

HOUSE BILL 26

P2

3lr0790

(PRE-FILED)

By: **Delegate B. Robinson**

Requested: November 13, 2012

Introduced and read first time: January 9, 2013

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Minority Business Enterprise Program – Former Subcontractors**
3 **Transitioning to Prime Contractors**

4 FOR the purpose of requiring the Board of Public Works to adopt regulations under
5 the minority business enterprise program that recognize and give credit to
6 certain former subcontractors that submit bids as prime contractors on certain
7 procurement contracts; and generally relating to the minority business
8 enterprise program.

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

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

16 **Article – State Finance and Procurement**

17 14–303.

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

21 (ii) The Board shall keep a record of information regarding any
22 waivers requested in accordance with § 14–302(a)(8)(i) of this subtitle and subsection
23 (b)(11) of this section and submit a copy of the record to the General Assembly on or

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 before October 1 of each year, in accordance with § 2–1246 of the State Government
2 Article.

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

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

12 (b) These regulations shall include:

13 (1) provisions:

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

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

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

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

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

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

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

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

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

10 (7) provisions to ensure the uniformity of requests for bids on
11 subcontracts;

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

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

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

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

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

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

31 (14) a requirement that a unit verify that minority business enterprises
32 listed in a successful bid are actually participating to the extent listed in the project
33 for which the bid was submitted;

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

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

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

9 **(18) WHEN EVALUATING A BID BY A FORMER SUBCONTRACTOR**
10 **THAT SUBMITS A BID AS A PRIME CONTRACTOR, PROVISIONS THAT RECOGNIZE**
11 **AND GIVE CREDIT TO THE SUBCONTRACTOR IF THE SUBCONTRACTOR HAS**
12 **PERFORMED SATISFACTORY WORK FOR PRIME CONTRACTORS UNDER STATE**
13 **PROCUREMENTS OVER THE PREVIOUS 10 YEARS;**

14 ~~[(18)]~~ **(19)** provisions establishing standards to require a minority
15 business enterprise to perform a commercially useful function on a contract;

16 ~~[(19)]~~ **(20)** a requirement that each unit work with the Governor's
17 Office of Minority Affairs to designate certain procurements as being excluded from
18 the requirements of § 14-302(a) of this subtitle; and

19 ~~[(20)]~~ **(21)** other provisions that the Board considers necessary or
20 appropriate to encourage participation by minority business enterprises and to protect
21 the integrity of the procurement process.

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

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