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Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement - Minority Business Enterprise Program - Policy Statements**

3 FOR the purpose of requiring the certification agency for the minority business
4 enterprise program to ensure that units of State government implement a
5 certain policy; specifying that a unit may award a contract only to a bidder or
6 offeror who makes a good faith effort to meet certain minority business
7 enterprise program goals; requiring a bidder or offeror to document its efforts to
8 meet certain goals; requiring units to consider certain criteria in evaluating a
9 bidder's or offeror's good faith efforts to obtain participation under certain
10 contracts of socially and economically disadvantaged individuals or minority
11 business enterprises; requiring a unit to make a fair and reasonable judgment
12 about the effort of a contractor to meet a certain goal; specifying that if the
13 contract price for a contract longer than a certain period is modified or amended
14 by more than a certain amount, a unit shall undertake a certain review and
15 evaluation, make a certain determination, apply certain administrative
16 sanctions if a contractor has failed to comply with certain requirements, and
17 prepare and submit a certain report; and generally relating to policies governing
18 contractors' utilization of socially and economically disadvantaged individuals
19 and minority business enterprises for certain procurement contracts.

20 BY adding to
21 Article - State Finance and Procurement
22 Section 14-306
23 Annotated Code of Maryland
24 (2001 Replacement Volume and 2005 Supplement)

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

1 **Article - State Finance and Procurement**

2 14-306.

3 (A) THE CERTIFICATION AGENCY SHALL ENSURE THAT IT IS THE POLICY OF
4 EACH UNIT THAT MINORITY BUSINESS ENTERPRISES HAVE THE MAXIMUM FEASIBLE
5 OPPORTUNITY TO PARTICIPATE IN THE PERFORMANCE OF CONTRACTS AWARDED BY
6 OR ON BEHALF OF THE UNIT.

7 (B) A UNIT MAY AWARD A CONTRACT ONLY TO A BIDDER OR OFFEROR THAT
8 MAKES A GOOD FAITH EFFORT TO MEET THE GOALS OF THE MINORITY BUSINESS
9 ENTERPRISE PROGRAM AND AFTER THE UNIT DETERMINES THAT THE BIDDER OR
10 OFFEROR DOCUMENTS THAT:

11 (1) IT HAS OBTAINED SUFFICIENT PARTICIPATION OF SOCIALLY AND
12 ECONOMICALLY DISADVANTAGED INDIVIDUALS OR MINORITY BUSINESS
13 ENTERPRISES TO MEET THE GOALS SPECIFIED IN THIS SUBTITLE; OR

14 (2) IT MADE AN ADEQUATE GOOD FAITH EFFORT TO MEET THE GOALS,
15 EVEN THOUGH IT DID NOT SUCCEED IN OBTAINING THE SPECIFIED PARTICIPATION
16 RATE OF SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS OR
17 MINORITY BUSINESS ENTERPRISES.

18 (C) (1) TO SHOW ITS GOOD FAITH EFFORT, A BIDDER OR OFFEROR MUST
19 DOCUMENT THAT IT TOOK ALL NECESSARY AND REASONABLE STEPS TO ACHIEVE
20 THE MINORITY BUSINESS ENTERPRISE PROGRAM GOAL.

21 (2) AT A MINIMUM, THE STATEMENT OF GOOD FAITH EFFORT REQUIRED
22 BY PARAGRAPH (1) OF THIS SUBSECTION SHALL INCLUDE:

23 (I) THE NAME, ADDRESS, DATE, AND TELEPHONE NUMBER OF THE
24 SOCIALLY AND ECONOMICALLY AND DISADVANTAGED INDIVIDUALS AND MINORITY
25 BUSINESS ENTERPRISES CONTACTED;

26 (II) THE DESCRIPTION OF THE INFORMATION PROVIDED TO
27 SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS AND MINORITY
28 BUSINESS ENTERPRISES REGARDING THE PLANS, SPECIFICATIONS, AND
29 ANTICIPATED TIME SCHEDULE FOR PORTIONS OF THE WORK TO BE PERFORMED;

30 (III) A DETAILED STATEMENT OF THE REASONS WHY EACH
31 REJECTED QUOTATION SUBMITTED BY A SOCIALLY AND ECONOMICALLY
32 DISADVANTAGED INDIVIDUAL OR MINORITY BUSINESS ENTERPRISE WAS DEEMED
33 UNACCEPTABLE; AND

34 (IV) A LIST OF MINORITY BUSINESS ENTERPRISE
35 SUBCONTRACTORS FOUND TO BE UNAVAILABLE, ACCOMPANIED BY AN AFFIDAVIT
36 BY EACH SUCH SUBCONTRACTOR ATTESTING TO ITS UNAVAILABILITY OR A
37 STATEMENT BY THE BIDDER OR OFFEROR EXPLAINING WHY AN AFFIDAVIT IS NOT
38 INCLUDED.

