
By: Delegates Benson, Patterson, Muse, Boston, Nathan-Pulliam, Opara, Kirk, Marriott, Crumlin, Oaks, Parker, and Exum

Introduced and read first time: February 2, 1996

Assigned to: Commerce and Government Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement - MBE Program - Default on Participation Obligation - Penalty**

3 FOR the purpose of requiring the Board of Public Works to include in regulations
4 concerning the minority business participation program for State procurement
5 contracts provisions for determining harm to the public interest as a basis for a
6 penalty to be paid by a contractor to the applicable State unit under certain
7 circumstances; requiring that the provisions include guidelines to be employed by a
8 unit in assessing a penalty; capping the maximum amount of a penalty; and
9 generally relating to the providing for a penalty for failure to meet certain minority
10 business participation obligations under State procurement contracts.

11 BY repealing and reenacting, with amendments,
12 Article - State Finance and Procurement
13 Section 14-303
14 Annotated Code of Maryland
15 (1995 Replacement Volume and 1995 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) In accordance with Title 10, Subtitle 1 of the State Government Article,
21 the Board shall adopt regulations consistent with the purposes of this Division II to carry
22 out the requirements of this subtitle.

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

27 (b) These regulations shall include:

1 (1) provisions designating one agency to certify and decertify minority
2 business enterprises for all units through a single process that meets applicable federal
3 requirements;

4 (2) a requirement that the solicitation document accompanying each
5 solicitation set forth the expected degree of minority business enterprise participation
6 based, in part, on:

7 (i) the potential subcontract opportunities available in the prime
8 procurement contract; and

9 (ii) the availability of certified minority business enterprises to
10 respond competitively to the potential subcontract opportunities;

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

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

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

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

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

22 (8) consistent with § 14-302(a)(4) of this subtitle, provisions relating to any
23 circumstances under which a unit may waive obligations of the contractor relating to
24 minority business enterprise participation;

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

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

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

36 (12) provisions establishing a graduation program based on the financial
37 viability of the minority business enterprise, using annual gross receipts or other economic
38 indicators as may be determined by the Board; [and]

1 (13) PROVISIONS FOR DETERMINING HARM TO THE PUBLIC INTEREST TO
2 BE PRESCRIBED AS PENALTIES PAYABLE TO A UNIT BY A CONTRACTOR ON
3 DEFAULT OF THE CONTRACTOR'S MINORITY BUSINESS PARTICIPATION
4 OBLIGATIONS, UNLESS THE UNIT DETERMINES THAT A WAIVER OF THE
5 OBLIGATION IS APPROPRIATE, PROVIDED THAT THE PROVISIONS REQUIRED BY
6 THIS ITEM (13) SHALL INCLUDE:

7 (I) GUIDELINES TO BE EMPLOYED BY A UNIT IN ASSESSING THE
8 LEVEL OF A PENALTY; AND

9 (II) A REQUIREMENT THAT ANY PENALTY IMPOSED NOT EXCEED
10 200% OF THE DIFFERENCE BETWEEN THE VALUE OF WORK THAT SHOULD HAVE
11 BEEN PERFORMED BY CERTIFIED MINORITY BUSINESS ENTERPRISES UNDER THE
12 CONTRACTOR'S MINORITY BUSINESS PARTICIPATION OBLIGATIONS AND THE
13 VALUE ACTUALLY PERFORMED BY CERTIFIED MINORITY BUSINESS ENTERPRISES;
14 AND

15 (14) other provisions that the Board considers necessary or appropriate to
16 encourage participation by minority business enterprises and to protect the integrity of
17 the procurement process.

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

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
22 October 1, 1996.