

HOUSE BILL 790

P2, P1

11r2124
CF 11r2125

By: **Delegate P. Young**

Introduced and read first time: January 29, 2021

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Office of Small, Minority, and Women Business Affairs – Small**
3 **Business Reserve Program and Veteran–Owned Small Business Enterprise**
4 **Program**

5 FOR the purpose of providing that the Small Business Reserve Program includes certain
6 veteran–owned small business enterprises that meet certain criteria; requiring the
7 Office of Small, Minority, and Women Business Affairs to adopt regulations to
8 establish a certain overall percentage goal of certain procurement contracts to be
9 made with veteran–owned small business enterprises; requiring certain solicitation
10 documents to include certain information; altering the required contents of a certain
11 annual report; creating the Advisory Committee on Veteran–Owned Small Business
12 Enterprises in the Office; providing for the membership, chair, staffing, and duties
13 of the Advisory Committee; altering the duties of the Special Secretary for the Office;
14 altering certain definitions; defining certain terms; and generally relating to the
15 Office of Small, Minority, and Women Business Affairs and procurement
16 preferences.

17 BY repealing and reenacting, with amendments,
18 Article – State Finance and Procurement
19 Section 14–501 and 14–601 through 14–604
20 Annotated Code of Maryland
21 (2015 Replacement Volume and 2020 Supplement)

22 BY adding to
23 Article – State Finance and Procurement
24 Section 14–604.1
25 Annotated Code of Maryland
26 (2015 Replacement Volume and 2020 Supplement)

27 BY repealing and reenacting, without amendments,
28 Article – State Government

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 9–301(a) and (e)
2 Annotated Code of Maryland
3 (2014 Replacement Volume and 2020 Supplement)

4 BY repealing and reenacting, with amendments,
5 Article – State Government
6 Section 9–304
7 Annotated Code of Maryland
8 (2014 Replacement Volume and 2020 Supplement)

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

11 **Article – State Finance and Procurement**

12 14–501.

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

14 (b) “Small business” means:

15 (1) a certified minority business enterprise, as defined in § 14–301 of this
16 title, that meets the criteria specified under item [(2)] (3) of this subsection;

17 (2) **A VETERAN–OWNED SMALL BUSINESS ENTERPRISE, AS DEFINED**
18 **IN § 14–601 OF THIS TITLE, THAT MEETS THE CRITERIA SPECIFIED UNDER ITEM (3)**
19 **OF THIS SUBSECTION; or**

20 [(2)] (3) a business, other than a broker, that meets the following criteria:

21 (i) the business is independently owned and operated;

22 (ii) the business is not a subsidiary of another business;

23 (iii) the business is not dominant in its field of operation; and

24 (iv) 1. A. the wholesale operations of the business did not
25 employ more than 50 persons in its most recently completed 3 fiscal years;

26 B. the retail operations of the business did not employ more
27 than 25 persons in its most recently completed 3 fiscal years;

28 C. the manufacturing operations of the business did not
29 employ more than 100 persons in its most recently completed 3 fiscal years;

30 D. the service operations of the business did not employ more
31 than 100 persons in its most recently completed 3 fiscal years;

1 E. the construction operations of the business did not employ
2 more than 50 persons in its most recently completed 3 fiscal years; and

3 F. the architectural and engineering services of the business
4 did not employ more than 100 persons in its most recently completed 3 fiscal years; or

5 2. A. the gross sales of the wholesale operations of the
6 business did not exceed an average of \$4,000,000 in its most recently completed 3 fiscal
7 years;

8 B. the gross sales of the retail operations of the business did
9 not exceed an average of \$3,000,000 in its most recently completed 3 fiscal years;

10 C. the gross sales of the manufacturing operations of the
11 business did not exceed an average of \$2,000,000 in its most recently completed 3 fiscal
12 years;

13 D. the gross sales of the service operations of the business did
14 not exceed an average of \$10,000,000 in its most recently completed 3 fiscal years;

15 E. the gross sales of the construction operations of the
16 business did not exceed an average of \$7,000,000 in its most recently completed 3 fiscal
17 years; and

18 F. the gross sales of the architectural and engineering
19 services of the business did not exceed an average of \$4,500,000 in its most recently
20 completed 3 fiscal years.

