

## Chapter 343

(Senate Bill 1066)

AN ACT concerning

### Minority Business Enterprises – Not-for-Profit Entities

FOR the purpose of requiring certain entities to include in certain contracts a certain requirement for procuring janitorial products; excluding a not-for-profit entity organized to promote the interests of physically or mentally disabled individuals from a certain definition of minority business enterprise; prohibiting certain contracts from being counted as part of a unit of State government's total dollar value of procurement contracts; authorizing a certain not-for-profit entity participating as a minority business enterprise on a certain procurement contract awarded by a unit before a certain date to continue to participate in that contract until the contract terminates; providing that the not-for-profit entity's participation may not be counted toward achieving certain minority business enterprise participation goals and the unit may not require that a certified minority business enterprise be substituted for the not-for-profit entity in order to meet certain minority business enterprise goals; requiring certain State or State aided or controlled entities, the University System of Maryland, St. Mary's College of Maryland, and Morgan State University to submit certain forecasts and reports to the Department of General Services on or before certain dates; requiring certain preferred providers to report to the Department of General Services on or before a certain date; requiring the Department of General Services to report to the Board of Public Works and certain committees of the General Assembly on or before a certain date; requiring the Department of General Services, on or before a certain date, to identify certain State or State aided or controlled entities required to submit certain reports; requiring the Department of Disabilities, in consultation with certain entities, to undertake certain ~~studies~~ evaluations and submit certain reports to ~~the Legislative Policy Committee a final report on the studies~~ certain committees on or before ~~a certain date~~ certain dates; providing for the application of this Act; defining ~~a certain term~~ terms; providing for a delayed effective date for certain provisions of this Act; and generally relating to minority business enterprise participation in State procurement.

BY repealing and reenacting, with amendments,  
 Article – State Finance and Procurement  
 Section ~~14-101 through 14-103~~, 14-301 and 14-302(a)(1) and (11)  
 Annotated Code of Maryland  
 (2009 Replacement Volume and 2012 Supplement)

BY adding to

Article – State Finance and Procurement  
Section 14–110 and 14–302(a)(12)  
Annotated Code of Maryland  
(2009 Replacement Volume and 2012 Supplement)

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

**Article – State Finance and Procurement**

14–101.

(a) In this subtitle the following words have the meanings indicated.

(b) “Community service provider” means an entity that:

(1) is organized under the laws of the United States or this State;

(2) is accredited by the Division of Rehabilitation Services of the State Department of Education for participation in the Employment Works Program;

(3) is operated in the interest of individuals who have a mental or physical disability, including blindness, that:

(i) constitutes a substantial barrier to employment; and

(ii) prevents the individual from engaging in competitive employment; and

(4) does not inure net income wholly or partly to the benefit of any shareholder or other individual.

(c) “Individual with disability owned business” means a business:

(1) that is organized under the laws of the United States or the State;

(2) that is majority owned by an individual or individuals determined by the Division of Rehabilitation Services in the State Department of Education to have a disability, as defined by Title 21, Subtitle 3 of the Education Article;

(3) whose majority owner or owners are directly and significantly engaged in the daily operation of the business;

(4) whose workforce includes individuals with disabilities comprising a percentage of the workforce that is at or above the minimum required under the

policies or guidelines established by the Pricing and Selection Committee for the Employment Works Program;

(5) whose total gross revenues for contracts assigned under the Program at the time of assignment do not exceed the maximum allowed under policies or guidelines established by the Pricing and Selection Committee for the Employment Works Program; and

(6) that continues to meet all other eligibility criteria established by the Pricing and Selection Committee for the Employment Works Program.

**(D) “PREFERRED PROVIDER” MEANS A PROVIDER OF SUPPLIES OR SERVICES GIVEN PREFERENCE IN § 14–103 OF THIS SUBTITLE.**

**[(d)] (E) “State aided or controlled entity” means any public or quasi–public institution that receives aid from the State or that is owned, controlled, or managed by the State.**

14–102.

(a) Notwithstanding any other provision of this Division II, [the] A State OR STATE AIDED OR CONTROLLED ENTITY shall buy supplies and services in accordance with § 14–103 OF this subtitle.

(b) The procurement of services from a sheltered workshop is not subject to the cost savings requirements of § 13–405 of the State Personnel and Pensions Article.

14–103.

