

# HOUSE BILL 25

P2

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(PRE-FILED)

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By: **Delegate B. Robinson**

Requested: November 13, 2012

Introduced and read first time: January 9, 2013

Assigned to: Health and Government Operations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Minority Business Enterprises – Board of Public Works – Regulations**

3 FOR the purpose of requiring the Board of Public Works to adopt certain regulations  
4 that impose a penalty on a prime contractor if minority business enterprises  
5 listed in a successful bid do not participate to the extent listed in the project;  
6 requiring the Board to adopt regulations to require a unit to provide notice to all  
7 subcontractors of record for a minority business enterprise procurement  
8 contract when payment is made to the prime contractor; and generally relating  
9 to the adoption of regulations by the Board of Public Works concerning the  
10 minority business enterprise program.

11 BY repealing and reenacting, with amendments,  
12 Article – State Finance and Procurement  
13 Section 14–303  
14 Annotated Code of Maryland  
15 (2009 Replacement Volume and 2012 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 14–303.

20 (a) (1) (i) In accordance with Title 10, Subtitle 1 of the State  
21 Government Article, the Board shall adopt regulations consistent with the purposes of  
22 this Division II to carry out the requirements of this subtitle.

23 (ii) The Board shall keep a record of information regarding any  
24 waivers requested in accordance with § 14–302(a)(8)(i) of this subtitle and subsection

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (b)(11) of this section and submit a copy of the record to the General Assembly on or  
2 before October 1 of each year, in accordance with § 2–1246 of the State Government  
3 Article.

4 (iii) The Board shall keep a record of the aggregate number and  
5 the identity of minority business enterprises that receive certification under the  
6 process established by the Board under subsection (b)(1) of this section and submit a  
7 copy of the record to the General Assembly on or before October 1 of each year, in  
8 accordance with § 2–1246 of the State Government Article.

9 (2) The regulations shall establish procedures to be followed by units,  
10 prospective contractors, and successful bidders or offerors to maximize notice to, and  
11 the opportunity to participate in the procurement process by, a broad range of  
12 minority business enterprises.

13 (b) These regulations shall include:

14 (1) provisions:

15 (i) designating one State agency to certify and decertify  
16 minority business enterprises for all units through a single process that meets  
17 applicable federal requirements, including provisions that promote and facilitate the  
18 submission of some or all of the certification application through an electronic process;

19 (ii) for the purpose of certification under this subtitle, that  
20 promote and facilitate certification of minority business enterprises that have received  
21 certification from the U.S. Small Business Administration or a county that uses a  
22 certification process substantially similar to the process established in accordance  
23 with item (i) of this item;

24 (iii) requiring the agency designated to certify minority business  
25 enterprises to complete the agency's review of an application for certification and  
26 notify the applicant of the agency's decision within 90 days of receipt of a complete  
27 application that includes all of the information necessary for the agency to make a  
28 decision; and

29 (iv) authorizing the agency designated to certify minority  
30 business enterprises to extend the notification requirement established under item (iii)  
31 of this item once, for no more than an additional 60 days, if the agency provides the  
32 applicant with a written notice and explanation;

33 (2) a requirement that the solicitation document accompanying each  
34 solicitation set forth the expected degree of minority business enterprise participation  
35 based, in part, on the factors set forth in § 14–302(a)(2)(ii) of this subtitle;

1           (3) a requirement that bidders or offerors complete a document setting  
2 forth the percentage of the total dollar amount of the contract that the bidder or  
3 offeror agrees will be performed by certified minority business enterprises;

4           (4) a requirement that the solicitation documents completed and  
5 submitted by the bidder or offeror in connection with its minority business enterprise  
6 participation commitment must be attached to and made a part of the contract;

7           (5) a requirement that all contracts containing minority business  
8 enterprise participation goals shall contain a liquidated damages provision that  
9 applies in the event that the contractor fails to comply in good faith with the  
10 provisions of this subtitle or the pertinent terms of the applicable contract;

11           (6) a requirement that the unit provide a current list of certified  
12 minority business enterprises to each prospective contractor;

13           (7) provisions to ensure the uniformity of requests for bids on  
14 subcontracts;

15           (8) provisions relating to the timing of requests for bids on  
16 subcontracts and of submission of bids on subcontracts;

17           (9) provisions designed to ensure that a fiscal disadvantage to the  
18 State does not result from an inadequate response by minority business enterprises to  
19 a request for bids;

20           (10) provisions relating to joint ventures, under which a bidder may  
21 count toward meeting its minority business enterprise participation goal, the minority  
22 business enterprise portion of the joint venture;

23           (11) consistent with § 14–302(a)(8) of this subtitle, provisions relating  
24 to any circumstances under which a unit may waive obligations of the contractor  
25 relating to minority business enterprise participation;

26           (12) provisions requiring a monthly submission to the unit by minority  
27 business enterprises acknowledging all payments received in the preceding 30 days  
28 under a contract governed by this subtitle;

29           (13) a requirement that a unit shall verify and maintain data  
30 concerning payments received by minority business enterprises, including a  
31 requirement that, upon completion of a project, the unit shall compare the total dollar  
32 value actually received by minority business enterprises with the amount of contract  
33 dollars initially awarded, and an explanation of any discrepancies therein;

34           (14) a requirement that a unit verify that minority business enterprises  
35 listed in a successful bid are actually participating to the extent listed in the project  
36 for which the bid was submitted **AND, IF MINORITY BUSINESS ENTERPRISES ARE**

1 NOT PARTICIPATING TO THE EXTENT LISTED IN THE PROJECT, A REQUIREMENT  
2 THAT A PENALTY BE IMPOSED ON THE PRIME CONTRACTOR FOR THE DEFAULT;

3 (15) provisions establishing a graduation program based on the  
4 financial viability of the minority business enterprise, using annual gross receipts or  
5 other economic indicators as may be determined by the Board;

6 (16) a requirement that a bid or proposal based on a solicitation with an  
7 expected degree of minority business enterprise participation identify the specific  
8 commitment of certified minority business enterprises at the time of submission;

9 (17) provisions promoting and providing for the counting and reporting  
10 of certified minority business enterprises as prime contractors;

11 (18) provisions establishing standards to require a minority business  
12 enterprise to perform a commercially useful function on a contract;

13 **(19) A REQUIREMENT THAT WHEN A UNIT AUTHORIZES PAYMENT**  
14 **TO A PRIME CONTRACTOR UNDER A PROCUREMENT CONTRACT THAT THE UNIT**  
15 **ALSO PROVIDE NOTICE OF THE PAYMENT TO ALL SUBCONTRACTORS OF RECORD**  
16 **UNDER THE PROCUREMENT CONTRACT;**

17 ~~[(19)]~~ **(20)** a requirement that each unit work with the Governor's  
18 Office of Minority Affairs to designate certain procurements as being excluded from  
19 the requirements of § 14-302(a) of this subtitle; and

20 ~~[(20)]~~ **(21)** other provisions that the Board considers necessary or  
21 appropriate to encourage participation by minority business enterprises and to protect  
22 the integrity of the procurement process.

23 (c) The regulations adopted under this section shall specify that a unit may  
24 not allow a business to participate as if it were a certified minority business enterprise  
25 if the business's certification is pending.

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