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CHAPTER _____

1 AN ACT concerning

2 **Procurement - Minority Business Preference - Socially and Economically**
3 **Disadvantaged Individuals**

4 FOR the purpose of altering the criteria for certification as a minority business
5 enterprise by including certain individuals in a certain definition; requiring the
6 Board of Public Works to adopt certain regulations that include certain
7 provisions for determining that an individual is socially and economically
8 disadvantaged; and generally relating to the certification of socially and
9 economically disadvantaged individuals.

10 BY repealing and reenacting, with amendments,
11 Article - State Finance and Procurement
12 Section 14-301 and 14-303
13 Annotated Code of Maryland
14 (2001 Replacement Volume)

15 BY repealing and reenacting, without amendments,
16 Article - State Finance and Procurement
17 Section 14-302
18 Annotated Code of Maryland
19 (2001 Replacement Volume)

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

1 **Article - State Finance and Procurement**

2 14-301.

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

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

6 (c) "Certification agency" means the agency designated by the Board of Public
7 Works under § 14-303(b) of this subtitle to certify and decertify minority business
8 enterprises AND TO DETERMINE SOCIALLY AND ECONOMICALLY DISADVANTAGED
9 INDIVIDUALS.

10 (d) "Certified minority business enterprise" means a minority business
11 enterprise that holds a certification.

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

16 (f) (1) "Minority business enterprise" means any legal entity, except a joint
17 venture, that is:

18 (i) organized to engage in commercial transactions;

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

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

24 (2) "Minority business enterprise" includes a not for profit entity
25 organized to promote the interests of physically or mentally disabled individuals.

26 (g) (1) Subject to paragraphs (2) and (3) of this subsection, "personal net
27 worth" means the net value of the assets of an individual remaining after total
28 liabilities are deducted.

29 (2) "Personal net worth" includes the individual's share of assets held
30 jointly or as community property with the individual's spouse.

31 (3) "Personal net worth" does not include:

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

34 (ii) the individual's equity in his or her primary place of residence.

1 (h) "Race-neutral measure" means a method that is or can be used to assist all
2 small businesses.

3 (i) (1) Subject to paragraphs (2) and (3) of this subsection, "socially and
4 economically disadvantaged individual" means a citizen or lawfully admitted
5 permanent resident of the United States who is:

6 (i) in any of the following minority groups:

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

9 2. American Indian/Native American - an individual having
10 origins in any of the original peoples of North America and who is a documented
11 member of a North American tribe, band, or otherwise has a special relationship with
12 the United States or a state through treaty, agreement, or some other form of
13 recognition. This includes an individual who claims to be an American Indian/Native
14 American and who is regarded as such by the American Indian/Native American
15 community of which the individual claims to be a part, but does not include an
16 individual of Eskimo or Aleutian origin;

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

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

23 5. physically or mentally disabled - an individual who has an
24 impairment that substantially limits one or more major life activity, who is regarded
25 generally by the community as having such a disability, and whose disability has
26 substantially limited his or her ability to engage in competitive business; or

27 6. women - a woman, regardless of race or ethnicity, unless
28 she is also a member of an ethnic or racial minority group and elects that category in
29 lieu of the gender category; or

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

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

35 (3) An individual whose personal net worth exceeds \$750,000 may not be
36 found to be economically disadvantaged.

37 (j) "Socially disadvantaged individual" means:

1 (1) an individual who, AS A RESULT OF CIRCUMSTANCES BEYOND THE
2 CONTROL OF THE INDIVIDUAL, has been subjected to racial or ethnic prejudice or
3 cultural bias within American society because of membership in a group and without
4 regard to individual qualities[. Social disadvantage must stem from circumstances
5 beyond the control of the individual]; OR

6 (2) AN INDIVIDUAL, INCLUDING A NONMINORITY MALE, WHO HAS
7 SUFFERED SOCIAL DISADVANTAGE BECAUSE OF LONG-TERM RESIDENCE IN AN
8 ENVIRONMENT ISOLATED FROM THE MAINSTREAM OF AMERICAN ~~SOCIETY~~; SOCIETY
9 OR

10 ~~(3) AN INDIVIDUAL WHO HAS SUFFERED SOCIAL DISADVANTAGE DUE~~
11 ~~TO OTHER CAUSES NOT COMMON TO INDIVIDUALS WHO ARE NOT SOCIALLY~~
12 ~~DISADVANTAGED~~ MEMBERS OF THE GENERAL PUBLIC.

13 14-302.

14 (a) (1) Except for leases of real property and except as provided in
15 paragraphs (2) and (3) of this subsection, each unit shall structure procurement
16 procedures, consistent with the purposes of this subtitle, to try to achieve the
17 following results:

18 (i) a minimum of 7% of the unit's total dollar value of procurement
19 contracts is to be made directly or indirectly from certified minority business
20 enterprises classified by the certification agency as African American-owned
21 businesses;

22 (ii) a minimum of 10% of the unit's total dollar value of
23 procurement contracts is to be made directly or indirectly from certified minority
24 business enterprises classified by the certification agency as women-owned
25 businesses; and

26 (iii) an overall minimum of 25% of the unit's total dollar value of
27 procurement contracts is to be made directly or indirectly from all certified minority
28 business enterprises.

