

SENATE BILL 715

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P2

2003 Regular Session
3lr0568

By: **Senator Conway**

Introduced and read first time: February 21, 2003

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Minority Business Enterprises - State Contracts**

3 FOR the purpose of requiring certain units of State government to comply with
4 certain provisions regarding State procurement from minority business
5 enterprises; establishing a Minority Business Enterprises Goal Waiver Panel;
6 authorizing the Panel to grant waivers to units of State government from
7 attaining certain procurement goals in certain circumstances; requiring that
8 units of State government that cannot reasonably meet a certain goal submit a
9 written request for a certain waiver to the Panel; specifying the duration of the
10 waivers; requiring the Board of Public Works to adopt certain regulations;
11 clarifying that the Panel shall operate independently from any other State
12 entity; and generally relating to procurement contracts with minority business
13 enterprises.

14 BY repealing and reenacting, without amendments,
15 Article - State Finance and Procurement
16 Section 11-203(a)
17 Annotated Code of Maryland
18 (2001 Replacement Volume and 2002 Supplement)

19 BY repealing and reenacting, with amendments,
20 Article - State Finance and Procurement
21 Section 11-203(b) and 14-302(a)
22 Annotated Code of Maryland
23 (2001 Replacement Volume and 2002 Supplement)

24 BY adding to
25 Article - State Finance and Procurement
26 Section 14-307.1
27 Annotated Code of Maryland
28 (2001 Replacement Volume and 2002 Supplement)

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

3 **Article - State Finance and Procurement**

4 11-203.

5 (a) Except as provided in subsection (b) of this section, this Division II does
6 not apply to:

7 (1) procurement by:

8 (i) the Blind Industries and Services of Maryland;

9 (ii) the Maryland State Arts Council, for the support of the arts;

10 (iii) the Maryland Health and Higher Educational Facilities
11 Authority, if no State money is to be spent on a procurement contract;

12 (iv) the Maryland Higher Education Supplemental Loan Authority,
13 if no State money is to be spent on a procurement contract;

14 (v) the Maryland Industrial Training Program or the Partnership
15 for Workforce Quality Program in the Department of Business and Economic
16 Development, for training services or programs for new or expanding businesses or
17 industries or businesses or industries in transition;

18 (vi) the Maryland Food Center Authority, to the extent the
19 Authority is exempt under Title 13, Subtitle 1 of Article 41 of the Code;

20 (vii) the Maryland Public Broadcasting Commission, for services of
21 artists for educational and cultural television productions;

22 (viii) public institutions of higher education, for cultural,
23 entertainment, and intercollegiate athletic procurement contracts;

24 (ix) the Maryland State Planning Council on Developmental
25 Disabilities, for services to support demonstration, pilot, and training programs;

26 (x) the Maryland Automobile Insurance Fund;

27 (xi) the Maryland Historical Trust for:

28 1. surveying and evaluating architecturally, archeologically,
29 historically, or culturally significant properties; and

30 2. other than as to architectural services, preparing historic
31 preservation planning documents and educational material;

32 (xii) the University of Maryland, for University College Overseas
33 Programs, if the University adopts regulations that:

- 1 1. establish policies and procedures governing procurement
2 for University College Overseas Programs; and
- 3 2. promote the purposes stated in § 11-201(a) of this subtitle;
- 4 (xiii) St. Mary's College of Maryland;
- 5 (xiv) the Department of Business and Economic Development, for
6 negotiating and entering into private sector cooperative marketing projects that
7 directly enhance promotion of Maryland and the tourism industry where there will be
8 a private sector contribution to the project if not less than 50% of the total cost of the
9 project, if the project is reviewed by the Attorney General and approved by the
10 Secretary of Business and Economic Development or the Secretary's designee;
- 11 (xv) the Forvm for Rural Maryland;
- 12 (xvi) the Maryland State Lottery Agency, for negotiating and
13 entering into private sector cooperative marketing projects that directly enhance
14 promotion of the Maryland State Lottery and its products, if the cooperative
15 marketing project:
 - 16 1. provides a substantive promotional or marketing value
17 that the lottery determines acceptable in exchange for advertising or other
18 promotional activities provided by the lottery;
 - 19 2. does not involve the advertising or other promotion of
20 alcohol or tobacco products; and
 - 21 3. is reviewed by the Attorney General and approved by the
22 Maryland Lottery Director or the Director's designee; and
- 23 (xvii) the Maryland Health Insurance Plan established under Title
24 14, Subtitle 5 of the Insurance Article;
- 25 (2) procurement by a unit from:
 - 26 (i) another unit;
 - 27 (ii) a political subdivision of the State;
 - 28 (iii) an agency of a political subdivision of the State;
 - 29 (iv) a government, including the government of another state, of the
30 United States, or of another country;
 - 31 (v) an agency or political subdivision of a government; or
 - 32 (vi) a bistate, multistate, bicounty, or multicounty governmental
33 agency; or
- 34 (3) procurement in support of enterprise activities for the purpose of:

- 1 (i) direct resale; or
- 2 (ii) remanufacture and subsequent resale.
- 3 (b) (1) The following provisions of this Division II apply to each procurement
4 enumerated in subsection (a) of this section:
- 5 (i) § 11-205 of this subtitle ("Fraud in procurement");
- 6 (ii) § 12-204 of this article ("Board approval for designated
7 contracts");
- 8 (iii) Title 12, Subtitle 2 of this article ("Supervision of Capital
9 Expenditures and Real Property Leases");
- 10 (iv) § 13-219 of this article ("Required clauses - Nondiscrimination
11 clause");
- 12 (v) § 13-221 of this article ("Disclosures to Secretary of State");
- 13 (vi) TITLE 14, SUBTITLE 3 OF THIS ARTICLE ("MINORITY BUSINESS
14 PARTICIPATION");
- 15 (VII) Title 16 of this article ("Debarment of Contractors"); and
- 16 [(vii)] (VIII) Title 17 of this article ("Special Provisions - State and
17 Local Subdivisions").
- 18 (2) A procurement by an entity listed in subsection (a)(1)(i) through (xv)
19 of this section shall be made under procedures that promote the purposes stated in §
20 11-201(a) of this subtitle.
- 21 (3) (i) A unit that procures human, social, or educational services from
22 an entity enumerated in subsection (a)(2) of this section shall publish in the Contract
23 Weekly notice of a procurement contract or an extension or renewal of a procurement
24 contract if:
- 25 1. the procurement contract, extension, or renewal costs
26 more than \$25,000; and
- 27 2. the procurement is made for 3rd party clients described in
28 § 13-106 of this article.
- 29 (ii) The notice required under this paragraph shall be published not
30 more than 30 days after the execution and approval of the procurement contract or
31 the extension or renewal of the procurement contract.
- 32 (4) The purchase of advisory services from the General Selection Board
33 or the Transportation Selection Board under § 13-305 of this article shall be governed
34 by the Maryland Architectural and Engineering Services Act.

1 14-302.

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

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

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

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

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

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

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

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

31 (ii) The unit shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (7) EACH UNIT THAT CANNOT REASONABLY MEET THE MINORITY
31 BUSINESS ENTERPRISE GOALS SET FORTH IN THIS SUBSECTION SHALL SUBMIT A
32 WRITTEN REQUEST FOR A WAIVER OF THE ACHIEVEMENT OF THE MINORITY
33 BUSINESS ENTERPRISE GOALS TO THE MINORITY BUSINESS ENTERPRISE GOAL
34 WAIVER REVIEW PANEL IN ACCORDANCE WITH § 14-307.1 OF THIS SUBTITLE.

1 14-307.1.

2 (A) THERE IS A MINORITY BUSINESS ENTERPRISE GOAL WAIVER REVIEW
3 PANEL.

4 (B) THE PANEL CONSISTS OF:

5 (1) ONE REPRESENTATIVE FROM THE CERTIFICATION AGENCY,
6 DESIGNATED BY THE HEAD OF THE AGENCY;

7 (2) THE SECRETARY OF THE DEPARTMENT OF GENERAL SERVICES, OR A
8 DESIGNEE; AND

9 (3) ONE REPRESENTATIVE FROM THE MARYLAND MINORITY
10 CONTRACTORS ASSOCIATION, DESIGNATED BY THE MARYLAND MINORITY
11 CONTRACTORS ASSOCIATION.

12 (C) IN ACCORDANCE WITH § 14-302(A)(7) OF THIS SUBTITLE, THE PANEL SHALL
13 REVIEW WRITTEN REQUESTS FROM UNITS FOR A WAIVER OF THE ACHIEVEMENT OF
14 THE MINORITY BUSINESS ENTERPRISE GOALS SET FORTH IN § 14-302 (A) OF THIS
15 SUBTITLE.

16 (D) THE PANEL SHALL GRANT A WAIVER IF IT DETERMINES THAT THE UNIT
17 CANNOT REASONABLY MEET THE MINORITY BUSINESS ENTERPRISE GOALS SET
18 FORTH IN § 14-302(A) OF THIS SUBTITLE.

19 (E) A WAIVER SHALL LAST FOR 12 MONTHS AND IS RENEWABLE.

20 (F) THE PANEL SHALL OPERATE INDEPENDENTLY FROM ANY OTHER STATE
21 ENTITY.

22 (G) THE BOARD SHALL ADOPT REGULATIONS TO IMPLEMENT THE
23 PROVISIONS OF THIS SECTION.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
25 effect October 1, 2003.