(a) [The] A State or [a] State aided or controlled entity shall buy supplies and services from:

(1) Maryland Correctional Enterprises, as provided in Title 3, Subtitle 5 of the Correctional Services Article, if State Use Industries provides the supplies or services;

(2) Blind Industries and Services of Maryland, if:

(i) Blind Industries and Services of Maryland provides the supplies or services; and

(ii) Maryland Correctional Enterprises does not provide the supplies or services;

(3) the Employment Works Program established under § 14–108 of this subtitle, if:

(i) a community service provider provides the supplies or services;

(ii) neither Maryland Correctional Enterprises nor Blind Industries and Services of Maryland provides the supplies or services; and

(iii) the State or a State aided or controlled entity is not required by law to buy the supplies or services from any other unit of the State government; or

(4) individual with disability owned businesses if:

(i) an individual with disability owned business provides the supplies or services;

(ii) neither Maryland Correctional Enterprises, Blind Industries and Services of Maryland, nor a community service provider provides the supplies or services; and

(iii) [the] A State or [a] State aided or controlled entity is not required by law to buy the supplies or services from any other unit of the State government.

(b) [The] A State or [a] State aided or controlled entity shall give preference to the [entities] PROVIDERS listed under subsection (a) of this section in the order that the [entities] PROVIDERS are listed.

**(C) TO THE EXTENT PRACTICABLE, A STATE OR STATE AIDED OR CONTROLLED ENTITY SHALL INCLUDE IN A MAINTENANCE CONTRACT THAT HAS A COMPONENT FOR HOUSEKEEPING OR JANITORIAL SERVICES, A REQUIREMENT THAT A PRIME CONTRACTOR PROCURE JANITORIAL PRODUCTS FROM BLIND INDUSTRIES AND SERVICES OF MARYLAND WHEN THE SPECIFIED PRODUCTS ARE AVAILABLE.**

#### **14-110.**

**(A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, SUBSECTIONS (B) AND (C) OF THIS SECTION APPLY TO:**

**(1) A STATE OR STATE AIDED OR CONTROLLED ENTITY THAT IS:**

**(I) SUBJECT TO THE REQUIREMENTS OF § 14-103 OF THIS SUBTITLE AND § 14-305 OF THIS TITLE; OR**

(II) IDENTIFIED BY THE DEPARTMENT OF GENERAL SERVICES; AND

(2) THE UNIVERSITY SYSTEM OF MARYLAND, ST. MARY'S COLLEGE OF MARYLAND, AND MORGAN STATE UNIVERSITY.

(B) (1) WITHIN 60 DAYS AFTER THE ENACTMENT OF THE BUDGET BILL BY THE GENERAL ASSEMBLY, EACH STATE OR STATE AIDED OR CONTROLLED ENTITY SHALL PREPARE AND SUBMIT TO THE DEPARTMENT OF GENERAL SERVICES A FISCAL YEAR PROCUREMENT EXPENDITURE FORECAST THAT DETAILS THE EXPECTED EXPENDITURES AND CONTRACTS TO BE AWARDED UNDER § 14-103 OF THIS SUBTITLE IN THE NEXT FISCAL YEAR.

(2) THE FORECAST REQUIRED BY PARAGRAPH (1) OF THIS SUBSECTION SHALL INCLUDE ACTIVITIES PLANNED TO INCREASE THE NUMBER OF CONTRACTS AWARDED UNDER § 14-103 OF THIS SUBTITLE.

(C) (1) WITHIN 90 DAYS AFTER THE END OF EACH FISCAL YEAR, A STATE OR STATE AIDED OR CONTROLLED ENTITY SHALL SUBMIT A REPORT TO THE DEPARTMENT OF GENERAL SERVICES THAT COMPLIES WITH THE REQUIREMENTS OF PARAGRAPH (2) OF THIS SUBSECTION.

