PARTICIPATION SCHEDULE MAY NOT BE AMENDED UNLESS THE AMENDMENT IS APPROVED BY THE UNIT'S PROCUREMENT OFFICER AFTER CONSULTING WITH THE UNIT'S MBE LIAISON.

4. AN MBE PARTICIPATION SCHEDULE MAY NOT BE AMENDED AFTER THE DATE OF CONTRACT EXECUTION UNLESS THE REQUEST IS APPROVED BY THE HEAD OF THE UNIT AND THE CONTRACT IS AMENDED.

(9) If, during the performance of a contract, a certified minority business enterprise contractor or subcontractor becomes ineligible to participate in the Minority Business Enterprise Program because one or more of its owners has a personal net worth that exceeds the amount specified in § 14-301(i)(3) of this subtitle:

(i) that ineligibility alone may not cause the termination of the certified minority business enterprise's contractual relationship for the remainder of the term of the contract; and

(ii) the certified minority business enterprise's participation under the contract shall continue to be counted toward the program and contract goals.

(b) (1) The provisions of §§ 14-301(f) and 14-303 of this subtitle and subsection (a) of this section are inapplicable to the extent that any unit determines the provisions to be in conflict with any applicable federal program requirement.

(2) The determination under this subsection shall be included with the report required under § 14-305 of this subtitle.

Chapter 513 of the Acts of 2010

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That:

(a) There is a Task Force on the Minority Business Enterprise Program and Equity Investment Capital.

(f) The Task Force shall:

(1) study how to facilitate the acquisition of investment equity capital by minority business enterprises in Maryland in a manner that:

(i) allows minority business enterprise owners to retain operational control of the business enterprise; and

(ii) provides adequate protection to equity investors;

(2) make recommendations regarding the necessary modifications to the Minority Business Enterprise Program that will authorize and encourage equity investment in minority business enterprises in Maryland; and

(3) develop draft legislation for the [2011] 2012 legislative session to implement the recommendations identified in paragraph (2) of this subsection.

(g) On or before December 1, [2010] 2011, the Task Force shall report its recommendations and draft legislation to the Governor and, in accordance with § 2-1246 of the State Government Article, the General Assembly.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2010. It shall remain effective for a period of [1 year] 2 YEARS and, at the end of May 31, [2011] 2012, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.

Chapter 514 of the Acts of 2010

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That:

(a) There is a Task Force on the Minority Business Enterprise Program and Equity Investment Capital.

(f) The Task Force shall:

(1) study how to facilitate the acquisition of investment equity capital by minority business enterprises in Maryland in a manner that:

(i) allows minority business enterprise owners to retain operational control of the business enterprise; and

(ii) provides adequate protection to equity investors;

(2) make recommendations regarding the necessary modifications to the Minority Business Enterprise Program that will authorize and encourage equity investment in minority business enterprises in Maryland; and

(3) develop draft legislation for the [2011] 2012 legislative session to implement the recommendations identified in paragraph (2) of this subsection.

(g) On or before December 1, [2010] 2011, the Task Force shall report its recommendations and draft legislation to the Governor and, in accordance with § 2-1246 of the State Government Article, the General Assembly.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2010. It shall remain effective for a period of [1 year] 2 YEARS and, at the end of May 31, [2011] 2012, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.

~~SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:~~

~~Article – State Finance and Procurement~~

~~14-300.~~

~~The provisions of §§ 14-301 through 14-305 of this subtitle, and any regulations adopted under those sections, shall be of no effect and may not be enforced after July 1, [2011] 2013.~~

~~Chapter 116 of the Acts of 1995, as amended by Chapters 495 and 496 of the~~

~~Acts of 2000, Chapter 339 of the Acts of 2001, and Chapter 359 of the Acts of
2006~~

~~SECTION 2. AND BE IT FURTHER ENACTED, That the Certification Agency, in consultation with the General Assembly and the Office of the Attorney General, shall initiate a study of the Minority Business Enterprise Program to evaluate the Program's continued compliance with the requirements of the Croson decision and any subsequent federal or constitutional requirements. In preparation for the study, the Board of Public Works may adopt regulations authorizing a unit of State government to require bidders and offerors to submit information necessary for the conduct of the study. The Board of Public Works may designate that certain information received in accordance with regulations adopted under this section shall be confidential. Notwithstanding that certain information may be designated by the Board of Public Works as confidential, the certification agency may provide the information to any person that is under contract with the certification agency to assist in conducting the study. The study shall also evaluate race neutral programs and other methods that can be used to address the needs of minority businesses. The final report on the study shall be submitted to the Legislative Policy Committee of the General Assembly prior to September 30, [2010] **2012**, so that the General Assembly may review the report prior to the [2011] **2013** Session.~~

~~SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall take effect October 1, 2011.~~

~~SECTION 4. 2. AND BE IT FURTHER ENACTED, That, except as provided in Section 3 of this Act, this Act shall take effect July 1, 2011 is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a ye and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.~~

Approved by the Governor, May 10, 2011.