
By: **Senator Conway**
Introduced and read first time: February 21, 2003
Assigned to: Rules
Re-referred to: Education, Health, and Environmental Affairs, February 26, 2003

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 22, 2003

CHAPTER _____

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 ~~relating to the appointment of an individual to review certain waivers and make~~
12 ~~certain determinations; clarifying that the Panel shall operate independently~~
13 ~~from any other State entity providing for the termination of this Act; and~~
14 generally relating to procurement contracts with minority business enterprises.

15 BY repealing and reenacting, without amendments,
16 Article - State Finance and Procurement
17 Section 11-203(a) and 14-302(a)
18 Annotated Code of Maryland
19 (2001 Replacement Volume and 2002 Supplement)

20 BY repealing and reenacting, with amendments,
21 Article - State Finance and Procurement
22 Section 11-203(b) and ~~14-302(a)~~ 14-303(b)
23 Annotated Code of Maryland
24 (2001 Replacement Volume and 2002 Supplement)

1 ~~BY adding to~~
 2 ~~Article - State Finance and Procurement~~
 3 ~~Section 14-307.1~~
 4 ~~Annotated Code of Maryland~~
 5 ~~(2001 Replacement Volume and 2002 Supplement)~~

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

8 **Article - State Finance and Procurement**

9 11-203.

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

12 (1) procurement by:

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

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

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

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

19 (v) the Maryland Industrial Training Program or the Partnership
 20 for Workforce Quality Program in the Department of Business and Economic
 21 Development, for training services or programs for new or expanding businesses or
 22 industries or businesses or industries in transition;

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

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

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

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

31 (x) the Maryland Automobile Insurance Fund;

32 (xi) the Maryland Historical Trust for:

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

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

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

7 1. establish policies and procedures governing procurement
8 for University College Overseas Programs; and

9 2. promote the purposes stated in § 11-201(a) of this subtitle;

10 (xiii) St. Mary's College of Maryland;

11 (xiv) the Department of Business and Economic Development, for
12 negotiating and entering into private sector cooperative marketing projects that
13 directly enhance promotion of Maryland and the tourism industry where there will be
14 a private sector contribution to the project if not less than 50% of the total cost of the
15 project, if the project is reviewed by the Attorney General and approved by the
16 Secretary of Business and Economic Development or the Secretary's designee;

17 (xv) the Forvm for Rural Maryland;

18 (xvi) the Maryland State Lottery Agency, for negotiating and
19 entering into private sector cooperative marketing projects that directly enhance
20 promotion of the Maryland State Lottery and its products, if the cooperative
21 marketing project:

22 1. provides a substantive promotional or marketing value
23 that the lottery determines acceptable in exchange for advertising or other
24 promotional activities provided by the lottery;

25 2. does not involve the advertising or other promotion of
26 alcohol or tobacco products; and

27 3. is reviewed by the Attorney General and approved by the
28 Maryland Lottery Director or the Director's designee; and

29 (xvii) the Maryland Health Insurance Plan established under Title
30 14, Subtitle 5 of the Insurance Article;

31 (2) procurement by a unit from:

32 (i) another unit;

33 (ii) a political subdivision of the State;

34 (iii) an agency of a political subdivision of the State;

1 (iv) a government, including the government of another state, of the
2 United States, or of another country;

3 (v) an agency or political subdivision of a government; or

4 (vi) a bistate, multistate, bicounty, or multicounty governmental
5 agency; or

6 (3) procurement in support of enterprise activities for the purpose of:

7 (i) direct resale; or

8 (ii) remanufacture and subsequent resale.

9 (b) (1) The following provisions of this Division II apply to each procurement
10 enumerated in subsection (a) of this section:

11 (i) § 11-205 of this subtitle ("Fraud in procurement");

12 (ii) § 12-204 of this article ("Board approval for designated
13 contracts");

14 (iii) Title 12, Subtitle 2 of this article ("Supervision of Capital
15 Expenditures and Real Property Leases");

16 (iv) § 13-219 of this article ("Required clauses - Nondiscrimination
17 clause");

18 (v) § 13-221 of this article ("Disclosures to Secretary of State");

19 (vi) ~~TITLE 14, SUBTITLE 3 OF THIS ARTICLE ("MINORITY BUSINESS~~
20 ~~PARTICIPATION")~~;

21 ~~(vii)~~ Title 16 of this article ("Debarment of Contractors"); and

22 ~~{(vii)}~~ ~~(viii)~~ Title 17 of this article ("Special Provisions - State and
23 Local Subdivisions").