(2) FOR THE PRECEDING FISCAL YEAR, THE REPORT SHALL INCLUDE:

(I) THE TOTAL NUMBER AND THE DOLLAR VALUE OF CONTRACTS AWARDED BY THE STATE OR STATE AIDED OR CONTROLLED ENTITY TO A PREFERRED PROVIDER;

(II) THE TOTAL NUMBER AND THE DOLLAR VALUE OF PAYMENTS MADE BY A STATE OR STATE AIDED OR CONTROLLED ENTITY TO A PREFERRED PROVIDER, INCLUDING PURCHASE CARD PROCUREMENTS;

(III) THE TOTAL NUMBER AND THE DOLLAR VALUE OF CONTRACTS AWARDED BY THE STATE OR STATE AIDED OR CONTROLLED ENTITY TO A PROVIDER OTHER THAN A PREFERRED PROVIDER;

(IV) THE TOTAL NUMBER AND THE DOLLAR VALUE OF PAYMENTS MADE BY THE STATE OR STATE AIDED OR CONTROLLED ENTITY TO A PROVIDER OTHER THAN A PREFERRED PROVIDER, INCLUDING PURCHASE CARD PROCUREMENTS;

(V) THE PERCENTAGE THAT THE CONTRACTS TO PREFERRED PROVIDERS REPRESENT OF THE TOTAL NUMBER OF PROCUREMENT CONTRACTS;

(VI) THE PERCENTAGE THAT THE PAYMENTS TO PREFERRED PROVIDERS REPRESENT OF THE TOTAL VALUE OF PAYMENTS; AND

(VII) ANY OTHER INFORMATION REQUIRED BY THE DEPARTMENT OF GENERAL SERVICES.

(D) (1) WITHIN 90 DAYS AFTER THE END OF EACH FISCAL YEAR, A PREFERRED PROVIDER AWARDED A CONTRACT IN ACCORDANCE WITH § 14-103 OF THIS SUBTITLE SHALL REPORT TO THE DEPARTMENT OF GENERAL SERVICES IN ACCORDANCE WITH PARAGRAPH (2) OF THIS SUBSECTION.

(2) FOR THE PRECEDING FISCAL YEAR, THE REPORT SHALL STATE THE TOTAL NUMBER OF FULL-TIME EQUIVALENTS FOR INDIVIDUALS WITH DISABILITIES WHO CONTRIBUTED TO THE WORK OF THE CONTRACTS.

(E) WITHIN 60 DAYS AFTER RECEIPT OF ALL OF THE REPORTS REQUIRED UNDER SUBSECTIONS (C) AND (D) OF THIS SECTION, THE DEPARTMENT OF GENERAL SERVICES SHALL SUBMIT A SUMMARY OF THE INFORMATION TO:

(1) THE BOARD OF PUBLIC WORKS; AND

(2) IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE SENATE EDUCATION, HEALTH, AND ENVIRONMENTAL AFFAIRS COMMITTEE, THE HOUSE HEALTH AND GOVERNMENT OPERATIONS COMMITTEE, AND THE LEGISLATIVE POLICY COMMITTEE.

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

Article – State Finance and Procurement

14-301.

(a) In this subtitle the following words have the meanings indicated.

(b) “Certification” means the determination that a legal entity is a minority business enterprise for the purposes of this subtitle.

(c) “Certification agency” means the agency designated by the Board of Public Works under § 14–303(b) of this subtitle to certify and decertify minority business enterprises.

(d) “Certified minority business enterprise” means a minority business enterprise that holds a certification.

(e) “Economically disadvantaged individual” means a socially disadvantaged individual whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.

(f) [(1)] “Minority business enterprise” means any legal entity, except a joint venture, that is:

[(i)] (1) organized to engage in commercial transactions;

[(ii)] (2) at least 51% owned and controlled by 1 or more individuals who are socially and economically disadvantaged; and

[(iii)] (3) managed by, and the daily business operations of which are controlled by, one or more of the socially and economically disadvantaged individuals who own it.

[(2)] “Minority business enterprise” includes a not for profit entity organized to promote the interests of physically or mentally disabled individuals.]

(g) “Minority business enterprise participation schedule” means a schedule included in the submission of a bid or offer that identifies:

(1) 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.

**(H) “NOT-FOR-PROFIT ENTITY” MEANS ~~A LEGAL ENTITY ORGANIZED TO PROMOTE THE INTERESTS OF PHYSICALLY OR MENTALLY DISABLED INDIVIDUALS~~ A CORPORATION THAT:**

**(1) IS INCORPORATED IN THE STATE OR OTHERWISE QUALIFIED TO DO BUSINESS IN THE STATE;**

**(2) HAS BEEN DETERMINED BY THE INTERNAL REVENUE SERVICE TO BE EXEMPT FROM TAXATION UNDER § 501(C)(3), (4), OR (6) OF THE INTERNAL REVENUE CODE; AND**

**(3) IS ORGANIZED TO PROMOTE THE INTERESTS OF PHYSICALLY OR MENTALLY DISABLED INDIVIDUALS.**

**[(h)] (I)** (1) Subject to paragraphs (2) and (3) of this subsection, “personal net worth” means the net value of the assets of an individual remaining after total liabilities are deducted.