21 (c) "Small business reserve" means those procurements that are limited to
22 responses from small businesses under § 14-502(b) of this subtitle.

23 14-601.

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

25 (b) "Veteran" means an individual who is verified [by the State Department of
26 Veterans Affairs] as having served on active duty in the armed forces of the United States,
27 other than for training, and was discharged or released under conditions other than
28 dishonorable.

29 (c) "Veteran-owned small business enterprise" means a **FOR-PROFIT** business
30 that:

31 (1) meets the size standards adopted by the United States Small Business
32 Administration in 13 C.F.R. 121.201 and any subsequent revision of that regulation; and

1 (2) is at least 51% owned by one or more individuals who:

2 (i) are veterans; and

3 (ii) control the management and daily operations of the business.

4 14-602.

5 (a) (1) A unit shall structure procurement procedures, consistent with the
6 purposes of this subtitle, to try to achieve **OR EXCEED** an overall [minimum of 1%]
7 **PERCENTAGE GOAL** of the unit's total dollar value of procurement contracts to be made
8 directly or indirectly with veteran-owned small business enterprises.

9 (2) **THE OFFICE OF SMALL, MINORITY, AND WOMEN BUSINESS**
10 **AFFAIRS SHALL ADOPT REGULATIONS THAT ESTABLISH THE OVERALL PERCENTAGE**
11 **GOAL.**

12 (b) Solicitation documents shall [establish the expected degree] **STATE THE**
13 **EXPECTED PERCENTAGE** of veteran-owned small business enterprise participation
14 based, in part, on:

15 (1) the potential [subcontract] **CONTRACTING** opportunities available in
16 the procurement contract, **INCLUDING BOTH PRIME CONTRACTING AND**
17 **SUBCONTRACTING OPPORTUNITIES, AS DETERMINED THROUGH ANALYSIS OF THE**
18 **SCOPE OF THE WORK PRESENTED IN THE SOLICITATION DOCUMENTS;** and

19 (2) the availability of veteran-owned small business enterprises to respond
20 competitively to the potential [subcontract] **CONTRACTING** opportunities.

21 (c) The provisions of this subtitle do not apply to a unit's procurement procedures
22 to the extent that any unit determines that those provisions are in conflict with an
23 applicable federal program.

24 14-603.

25 (a) For procurements conducted by competitive sealed bidding, a unit shall award
26 the contract to the responsible bidder that submits the responsive bid that:

27 (1) (i) has the lowest bid price;

28 (ii) has the lowest evaluated bid price; or

29 (iii) for procurements subject to § 11-202(3) of this article, is the bid
30 most favorable to the State; and

1 (2) meets or makes a good faith effort to meet any applicable **OVERALL**
2 **PERCENTAGE** goal established under this subtitle.

3 (b) For procurements conducted by competitive sealed proposals, a unit shall
4 award the contract to the responsible offeror:

5 (1) proposing the most advantageous offer; and

6 (2) that meets or makes a good faith effort to meet any applicable
7 **OVERALL PERCENTAGE** goal established under this subtitle.

8 14-604.

9 The Governor's Office of Small, Minority, and Women Business Affairs shall:

10 (1) adopt regulations to implement this subtitle;

11 (2) establish procedures for tracking and reporting participation of
12 veteran-owned small business enterprises under this subtitle; and

13 (3) on or before December 1 of each year, report to the Legislative Policy
14 Committee on:

15 (i) the number and [amount] **DOLLAR VALUE** of contracts awarded
16 to veteran-owned small business enterprises under this subtitle, **INCLUDING THE TOTAL**
17 **DOLLAR VALUE OF PAYMENTS MADE TO VETERAN-OWNED SMALL BUSINESS**
18 **ENTERPRISES UNDER EXISTING CONTRACTS**; and

19 (ii) **AN EVALUATION OF** the effectiveness of the program under this
20 subtitle.