1 (D) EACH UNIT SHALL CONSIDER THE FOLLOWING CRITERIA WHEN
2 EVALUATING WHETHER A BIDDER OR OFFEROR MADE A GOOD FAITH EFFORT TO
3 OBTAIN SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS OR
4 MINORITY BUSINESS ENTERPRISES FOR THE CONTRACT:

5 (1) WHETHER THE BIDDER OR OFFEROR EXERCISED ALL REASONABLE
6 AND AVAILABLE MEANS, SOLICITED IN A TIMELY MANNER, AND CONDUCTED
7 APPROPRIATE FOLLOW-UP TO EXPRESSIONS OF INTEREST;

8 (2) WHETHER THE BIDDER OR OFFEROR APPORTIONED THE WORK TO
9 BE PERFORMED IN A MANNER THAT WOULD INCREASE THE LIKELIHOOD THAT THE
10 GOAL FOR PARTICIPATION BY SOCIALLY AND ECONOMICALLY DISADVANTAGED
11 INDIVIDUALS OR MINORITY BUSINESS ENTERPRISES WOULD BE ACHIEVED;

12 (3) WHETHER THE BIDDER OR OFFEROR PROVIDED SOCIALLY AND
13 ECONOMICALLY DISADVANTAGED INDIVIDUALS OR MINORITY BUSINESS
14 ENTERPRISES WITH ADEQUATE INFORMATION ABOUT THE PLANS, SPECIFICATIONS,
15 AND REQUIREMENTS OF THE CONTRACT IN A TIMELY MANNER TO ASSIST THEM IN
16 RESPONDING TO THE SOLICITATION;

17 (4) WHETHER THE BIDDER OR OFFEROR NEGOTIATED IN GOOD FAITH
18 WITH INTERESTED SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS
19 OR MINORITY BUSINESS ENTERPRISES TO:

20 (I) MAKE A PORTION OF THE WORK AVAILABLE TO SOCIALLY AND
21 ECONOMICALLY DISADVANTAGED INDIVIDUALS OR MINORITY BUSINESS
22 ENTERPRISES;

23 (II) SELECT THOSE PORTIONS OF THE WORK OR MATERIAL NEEDS
24 IN A MANNER CONSISTENT WITH THE AVAILABILITY OF SOCIALLY AND
25 ECONOMICALLY DISADVANTAGED INDIVIDUALS OR MINORITY BUSINESS
26 ENTERPRISES; AND

27 (III) EVALUATE IN A FAIR AND OBJECTIVE MANNER ANY
28 ADDITIONAL COSTS THAT MIGHT BE INVOLVED IN FINDING AND USING SOCIALLY
29 AND ECONOMICALLY DISADVANTAGED INDIVIDUALS OR MINORITY BUSINESS
30 ENTERPRISES;

31 (5) WHETHER THE BIDDER OR OFFEROR REJECTED SOCIALLY AND
32 ECONOMICALLY DISADVANTAGED INDIVIDUALS OR MINORITY BUSINESS
33 ENTERPRISES AS UNQUALIFIED WITHOUT SOUND REASONS BASED ON A THOROUGH
34 INVESTIGATION OF THEIR CAPABILITIES;

35 (6) WHETHER THE BIDDER OR OFFEROR UNDERTOOK EFFORTS TO
36 ASSIST INTERESTED SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS
37 OR MINORITY BUSINESS ENTERPRISES TO OBTAIN BONDING, LINES OF CREDIT, OR
38 INSURANCE AS REQUIRED BY THE UNIT OR THE CONTRACTOR;

39 (7) WHETHER THE BIDDER OR OFFEROR ASSISTED SOCIALLY AND
40 ECONOMICALLY DISADVANTAGED INDIVIDUALS OR MINORITY BUSINESS

1 ENTERPRISES TO OBTAIN NECESSARY EQUIPMENT, SUPPLIES, MATERIALS, OR
2 RELATED ASSISTANCE OR SERVICES;

3 (8) WHETHER THE BIDDER OR OFFEROR UTILIZED THE SERVICES OF
4 MINORITY OR WOMEN COMMUNITY ORGANIZATIONS, CONTRACTOR GROUPS, STATE
5 OR LOCAL GOVERNMENT MINORITY BUSINESS ENTERPRISE ASSISTANCE OFFICES,
6 AND SIMILAR ORGANIZATIONS TO HELP RECRUIT SOCIALLY AND ECONOMICALLY
7 DISADVANTAGED INDIVIDUALS OR MINORITY BUSINESS ENTERPRISES;

8 (9) WHETHER THE BIDDER OR OFFEROR ENTERED INTO JOINT
9 VENTURE ARRANGEMENTS OR PARTNERSHIPS WITH SOCIALLY AND ECONOMICALLY
10 DISADVANTAGED INDIVIDUALS OR MINORITY BUSINESS ENTERPRISES TO ENHANCE
11 THE OPPORTUNITY FOR THEIR PARTICIPATION IN THE CONTRACT;