(2) “Personal net worth” includes the individual’s share of assets held jointly or as community property with the individual’s spouse.

(3) “Personal net worth” does not include:

(i) the individual’s ownership interest in the applicant or a certified minority business enterprise;

(ii) the individual’s equity in his or her primary place of residence; or

(iii) up to \$500,000 of the cash value of any qualified retirement savings plans or individual retirement accounts.

**[(i)] (J)** “Race-neutral measure” means a method that is or can be used to assist all small businesses.

**[(j)] (K)** (1) Subject to paragraphs (2) and (3) of this subsection, and in accordance with the State’s most recent disparity study, “socially and economically disadvantaged individual” means a citizen or lawfully admitted permanent resident of the United States who is:

(i) in any of the following minority groups:

1. African American – an individual having origins in any of the black racial groups of Africa;

2. American Indian/Native American – an individual having origins in any of the original peoples of North America and who is a documented member of a North American tribe, band, or otherwise has a special relationship with the United States or a state through treaty, agreement, or some other form of recognition. This includes an individual who claims to be an American Indian/Native American and who is regarded as such by the American Indian/Native

American community of which the individual claims to be a part, but does not include an individual of Eskimo or Aleutian origin;

3. Asian – an individual having origins in the Far East, Southeast Asia, or the Indian subcontinent, and who is regarded as such by the community of which the person claims to be a part;

4. Hispanic – an individual of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race, and who is regarded as such by the community of which the person claims to be a part;

5. physically or mentally disabled – notwithstanding the State's most recent disparity study, an individual who has an impairment that substantially limits one or more major life activities, who is regarded generally by the community as having such a disability, and whose disability has substantially limited his or her ability to engage in competitive business; or

6. women – a woman, regardless of race or ethnicity; or

(ii) otherwise found by the certification agency to be a socially and economically disadvantaged individual.

(2) There is a rebuttable presumption that an individual who is a member of a minority group under paragraph (1)(i) of this subsection is socially and economically disadvantaged.

(3) An individual whose personal net worth exceeds \$1,500,000, as adjusted annually for inflation according to the Consumer Price Index, may not be found to be economically disadvantaged.

**[(k)] (L)** “Socially disadvantaged individual” means an individual who has been subjected to racial or ethnic prejudice or cultural bias within American society because of membership in a group and without regard to individual qualities. Social disadvantage must stem from circumstances beyond the control of the individual.

14–302.

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

**2. NOTWITHSTANDING SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH, THE FOLLOWING CONTRACTS MAY NOT BE COUNTED AS PART OF A UNIT'S TOTAL DOLLAR VALUE OF PROCUREMENT CONTRACTS:**

**A. A PROCUREMENT CONTRACT AWARDED IN ACCORDANCE WITH SUBTITLE 1 OF THIS TITLE; ~~AND~~**

**B. A PROCUREMENT CONTRACT AWARDED TO A NOT-FOR-PROFIT ENTITY IN ACCORDANCE WITH REQUIREMENTS MANDATED BY STATE OR FEDERAL LAW; AND**

**C. A PROCUREMENT BY THE MARYLAND DEVELOPMENTAL DISABILITIES ADMINISTRATION OF THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE FOR FAMILY AND INDIVIDUAL SUPPORT SERVICES, COMMUNITY RESIDENTIAL SERVICES, RESOURCE COORDINATION SERVICES, BEHAVIORAL SUPPORT SERVICES, VOCATIONAL AND DAY SERVICES, AND RESPITE SERVICES, AS THOSE TERMS ARE DEFINED IN REGULATIONS ADOPTED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE.**

(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 establishing the overall goal, the previous year's goal will apply.

(iii) 1. In consultation with the Secretary of Transportation and the Attorney General, the Special Secretary of Minority Affairs shall establish guidelines on a biennial basis for each unit to consider while determining whether to set subgoals for the minority groups listed in § [14-301(j)(1)(i)1, 2, 3, 4, and 6] **14-301(k)(1)(I)1, 2, 3, 4, AND 6** of this subtitle.

