

HOUSE BILL 20

P2

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(PRE-FILED)

By: **Delegate B. Robinson**

Requested: November 13, 2012

Introduced and read first time: January 9, 2013

Assigned to: Health and Government Operations and Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Minority Business Enterprise Program – Participation Subgoals – Prime**
3 **Contractors**

4 FOR the purpose of requiring, under certain circumstances, a unit of State
5 government to count the dollar value of a procurement contract made directly or
6 indirectly with a prime contractor that is a certified minority business
7 enterprise toward meeting the certified minority business enterprise
8 participation subgoal on the contract; and generally relating to participation
9 subgoals under the Minority Business Enterprise Program.

10 BY repealing and reenacting, with amendments,
11 Article – State Finance and Procurement
12 Section 14–302
13 Annotated Code of Maryland
14 (2009 Replacement Volume and 2012 Supplement)

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

17 **Article – State Finance and Procurement**

18 14–302.

19 (a) (1) (i) Except for leases of real property, each unit shall structure
20 procurement procedures, consistent with the purposes of this subtitle, to try to achieve
21 an overall percentage goal of the unit's total dollar value of procurement contracts
22 being made directly or indirectly to certified minority business enterprises.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(ii) 1. The overall percentage goal shall be established on a biennial basis by the Special Secretary of Minority Affairs, in consultation with the Secretary of Transportation and the Attorney General.

2. During any year in which there is a delay in
3 establishing the overall goal, the previous year's goal will apply.

2. During any year in which there is a delay in establishing the subgoal guidelines, the previous year's subgoal guidelines will apply.

18 2. In establishing overall goals and subgoal guidelines,
19 the Special Secretary of Minority Affairs shall provide for public participation by
20 consulting with minority, women's, and general contractor groups, community
21 organizations, and other officials or organizations that could be expected to have
22 information concerning:

27 C. the State's operation of the Minority Business
28 Enterprise Program.

31 1. the relative availability of minority- and
32 women-owned businesses to participate in State procurement as demonstrated by the
33 State's most recent disparity study;

3. other factors that contribute to constitutional goal setting.

(vi) Notwithstanding § 12-101 of this article, the Special Secretary of Minority Affairs shall adopt regulations in accordance with Title 10, Subtitle 1 of the State Government Article setting forth the State's overall goal.

(2) Each unit shall:

(i) consider the practical severability of all contracts and, in accordance with § 11–201 of this article, may not bundle contracts;

(ii) implement a program that will enable the unit to evaluate each contract to determine the appropriate minority business enterprise participation goals, if any, for the contract based on:

1. the potential subcontract opportunities available in the prime procurement contract;

2. the availability of certified minority business enterprises to respond competitively to the potential subcontract opportunities;

3. the guidelines established under paragraph (1)(ii) of this subsection; and

4. other factors that contribute to constitutional goal setting;

(iii) monitor and collect data with respect to prime contractor compliance with contract goals; and

(iv) institute corrective action when prime contractors do not make good-faith efforts to comply with contract goals.

(3) Units may not use quotas or any project goal-setting process that:

(i) solely relies on the State's overall numerical goal, or any other jurisdiction's overall numerical goal; or

(ii) fails to incorporate the analysis outlined in paragraph (2)(ii) of this subsection.

(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

1 be counted as a woman-owned business, or as a business owned by a member of an
2 ethnic or racial group, but not both, if the business has been certified in both
3 categories.

(6) If a unit establishes minority business enterprise participation goals for a contract, a contractor, including a contractor that is a certified minority business enterprise, shall:

11 (i) identify specific work categories appropriate for
12 subcontracting;

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

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

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

(iv) offer to provide reasonable assistance to minority business enterprises to fulfill bonding requirements or to obtain a waiver of those requirements;

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

29 (7) The Special Secretary of Minority Affairs shall:

(ii) notwithstanding § 12–101 of this article, adopt regulations setting forth the procedures established in accordance with this paragraph.

6 2. A waiver of any part of the minority business
7 enterprise goals for a contract shall be granted if a contractor provides a reasonable
8 demonstration of good-faith efforts to achieve the goals.

(ii) If the unit determines that a waiver should be granted in accordance with subparagraph (i) of this paragraph, the unit may not require the contractor to renegotiate any subcontract in order to achieve a different result.

2 The head of the unit shall:

20 A. keep one copy of the waiver determination and the
21 reasons for the determination; and

22 B. forward one copy of the waiver determination to the
23 Governor's Office of Minority Affairs

the contract titles, numbers, and dates;

³² 2 the number of waiver requests received;

³³ the number of waiver requests granted; and

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1 4. any other information specifically requested by the
2 Board.

3 (9) (i) 1. This paragraph applies to a bidder or offeror after
4 submission of a bid or proposal and before the execution of a contract with an expected
5 degree of minority business enterprise participation.

6 2. If the bidder or offeror determines that a minority
7 business enterprise identified in the minority business enterprise participation
8 schedule has become or will become unavailable or ineligible to perform the work
9 required under the contract, the bidder or offeror shall notify the unit within 72 hours
10 of making the determination.

11 (ii) 1. If a minority business enterprise identified in the
12 minority business enterprise participation schedule submitted with a bid or offer has
13 become or will become unavailable or ineligible to perform the work required under
14 the contract, the bidder or offeror may submit a written request with the unit to
15 amend the minority business enterprise participation schedule.

16 2. The request to amend the minority business
17 enterprise participation schedule shall indicate the bidder's or offeror's efforts to
18 substitute another certified minority business enterprise to perform the work that the
19 unavailable or ineligible minority business enterprise would have performed.

20 (iii) A minority business enterprise participation schedule may
21 not be amended unless:

22 1. the bidder or offeror provides a satisfactory
23 explanation of the reason for inclusion of the unavailable or ineligible firm on the
24 minority business enterprise participation schedule; and

25 2. the amendment is approved by the unit's procurement
26 officer after consulting with the unit's minority business enterprise liaison.

27 (10) (i) This paragraph applies after execution of a contract with an
28 expected degree of minority business enterprise participation.

29 (ii) The minority business enterprise participation schedule,
30 including any amendment, shall be attached to and made a part of the executed
31 contract.

32 (iii) 1. A contractor may not terminate or otherwise cancel
33 the contract of a certified minority business enterprise subcontractor listed in the
34 minority business enterprise participation schedule without showing good cause and
35 obtaining the prior written consent of the minority business enterprise liaison and
36 approval of the head of the unit.

1 2. The unit shall send a copy of the written consent
2 obtained under subsubparagraph 1 of this subparagraph to the Governor's Office of
3 Minority Affairs.

4 (iv) A minority business enterprise participation schedule may
5 not be amended after the date of contract execution unless the request is approved by
6 the head of the unit and the contract is amended.

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

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

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

17 **(12) IF A PRIME CONTRACTOR ON A PROCUREMENT CONTRACT IS**
18 **A CERTIFIED MINORITY BUSINESS ENTERPRISE, THE UNIT SHALL COUNT THE**
19 **DOLLAR VALUE OF THE PROCUREMENT CONTRACT MADE DIRECTLY OR**
20 **INDIRECTLY WITH THE PRIME CONTRACTOR TOWARD MEETING THE CERTIFIED**
21 **MINORITY BUSINESS ENTERPRISE SUBGOAL SET BY THE UNIT ON THE**
22 **CONTRACT.**

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

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

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 October 1, 2013.