29 (2) (i) Except as provided in paragraph (3) of this subsection, in
30 procurement for construction, each unit shall structure procurement procedures,
31 consistent with the purposes of this subtitle, to try to achieve the following results:

32 1. a minimum of 7% of the unit's total dollar value of
33 construction contracts is to be made directly or indirectly from certified minority
34 business enterprises classified by the certification agency as African
35 American-owned businesses;

36 2. a minimum of 10% of the unit's total dollar value of
37 construction contracts is to be made directly or indirectly from certified minority
38 business enterprises classified by the certification agency as women-owned
39 businesses; and

1 (6) (i) The unit shall make a finding whether the contractor complied,
2 in good faith, with paragraph (5) of this subsection.

3 (ii) If the unit finds the contractor complied with paragraph (5) of
4 this subsection, the unit may not require the contractor to renegotiate any
5 subcontract in order to achieve a different result.

6 (b) (1) The provisions of §§ 14-301(f) and 14-303 of this subtitle and
7 subsection (a) of this section are inapplicable to the extent that any unit determines
8 the provisions to be in conflict with any applicable federal program requirement.

9 (2) The determination under this subsection shall be included with the
10 report required under § 14-305 of this subtitle.

11 14-303.

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

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

19 (b) These regulations shall include:

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

23 (2) PROVISIONS ESTABLISHING THE ELEMENTS NEEDED FOR A
24 DETERMINATION THAT AN INDIVIDUAL, NOT PRESUMED UNDER § 14-301 OF THIS
25 ARTICLE TO BE SOCIALLY AND ECONOMICALLY DISADVANTAGED, IS SOCIALLY AND
26 ECONOMICALLY DISADVANTAGED, INCLUDING THE FOLLOWING:

27 (I) 1. LONG-TERM RESIDENCE IN AN ENVIRONMENT ISOLATED
28 FROM THE MAINSTREAM OF AMERICAN SOCIETY; OR

29 2. OTHER SIMILAR ~~CAUSE~~ CAUSES NOT COMMON TO
30 ~~INDIVIDUALS WHO ARE NOT SOCIALLY DISADVANTAGED~~ MEMBERS OF THE
31 GENERAL PUBLIC;

32 (II) PERSONAL EXPERIENCES OF SUBSTANTIAL AND CHRONIC
33 SOCIAL DISADVANTAGE IN AMERICAN SOCIETY; AND

34 (III) NEGATIVE IMPACT ON ENTRY OR ADVANCEMENT IN THE
35 BUSINESS WORLD BECAUSE OF THE DISADVANTAGE, INCLUDING:

- 1 1. DENIAL OF EQUAL ACCESS TO INSTITUTIONS OF HIGHER
2 EDUCATION AND VOCATIONAL TRAINING;
- 3 2. UNEQUAL TREATMENT IN HIRING, PROMOTIONS, AND
4 OTHER ASPECTS OF PROFESSIONAL ADVANCEMENT; ~~AND OR~~
- 5 3. UNEQUAL ACCESS TO CREDIT OR CAPITAL;
- 6 (3) ESTABLISHING THE ELEMENTS NEEDED FOR A DETERMINATION
7 THAT AN INDIVIDUAL IS ECONOMICALLY DISADVANTAGED INCLUDING
8 REQUIREMENTS THAT INDIVIDUALS CLAIMING ECONOMIC DISADVANTAGE SUBMIT
9 PERSONAL STATEMENTS OF NET WORTH;
- 10 [(2)] (4) a requirement that the solicitation document accompanying
11 each solicitation set forth the expected degree of minority business enterprise
12 participation based, in part, on:
- 13 (i) the potential subcontract opportunities available in the prime
14 procurement contract; and
- 15 (ii) the availability of certified minority business enterprises to
16 respond competitively to the potential subcontract opportunities;
- 17 [(3)] (5) a requirement that the unit provide a current list of certified
18 minority business enterprises to each prospective contractor;
- 19 [(4)] (6) provisions to ensure the uniformity of requests for bids on
20 subcontracts;
- 21 [(5)] (7) provisions relating to the timing of requests for bids on
22 subcontracts and of submission of bids on subcontracts;
- 23 [(6)] (8) provisions designed to ensure that a fiscal disadvantage to the
24 State does not result from an inadequate response by minority business enterprises to
25 a request for bids;
- 26 [(7)] (9) provisions relating to joint ventures, under which a bidder may
27 count toward meeting its minority business enterprise participation goal, the
28 minority business enterprise portion of the joint venture;
- 29 [(8)] (10) consistent with § 14-302(a)(5) of this subtitle, provisions
30 relating to any circumstances under which a unit may waive obligations of the
31 contractor relating to minority business enterprise participation;
- 32 [(9)] (11) provisions requiring a monthly submission to the unit by
33 minority business enterprises acknowledging all payments received in the preceding
34 30 days under a contract governed by this subtitle;
- 35 [(10)] (12) a requirement that a unit shall verify and maintain data
36 concerning payments received by minority business enterprises, including a

1 requirement that, upon completion of a project, the unit shall compare the total dollar
2 value actually received by minority business enterprises with the amount of contract
3 dollars initially awarded, and an explanation of any discrepancies therein;

4 [(11)] (13) a requirement that a unit verify that minority business
5 enterprises listed in a successful bid are actually participating to the extent listed in
6 the project for which the bid was submitted;

7 [(12)] (14) provisions establishing a graduation program based on the
8 financial viability of the minority business enterprise, using annual gross receipts or
9 other economic indicators as may be determined by the Board; and

10 [(13)] (15) other provisions that the Board considers necessary or
11 appropriate to encourage participation by minority business enterprises and to
12 protect the integrity of the procurement process.

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

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 October 1, 2002.