21 **14-604.1.**

22 (A) (1) **IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**
23 **INDICATED.**

24 (2) **"ADVISORY COMMITTEE" MEANS THE ADVISORY COMMITTEE ON**
25 **VETERAN-OWNED SMALL BUSINESS ENTERPRISES.**

26 (3) **"OFFICE" MEANS THE OFFICE OF SMALL, MINORITY, AND**
27 **WOMEN BUSINESS AFFAIRS.**

28 (4) **"SPECIAL SECRETARY" MEANS THE SPECIAL SECRETARY FOR**
29 **THE OFFICE.**

1 **(B) THE OFFICE SHALL ESTABLISH AN ADVISORY COMMITTEE ON**
2 **VETERAN-OWNED SMALL BUSINESS ENTERPRISES.**

3 **(C) THE SPECIAL SECRETARY SHALL BE CHAIR OF THE ADVISORY**
4 **COMMITTEE AND THE OFFICE SHALL PROVIDE STAFF SUPPORT.**

5 **(D) THE ADVISORY COMMITTEE CONSISTS OF INDIVIDUALS THAT THE**
6 **SPECIAL SECRETARY CONSIDERS WILL ASSIST THE OFFICE IN STUDYING AND**
7 **DEVELOPING POLICIES TO FURTHER THE PURPOSES OF THIS SUBTITLE, INCLUDING**
8 **REPRESENTATIVES FROM:**

9 **(1) THE DEPARTMENT OF COMMERCE;**

10 **(2) THE DEPARTMENT OF GENERAL SERVICES;**

11 **(3) THE GOVERNOR'S OFFICE OF PERFORMANCE IMPROVEMENT;**

12 **(4) THE DEPARTMENT OF VETERANS AFFAIRS; AND**

13 **(5) CERTIFIED VETERAN-OWNED SMALL BUSINESS ENTERPRISES.**

14 **(E) THE ADVISORY COMMITTEE SHALL MEET AT LEAST TWO TIMES EACH**
15 **YEAR.**

16 **(F) THE ADVISORY COMMITTEE SHALL:**

17 **(1) REVIEW THE ANNUAL REPORT AND EVALUATION SUBMITTED TO**
18 **THE LEGISLATIVE POLICY COMMITTEE IN ACCORDANCE WITH § 14-604 OF THIS**
19 **SUBTITLE TO:**

20 **(I) IDENTIFY ANY AREAS OF THE PROGRAM THAT NEED**
21 **IMPROVEMENT; AND**

22 **(II) RECOMMEND POSSIBLE ACTIONS THAT MAY ACHIEVE THE**
23 **NECESSARY IMPROVEMENTS; AND**

24 **(2) ENSURE THAT A CONTINUOUS OVERSIGHT AND IMPROVEMENT**
25 **STRUCTURE EXISTS FOR THE PROGRAM.**

26 **Article – State Government**

27 9-301.

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

1 (e) "Special Secretary" means the Special Secretary for the Office of Small,
2 Minority, and Women Business Affairs.

3 9-304.

4 Subject to the limitations of any law that governs the activities of other units of the
5 Executive Branch of the State government, the Special Secretary shall:

6 (1) advise the Governor on:

7 (i) the activities of the State government that are intended to
8 promote:

9 1. the employment of minority persons in the State; and

10 2. **STATE CONTRACTING OPPORTUNITIES AVAILABLE TO**
11 **AND THE ACCESSIBILITY OF THOSE CONTRACTING OPPORTUNITIES TO COMPANIES**
12 **OWNED BY MINORITY PERSONS, SMALL BUSINESSES, AND VETERAN-OWNED SMALL**
13 **BUSINESSES; AND**

14 (ii) each other matter that affects the rights and interests of minority
15 persons, **SMALL BUSINESSES, AND VETERAN-OWNED SMALL BUSINESSES** and the
16 communities in which they live, **WORK, AND PROVIDE EMPLOYMENT OPPORTUNITIES**
17 **TO OTHERS; and**

18 (2) as authorized by the Governor:

19 (i) provide help to minority persons, **SMALL BUSINESSES, AND**
20 **VETERAN-OWNED SMALL BUSINESSES** and the communities in which they live, **WORK,**
21 **AND EMPLOY OTHERS;**

22 (ii) represent the Governor in any matter that relates to minority
23 persons, **SMALL BUSINESSES, AND VETERAN-OWNED SMALL BUSINESSES** or generally
24 to the promotion of equality among the people of the State; and

25 (iii) perform any other responsibility that the Governor assigns.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 October 1, 2021.