
By: **Prince George's County Delegation and Montgomery County
Delegation**

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CHAPTER _____

1 AN ACT concerning

2 **Washington Suburban Sanitary Commission - Minority and Local Small**
3 **Business Enterprise Programs**
4 **PG/MC 119-06**

5 FOR the purpose of establishing the Office of Small, Local, and Minority Business
6 Enterprise (Office) in the Washington Suburban Sanitary Commission (WSSC);
7 requiring the Office to administer certain minority and local small business
8 enterprise programs; establishing the Director of the Office; ~~providing for the~~
9 ~~personnel status of the Director~~; imposing certain duties on the Office as to
10 minority business enterprises; imposing certain duties on the WSSC and a
11 contractor as to compliance with certified minority business enterprise
12 subcontract participation goals; requiring a bid or proposal for certain WSSC
13 procurement contracts to include the expected degree of minority business
14 enterprise participation, based on certain factors, under certain circumstances;
15 requiring certain WSSC rules and regulations to require a bid or proposal for
16 certain WSSC procurement contracts to include proof of certified minority
17 business enterprise commitment under certain circumstances; requiring certain
18 WSSC rules and regulations to include provisions that require general
19 contractors to submit certain monthly reports to the WSSC, provide certain
20 notification to the WSSC if a contract with a minority business enterprise is
21 terminated, and maintain a certain participation level from minority business
22 enterprises; altering the scope of certain business eligibility criteria that the
23 WSSC is required to adopt as to the local small business enterprise program;
24 altering the termination date of certain minority business enterprise programs
25 in the WSSC; defining certain terms; making certain conforming changes; and
26 generally relating to minority and local small business enterprise programs and

1 the Washington Suburban Sanitary Commission.

2 BY repealing and reenacting, without amendments,
3 Article 29 - Washington Suburban Sanitary District
4 Section 3-102(b)
5 Annotated Code of Maryland
6 (2003 Replacement Volume and 2005 Supplement)

7 BY repealing and reenacting, with amendments,
8 Article 29 - Washington Suburban Sanitary District
9 Section 3-102(d), (e), and (f), 3-109, and 3-110
10 Annotated Code of Maryland
11 (2003 Replacement Volume and 2005 Supplement)

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

14 **Article 29 - Washington Suburban Sanitary District**

15 3-102.

16 (b) This section only applies to design/build contracts and construction
17 contracts.

18 (d) (1) (i) In this subsection the following words have the meanings
19 indicated.

20 (ii) "Evaluated bid price" means the price of a bid after adjustment
21 in accordance with objective measurable criteria.

22 (iii) "Objective measurable criteria" means standards that enable
23 the WSSC to compare the economy, effectiveness, or value of the subject of the bids.

24 (2) If a contract is awarded based on competitive sealed bids, the WSSC
25 shall seek bids by issuing an invitation to bid.

26 (3) Subject to paragraphs (4) through (6) of this subsection, an invitation
27 to bid shall:

28 (i) Include the specifications of the contract, INCLUDING THE
29 EXPECTED DEGREE OF MINORITY BUSINESS ENTERPRISE PARTICIPATION, AS
30 PROVIDED IN SUBSECTION (F)(3)(VI) OF THIS SECTION; and

31 (ii) State whether the contract will be awarded based on the lowest
32 bid price or the lowest evaluated bid price.

1 (4) If a contract will be awarded on an evaluated bid price, the invitation
2 to bid shall include the objective measurable criteria by which the lowest evaluated
3 bid price will be determined.

4 (5) The WSSC shall award contracts based on competitive sealed bids to
5 the responsible bidder who submits the lowest bid price or lowest evaluated bid price,
6 as appropriate.

7 (6) If the WSSC determines that an initial preparation of specifications
8 for price bids is impractical, the invitation for bids may:

9 (i) Include a request for unpriced technical offers or samples; and

10 (ii) Direct the bidder to submit a:

11 1. Sealed price bid with the unpriced technical offer or
12 sample; or

13 2. Price bid after the WSSC evaluates the technical offer or
14 sample and finds that the offer or sample is acceptable under the criteria set forth in
15 the invitation to bid.

16 (7) If an invitation to bid includes a request for unpriced technical offers
17 or samples, the WSSC shall:

18 (i) Consider the price bid of a bidder whose technical offer or
19 sample is acceptable;

20 (ii) Return unopened the price bid of a bidder whose technical offer
21 or sample is unacceptable; and

22 (iii) Award the contract to the responsible bidder whose technical
23 offer or sample is acceptable and who submits the lowest bid or lowest evaluated bid,
24 as specified in the invitation to bid.

