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By: **Senators Conway, Blount, Currie, Dyson, Exum, Forehand, Frosh,  
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Ruben, Sfikas, Teitelbaum, and Van Hollen**

Introduced and read first time: January 30, 2002  
Assigned to: Education, Health, and Environmental Affairs

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Committee Report: Favorable with amendments  
Senate action: Adopted  
Read second time: March 8, 2002

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Procurement - Minority Business Participation**

3 ~~FOR the purpose of altering the requirements by the Minority Business Participation~~  
4 ~~Program by removing certain notice requirements and requiring bidders and~~  
5 ~~offerors on certain procurement contracts to include certain information relating~~  
6 ~~to their minority business status and the minority business enterprise~~  
7 ~~subcontractors they will use in the event of contract award; limiting the ability~~  
8 ~~of contractors to substitute subcontractors for those identified in certain bids or~~  
9 ~~proposals; requiring a procurement officer to consider certain factors in~~  
10 ~~determining whether to approve a request for the substitution of a~~  
11 ~~subcontractor; requiring the certification agency to conduct certain studies and~~  
12 ~~submit a certain report to certain committees of the General Assembly before a~~  
13 ~~certain date; and generally relating to the participation of minority business~~  
14 ~~enterprises in procurement contracts.~~

15 BY repealing and reenacting, with amendments,  
16 Article - State Finance and Procurement  
17 Section 14-302(a)  
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:

**Article - State Finance and Procurement**

14-302.

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

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

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

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

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

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

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

3. an overall minimum of 25% of the unit's total dollar value of construction contracts is to be made directly or indirectly from all certified minority business enterprises.

(ii) The unit shall:

1. consider the practical severability of the construction projects; and

2. implement a program that will enable the unit to evaluate each contract to determine the appropriateness of the goal.

1 (3) With respect to the Maryland Department of Transportation, the  
 2 provisions of paragraph (2)(i) of this subsection shall apply only to construction  
 3 contracts in excess of \$50,000.

4 (4) Each unit shall meet the maximum feasible portion of the goals  
 5 stated in paragraphs (1), (2), and (3) of this subsection by using race-neutral  
 6 measures to facilitate minority business enterprise participation in the procurement  
 7 process.

8 (5) To achieve the result specified in paragraph (1) or (2) of this  
 9 subsection, a contractor, including a contractor that is a certified minority business  
 10 enterprise, shall:

11 (i) identify specific work categories appropriate for subcontracting;

12 (ii) at least 10 days before bid opening, solicit minority business  
 13 enterprises, through written notice that:

14 1. describes the categories of work under item (i) of this  
 15 subparagraph; and

16 2. provides information regarding the type of work being  
 17 solicited and specific instructions on how to submit a bid;

18 (iii) attempt to make personal contact with the firms in item (ii) of  
 19 this paragraph;

20 (iv) assist minority business enterprises to fulfill bonding  
 21 requirements or to obtain a waiver of those requirements;

22 (v) in order to publicize contracting opportunities to minority  
 23 business enterprises, attend prebid meetings or other meetings scheduled by the unit;  
 24 and

25 (vi) upon acceptance of a bid, provide the unit with a list of minority  
 26 businesses with whom the contractor negotiated, including price quotes from  
 27 minority and nonminority firms.

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

30 (ii) If the unit finds the contractor complied with paragraph (5) of  
 31 this subsection, the unit may not require the contractor to renegotiate any  
 32 subcontract in order to achieve a different result. ~~A BIDDER OR OFFEROR ON A~~  
 33 ~~PROCUREMENT CONTRACT SHALL INCLUDE THE FOLLOWING INFORMATION IN ITS~~  
 34 ~~BID OR PROPOSAL:~~

35 (4) ~~WHETHER IT QUALIFIES AS A CERTIFIED MINORITY BUSINESS~~  
 36 ~~ENTERPRISE;~~

1                   (II)     ~~A LIST OF THE CERTIFIED MINORITY BUSINESS ENTERPRISES~~  
 2  ~~THAT WILL PERFORM WORK AS SUBCONTRACTORS IF THE BIDDER OR OFFEROR IS~~  
 3  ~~AWARDED THE CONTRACT;~~

4                   (III)    ~~THE TYPE OF WORK EACH OF THE LISTED MINORITY BUSINESS~~  
 5  ~~ENTERPRISE SUBCONTRACTORS WILL PERFORM; AND~~

6                   (IV)    ~~THE APPROXIMATE DOLLAR VALUE THAT EACH OF THE~~  
 7  ~~MINORITY BUSINESS ENTERPRISE SUBCONTRACTORS WILL BE AWARDED.~~

8                   (6)     (7)     (I)     A BIDDER OR OFFEROR THAT HAS IDENTIFIED MINORITY  
 9 BUSINESS ENTERPRISE SUBCONTRACTORS UNDER THIS SUBSECTION AND HAS BEEN  
 10 AWARDED A PROCUREMENT CONTRACT MAY NOT SUBSTITUTE A DIFFERENT  
 11 SUBCONTRACTOR UNLESS:-

12                   (I)     ~~THE CONTRACTOR SUBMITS COMPELLING, LEGITIMATE~~  
 13  ~~GROUNDS FOR SUBSTITUTION IN WRITING TO THE PROCUREMENT OFFICER ; AND~~

14                   (II)    ~~THE PROCUREMENT OFFICER PROVIDES EXPRESS WRITTEN~~  
 15  ~~APPROVAL BEFORE THE CONTRACTOR COMMENCES WORK. THE PROCUREMENT~~  
 16  ~~OFFICER PROVIDES EXPRESS WRITTEN APPROVAL.~~

17                   (II)    IN DETERMINING WHETHER TO APPROVE A REQUEST FOR  
 18 SUBSTITUTION OF A SUBCONTRACTOR, THE PROCUREMENT OFFICER SHALL  
 19 CONSIDER WHETHER THE PROPOSED SUBSTITUTION WOULD IMPACT THE  
 20 FULFILLMENT OF THE MINORITY BUSINESS ENTERPRISE GOALS ESTABLISHED FOR  
 21 THE PROJECT.

22     SECTION 2. AND BE IT FURTHER ENACTED, That for the purpose of  
 23 monitoring the effectiveness of this Act, the certification agency shall study the extent  
 24 to which waivers for established contract goals are granted or denied by primary  
 25 procurement units and the grounds for granting or denying requests for waivers. As  
 26 part of this study, the certification agency shall also examine the extent to which  
 27 contractors use noncertified subcontractors to perform work identified in bid  
 28 documents as intended to be subcontracted to certified minority business enterprises.  
 29 The certification agency shall submit a report on the study, including its findings and  
 30 recommendations, to the Senate Education, Health, and Environmental Affairs  
 31 Committee and the House Commerce and Government Matters Committee by  
 32 December 1, 2002, so that the General Assembly may review the report and  
 33 recommendations prior to the 2003 legislative session.

34     ~~SECTION 2. 3.~~ AND BE IT FURTHER ENACTED, That this Act shall take  
 35 effect July 1, 2002.