24 (2) EXCEPT FOR PROCUREMENT UNDER SUBSECTION (A)(1)(I) AND (2)(I)
25 AND (VI) OF THIS SECTION, THE PROVISIONS OF TITLE 14, SUBTITLE 3 OF THIS
26 ARTICLE ("MINORITY BUSINESS PARTICIPATION") SHALL APPLY TO EACH
27 PROCUREMENT ENUMERATED IN SUBSECTION (A) OF THIS SECTION.

28 ~~(2)~~ (3) A procurement by an entity listed in subsection (a)(1)(i) through
29 (xv) of this section shall be made under procedures that promote the purposes stated
30 in § 11-201(a) of this subtitle.

31 ~~(3)~~ (4) (i) A unit that procures human, social, or educational services
32 from an entity enumerated in subsection (a)(2) of this section shall publish in the
33 Contract Weekly notice of a procurement contract or an extension or renewal of a
34 procurement contract if:

- 1 more than \$25,000; and
- 1. the procurement contract, extension, or renewal costs
 - 2. the procurement is made for 3rd party clients described in § 13-106 of this article.

(ii) The notice required under this paragraph shall be published not more than 30 days after the execution and approval of the procurement contract or the extension or renewal of the procurement contract.

~~(4)~~ (5) The purchase of advisory services from the General Selection Board or the Transportation Selection Board under § 13-305 of this article shall be governed by the Maryland Architectural and Engineering Services Act. 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

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

4 (ii) The unit shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 ~~14-307.1.~~

12 ~~(A) THERE IS A MINORITY BUSINESS ENTERPRISE GOAL WAIVER REVIEW
13 PANEL.~~

14 ~~(B) THE PANEL CONSISTS OF:~~

15 ~~(1) ONE REPRESENTATIVE FROM THE CERTIFICATION AGENCY,
16 DESIGNATED BY THE HEAD OF THE AGENCY;~~

17 ~~(2) THE SECRETARY OF THE DEPARTMENT OF GENERAL SERVICES, OR A
18 DESIGNEE; AND~~

19 ~~(3) ONE REPRESENTATIVE FROM THE MARYLAND MINORITY
20 CONTRACTORS ASSOCIATION, DESIGNATED BY THE MARYLAND MINORITY
21 CONTRACTORS ASSOCIATION.~~

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

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

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

30 ~~(F) THE PANEL SHALL OPERATE INDEPENDENTLY FROM ANY OTHER STATE
31 ENTITY.~~

32 ~~(G) THE BOARD SHALL ADOPT REGULATIONS TO IMPLEMENT THE
33 PROVISIONS OF THIS SECTION.~~

34 14-303.

35 (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
3 federal 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
12 minority business enterprises to each prospective contractor;

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

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

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

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

23 (8) consistent with § 14-302(a)(5) of this subtitle, provisions relating to:

24 (I) any circumstances under which a unit may waive obligations of
25 the contractor relating to minority business enterprise participation; AND

26 (II) THE APPOINTMENT OF A NEUTRAL NONGOVERNMENTAL
27 INDIVIDUAL WHO SHALL:

28 1. REVIEW EACH WAIVER GRANTED UNDER THE WAIVER
29 PROCESS ESTABLISHED IN ACCORDANCE WITH SUBITEM (I) OF THIS ITEM; AND

30 2. DETERMINE WHETHER THE WAIVER COMPLIES WITH ALL
31 RELEVANT STATUTORY AND REGULATORY REQUIREMENTS;

32 (9) Provisions requiring a monthly submission to the unit by minority
33 business enterprises acknowledging all payments received in the preceding 30 days
34 under a contract governed by this subtitle;

35 (10) A requirement that a unit shall verify and maintain data concerning
36 payments received by minority business enterprises, including a requirement that,

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

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

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

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

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
14 effect October 1, 2003. It shall remain effective until the expiration of Title 14,
15 Subtitle 3 of the State Finance and Procurement Article, as enacted by Section 1 of
16 Chapter 339 of the Acts of the General Assembly of 2001.