12 (10) WHETHER THE BIDDER OR OFFEROR HAS A MENTOR PROGRAM TO
13 FOSTER LONG-TERM RELATIONSHIPS AND INCREASE ITS BUSINESS INVOLVEMENT
14 WITH SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS OR MINORITY
15 BUSINESS ENTERPRISES;

16 (11) WHETHER THE BIDDER OR OFFEROR HAS UNDERTAKEN EFFORTS TO
17 IDENTIFY AND ASSIST SOCIALLY AND ECONOMICALLY DISADVANTAGED
18 INDIVIDUALS OR MINORITY BUSINESS ENTERPRISES THAT ARE NOT CERTIFIED BUT,
19 IF CERTIFIED, COULD POSSIBLY SERVE ON A CONTRACT AND SATISFY THE MINORITY
20 BUSINESS ENTERPRISE PROGRAM GOALS SPECIFIED UNDER THIS SUBTITLE;

21 (12) WHETHER THE BIDDER OR OFFEROR ASSISTS SOCIALLY AND
22 ECONOMICALLY DISADVANTAGED INDIVIDUALS OR MINORITY BUSINESS
23 ENTERPRISES IN ACQUIRING MINORITY BUSINESS ENTERPRISE PROGRAM
24 CERTIFICATION;

25 (13) WHETHER THE BIDDER OR OFFEROR PROVIDES TECHNICAL
26 SUPPORT TO SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS OR
27 MINORITY BUSINESS ENTERPRISES TO ASSIST THEM IN THEIR OPERATIONS;

28 (14) WHETHER THE BIDDER OR OFFEROR PROVIDES LONG-TERM
29 SUPPORT IN BUSINESS DEVELOPMENT IN ORDER TO INCREASE OPPORTUNITIES IN A
30 VARIETY OF WORK SPECIALITIES AND THEREBY STRENGTHEN ITS ABILITY TO
31 CONTRACT FOR SIGNIFICANT PROJECTS; AND

32 (15) WHETHER THE BIDDER OR OFFEROR HAS A RECORD OF EXCEEDING
33 MINORITY BUSINESS ENTERPRISE PROGRAM GOALS ON PRIOR CONTRACTS.

34 (E) IF THE CONTRACT TERM FOR A CONTRACT ADMINISTERED BY A UNIT IS
35 LONGER THAN 2 YEARS AND THE CONTRACT PRICE IS MODIFIED OR AMENDED BY
36 MORE THAN 35% OF ITS ORIGINAL COST, EVERY 2 YEARS THE UNIT SHALL:

37 (1) REVIEW THE CONTRACTOR'S COMPLIANCE WITH THE MINORITY
38 BUSINESS ENTERPRISE PROGRAM GOALS SPECIFIED UNDER THIS SUBTITLE;

1 (2) REPORT AND VERIFY THE CONTRACTOR'S ACTUAL PAYMENTS TO
2 SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS OR MINORITY
3 BUSINESS ENTERPRISES TO DETERMINE THE PRIME CONTRACTOR'S LEVEL OF
4 COMPLIANCE WITH THOSE GOALS;

5 (3) HAVE ITS PROCUREMENT REVIEW TEAM EXAMINE THE
6 CONTRACTORS' GOALS FOR THE UTILIZATION OF SOCIALLY AND ECONOMICALLY
7 DISADVANTAGED INDIVIDUALS OR MINORITY BUSINESS ENTERPRISES UNDER THE
8 ORIGINAL CONTRACT AND DETERMINE WHETHER NEW OR REVISED GOALS SHOULD
9 BE ESTABLISHED FOR THE CONTRACTOR;

10 (4) APPLY ADMINISTRATIVE SANCTIONS IF A CONTRACTOR HAS FAILED
11 TO COMPLY WITH SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS OR
12 MINORITY BUSINESS ENTERPRISE PROGRAM REQUIREMENTS; AND

13 (5) BY JUNE 30 OF EACH YEAR, REPORT THE RESULTS OF ANY CONTRACT
14 MODIFICATION PROCEDURES IT UNDERTAKES UNDER THIS SUBSECTION TO THE
15 SPECIAL SECRETARY FOR THE OFFICE OF MINORITY AFFAIRS.

16 (F) A UNIT SHALL MAKE A FAIR AND REASONABLE JUDGMENT WHETHER A
17 BIDDER OR OFFEROR WHO FAILS TO MEET THE GOAL FOR MINORITY BUSINESS
18 ENTERPRISE PARTICIPATION UNDER THIS SUBTITLE MADE AN ADEQUATE GOOD
19 FAITH EFFORT TO DO SO.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
21 effect October 1, 2006.