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

(iv) 1. The Special Secretary of Minority Affairs, in consultation with the Secretary of Transportation and the Attorney General, shall establish goals and subgoal guidelines that, to the maximum extent feasible, approximate the level of minority business enterprise participation that would be expected in the absence of discrimination.

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

A. the availability of minority– and women–owned businesses;

B. the effects of discrimination on opportunities for minority– and women–owned businesses; and

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

(v) In establishing overall goals, the factors to be considered shall include:

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

2. past participation of minority business enterprises in State procurement, except for procurement related to leases of real property; and

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.

(11) 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(j)(3)] **14–301(K)(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.

**(12) (I) ~~A~~ EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, A NOT-FOR-PROFIT ENTITY PARTICIPATING AS A MINORITY BUSINESS ENTERPRISE ON A PROCUREMENT CONTRACT AWARDED BY A UNIT BEFORE JULY 1, ~~2013~~ 2015, MAY CONTINUE TO PARTICIPATE IN THE CONTRACT UNTIL THE CONTRACT EXPIRES OR OTHERWISE TERMINATES, ~~HOWEVER~~ INCLUDING ALL OPTIONS, RENEWALS, AND OTHER EXTENSIONS.**

~~(H)~~ (II) 1. ~~THE~~ THE NOT-FOR-PROFIT ENTITY'S PARTICIPATION MAY NOT BE COUNTED TOWARD ACHIEVING THE MINORITY BUSINESS ENTERPRISE PARTICIPATION GOALS IN THIS SUBSECTION; ~~AND.~~

~~(H)~~ 2. ~~THE~~ THE UNIT MAY NOT REQUIRE THAT A CERTIFIED MINORITY BUSINESS ENTERPRISE BE SUBSTITUTED FOR THE NOT-FOR-PROFIT ENTITY IN ORDER TO MEET THE MINORITY BUSINESS ENTERPRISE GOALS FOR THE PROCUREMENT CONTRACT.

SECTION 3. AND BE IT FURTHER ENACTED, That, on or before July 1, 2015, the Department of General Services shall identify the State or State aided or controlled entities required to submit reports under § 14-110 of the State Finance and Procurement Article, as enacted by Section 1 of this Act.

~~SECTION 2.~~ 4. AND BE IT FURTHER ENACTED, That:

(a) The Department of Disabilities, in consultation with the Governor's Office of Minority Affairs and the ~~Office of the Attorney General~~ Department of General Services, shall evaluate the impact of ~~Section 1~~ Sections 1 and 2 of this Act on the participation of not-for-profit entities organized to promote the interests of individuals with physical or mental disabilities ~~on in~~ in State procurement ~~and, to the extent practicable, related activities. and on employment and business opportunities for persons with disabilities by collecting the following data:~~

- ~~(1) the dollar amount awarded to each not for profit entity;~~
- ~~(2) the contract number and type of procurement or contracting activity through which the unit awarded such dollars to that entity; and~~
- ~~(3) any other data the Department of Disabilities considers relevant to its evaluation.~~

~~(b) In preparing for the evaluation required under subsection (a) of this section, the Department of Disabilities may issue a directive requiring units of State government to collect and submit the necessary information~~

(b) On or before December 1, 2015, the Department of Disabilities shall submit an interim report on the evaluation to the Senate Education, Health, and Environmental Affairs Committee, the House Health and Government Operations Committee, and the Legislative Policy Committee of the General Assembly in accordance with § 2-1246 of the State Government Article.

(c) On or before December 1, ~~2013~~ 2016, the Department of Disabilities shall submit a final report on the evaluation to the Senate Education, Health, and

Environmental Affairs Committee, the House Health and Government Operations Committee, and the Legislative Policy Committee of the General Assembly in accordance with § 2-1246 of the State Government Article.

SECTION ~~3~~ 5. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any contract awarded before the effective date of this Act.

SECTION 6. AND BE IT FURTHER ENACTED, That Sections 2 and 4 of this Act shall take effect July 1, 2015.

SECTION ~~4~~ 7. AND BE IT FURTHER ENACTED, That, except as provided in Section 6 of this Act, this Act shall take effect July 1, 2013.

**Approved by the Governor, May 2, 2013.**