25 (e) (1) If a contract is awarded based on competitive sealed proposals, the
26 WSSC shall seek proposals by issuing a request for proposals.

27 (2) A request for proposals shall include:

28 (i) A statement describing the scope of the contract, INCLUDING
29 THE EXPECTED DEGREE OF MINORITY BUSINESS ENTERPRISE PARTICIPATION, AS
30 PROVIDED IN SUBSECTION (F)(3)(VI) OF THIS SECTION;

31 (ii) The factors, including price, that will be used in evaluating
32 proposals; and

33 (iii) The relative importance of each factor.

34 (3) After receipt of proposals, but before the contract is awarded, the
35 WSSC may conduct discussions with an offeror to:

- 1 (i) Obtain the best price for the WSSC; and
- 2 (ii) Ensure full understanding of the requirements of the WSSC, as
3 set forth in the request for proposals and in the proposal.
- 4 (4) The WSSC:
- 5 (i) Shall treat all responsible offerors fairly and equally; and
- 6 (ii) May allow each responsible offeror to revise the offeror's initial
7 proposal and submit a best and final offer.
- 8 (5) The WSSC shall award a contract based on competitive sealed
9 proposals to the responsible offeror who submits the proposal or best and final offer
10 that the WSSC determines is the most advantageous to the WSSC, considering the
11 evaluation factors set out in the request for proposals.
- 12 (f) (1) In this subsection, "minority business enterprise" has the meaning
13 stated in § 14-301 of the State Finance and Procurement Article.
- 14 (2) (I) By resolution and by implementing rules and regulations, the
15 WSSC shall establish a mandatory minority business utilization program to facilitate
16 the participation of responsible certified minority business enterprises in contracts
17 awarded by the WSSC in accordance with competitive bidding or proposal procedures.
- 18 (II) THE OFFICE OF SMALL, LOCAL, AND MINORITY BUSINESS
19 ENTERPRISE, ESTABLISHED UNDER § 3-109 OF THIS SUBTITLE, SHALL ADMINISTER
20 THE MINORITY BUSINESS UTILIZATION PROGRAM ESTABLISHED UNDER
21 SUBPARAGRAPH (I) OF THIS PARAGRAPH.
- 22 (3) The rules and regulations that establish the program under
23 paragraph (2) of this subsection shall include, but not be limited to, provisions that:
- 24 (i) Recognize the certification of minority business enterprises by
25 the State certification agency designated under § 14-303(b) of the State Finance and
26 Procurement Article;
- 27 (ii) Recognize any other certification program that in the judgment
28 of the WSSC substantially duplicates the requirements of the State certification
29 agency;
- 30 (iii) Provide for an increase in minority business participation as
31 prime contractors and subcontractors;
- 32 (iv) Permit the waiver of all or part of the provisions of the program
33 for a specific contract if the WSSC determines that the application of the program to
34 the contract conflicts with the WSSC's overall objectives and responsibilities; [and]

1 (v) Provide for the graduation of a minority business enterprise
2 from the program if the WSSC determines that the minority business enterprise no
3 longer requires the assistance or benefits offered by the program; AND

4 (VI) REQUIRE THAT AT THE TIME OF SUBMISSION A BID OR
5 PROPOSAL BASED ON A SOLICITATION WITH AN EXPECTED DEGREE OF MINORITY
6 BUSINESS ENTERPRISE PARTICIPATION INCLUDE PROOF OF A CERTIFIED MINORITY
7 BUSINESS ENTERPRISE COMMITMENT ~~AT THE TIME OF SUBMISSION.~~ BY STATING:

8 1. THE POTENTIAL SUBCONTRACT OPPORTUNITIES
9 AVAILABLE IN THE PRIME PROCUREMENT CONTRACT; AND

10 2. THE NUMBER OF MINORITY BUSINESS ENTERPRISES
11 THAT HAVE CERTIFIED. UNDER THE PENALTIES OF PERJURY, THAT THE MINORITY
12 BUSINESS ENTERPRISE HAS ENTERED INTO AN AGREEMENT WITH THE BIDDER TO
13 PROVIDE GOODS OR SERVICES UNDER SPECIFIC TERMS OUTLINED IN THE
14 CERTIFICATION BEFORE THE BID IS ACCEPTED;

15 (VII) REQUIRE EACH GENERAL CONTRACTOR TO SUBMIT MONTHLY
16 REPORTS OF THE NUMBER OF MINORITY BUSINESS ENTERPRISES EMPLOYED BY THE
17 GENERAL CONTRACTOR TO THE WSSC;

18 (VIII) REQUIRE THAT EACH GENERAL CONTRACTOR PROVIDE
19 PROMPT NOTIFICATION TO THE WSSC IF A CONTRACT WITH A MINORITY BUSINESS
20 ENTERPRISE IS TERMINATED; AND

21 (IX) REQUIRE THAT EACH GENERAL CONTRACTOR MAINTAIN A
22 PARTICIPATION LEVEL FROM MINORITY BUSINESS ENTERPRISES THAT IS
23 CONSISTENT WITH THE PARTICIPATION LEVEL REFERENCED UNDER
24 SUBPARAGRAPH (VI)2 OF THIS PARAGRAPH OR PROVIDE JUSTIFICATION FOR THE
25 GENERAL CONTRACTOR'S INABILITY TO MAINTAIN THAT PARTICIPATION LEVEL.

26 (4) Before accepting a certification program under paragraph (3)(ii) of
27 this subsection, the WSSC shall examine the program to ensure that it adheres to the
28 following guidelines:

29 (i) Bona fide minority group membership shall be established on
30 the basis of the individual's claim that the individual is a member of a minority group
31 and is so regarded by that particular minority community. However, the certifying
32 agency is not required to accept this claim if it determines that the claim is invalid.

33 (ii) An eligible minority business enterprise shall be an
34 independent business. The ownership and control by minorities shall be real,
35 substantial, and continuing and shall go beyond the pro forma ownership of the
36 business as reflected in its ownership documents. The minority owners shall enjoy the
37 customary incidents of ownership and shall share in the risks and profits
38 commensurate with their ownership interests as demonstrated by an examination of
39 the substance rather than form of arrangements. Recognition of the business as a
40 separate entity for tax or corporate purposes is not necessarily sufficient for
41 recognition as a minority business enterprise. In determining whether a potential

1 minority business enterprise is an independent business, the certifying agency shall
2 consider all relevant factors, including the date the business was established, the
3 adequacy of its resources for the work of the contract, and the degree to which
4 financial, equipment leasing, and other relationships with nonminority businesses
5 vary from industry practice.

6 (iii) The minority owners shall also possess the power to direct or
7 cause the direction of the management and policies of the business and to make the
8 day-to-day as well as major decisions on matters of management, policy, and
9 operations. The business may not be subject to any formal or informal restrictions,
10 through bylaw provisions, partnership agreements, or charter requirements for
11 cumulative voting rights or otherwise that prevent the minority owners, without the
12 cooperation or vote of any owner who is not a minority, from making a business
13 decision of the business.

14 (iv) If the owners of the business who are not minorities are
15 disproportionately responsible for the operation of the firm, the firm is not controlled
16 by minorities and may not be considered a minority business enterprise within the
17 meaning of this section. Where the actual management of the business is contracted
18 out to individuals other than the owner, those persons who have the ultimate power to
19 hire and fire the managers may, for the purposes of this section, be considered as
20 controlling the business.

21 (v) All securities which constitute ownership or control of a
22 corporation for purposes of establishing it as a minority business enterprise under
23 this section shall be held directly by minorities. No securities held in trust, or by any
24 guardian for a minor, shall be considered as held by minorities in determining the
25 ownership or control of a corporation.

26 (vi) The contributions of capital or expertise by the minority owners
27 to acquire their interests in the business shall be real and substantial. Insufficient
28 contributions include a promise to contribute capital, a note payable to the business
29 or its owners who are not socially and economically disadvantaged, or the mere
30 participation as an employee, rather than as a manager.

31 (vii) The certifying agency shall give special consideration to the
32 following additional circumstances in determining eligibility:

33 1. Newly formed businesses and businesses whose ownership
34 or control has changed since the date of the advertisement of the contract are closely
35 scrutinized to determine the reasons for the timing of the formation of or change in
36 the businesses;

37 2. A previous or continuing employer-employee relationship
38 between or among present owners is carefully reviewed to ensure that the
39 employee-owner has management responsibilities and capabilities discussed in this
40 section; and

41 3. Any relationship between a minority business enterprise
42 and a business which is not a minority business enterprise which has an interest in

1 the minority business enterprise is carefully reviewed to determine if the interest of
2 the nonminority business conflicts with the ownership and control requirements of
3 this section.

4 (5) (i) The WSSC may conduct any impartial fact-finding study in
5 connection with a minority business enterprise program for consistency with
6 applicable law.

7 (ii) The WSSC shall report the findings of any review completed
8 under this paragraph to the Montgomery County and Prince George's County
9 Delegations to the General Assembly.

10 (6) By September 15 of each year, the WSSC shall issue a report
11 concerning the implementation and administration of the minority business
12 enterprise program for the fiscal year ending on the preceding June 30, and
13 appropriate recommendations concerning the program, to the Montgomery County
14 and Prince George's County Senate and House Delegations to the Maryland General
15 Assembly.

16 (7) The provisions of this subsection shall be null and void and may not
17 be enforced after July 1, [2006] ~~2011~~ 2010.

18 3-109.

19 (a) (1) In this [section,] SECTION THE FOLLOWING WORDS HAVE THE
20 MEANINGS INDICATED.

21 (2) "DIRECTOR" MEANS THE DIRECTOR OF THE OFFICE OF SMALL,
22 LOCAL, AND MINORITY BUSINESS ENTERPRISE ESTABLISHED UNDER SUBSECTION
23 (B)(2) OF THIS SECTION.

24 (3) ["minority] "MINORITY business enterprise" means any legal entity
25 that is organized to engage in commercial transactions and at least 51 percent owned
26 and controlled by 1 or more individuals who are members of a group that is:

27 [(1)] (I) Disadvantaged socially or economically by the effects of past
28 discrimination, including discrimination as to certification; and

29 [(2)] (II) Identified by a study conducted in accordance with this section
30 or a similar study previously conducted.

31 (4) "OFFICE" MEANS THE OFFICE OF SMALL, LOCAL, AND MINORITY
32 BUSINESS ENTERPRISE ESTABLISHED UNDER SUBSECTION (B)(2) OF THIS SECTION.

33 (b) (1) By resolution and implementing rules and regulations, the WSSC
34 shall establish a minority business utilization program to facilitate the participation
35 of responsible certified minority business enterprises in contracts awarded by the
36 WSSC for goods and services not covered by § 3-102 of this article if:

1 [(1)] (I) The WSSC determines that minority business enterprises are
2 underrepresented in the award of these contracts due to the effects of past
3 discrimination; and

4 [(2)] (II) The WSSC determines that such a program is necessary to
5 remedy the effects of past discrimination against minority business enterprises in
6 contracting with the WSSC.

7 (2) (I) THERE IS AN OFFICE OF SMALL, LOCAL, AND MINORITY
8 BUSINESS ENTERPRISE IN THE WSSC.

9 (II) THE OFFICE SHALL ADMINISTER THE PROGRAMS THE WSSC IS
10 REQUIRED TO ESTABLISH UNDER PARAGRAPH (1) OF THIS SUBSECTION AND §§
11 3-102(F) AND 3-110 OF THIS SUBTITLE.

12 (III) THERE IS A DIRECTOR WHO SHALL BE IN CHARGE OF THE
13 OFFICE.

14 ~~(IV) THE DIRECTOR SHALL:~~

15 ~~1- BE A MERIT PERSONNEL EMPLOYEE; AND~~

16 ~~2- RECEIVE A SALARY COMMENSURATE WITH THE SALARY~~
17 ~~OF THE DEPARTMENT HEADS IN THE WSSC.~~

18 (c) The rules and regulations that establish the program under subsection (b)
19 of this section shall include provisions that:

20 (1) Recognize the certification of minority business enterprises by the
21 State certification agency designated under § 14-303(b) of the State Finance and
22 Procurement Article;

23 (2) Recognize any other certification program that in the judgment of the
24 WSSC substantially duplicates the requirements of the State certification agency;

25 (3) Provide for minority business participation through subcontracting;

26 (4) Except as provided in paragraph (5) of this subsection, provide for a
27 system of granting a preference of up to the lesser of 5% or \$50,000 to minority
28 business enterprises in evaluating bids and proposals;

29 (5) (i) Subject to the provisions of subparagraphs (ii), (iii), and (iv) of
30 this paragraph, establish a sheltered market program in which bidding on
31 procurement contracts designated by the WSSC as appropriate is restricted to
32 certified minority business enterprises;

33 (ii) The sheltered market program under this paragraph may not
34 be utilized until all less restrictive remedies under this subsection and race-neutral
35 remedies such as assistance with bonding requirements, financing, or bidding
36 procedures for small firms have been used and found to be ineffective;

1 (iii) Upon the bid of at least 3 certified minority business
2 contractors, a contract shall be awarded under this paragraph to the lowest of those
3 bidders; and

4 (iv) If fewer than 3 certified minority business enterprises bid on a
5 contract under this paragraph, the contract shall be awarded under the general
6 provisions of paragraph (4) of this subsection;

7 (6) Provide for the graduation of a minority business enterprise from the
8 program if the WSSC determines that the minority business enterprise no longer
9 requires the assistance or benefits offered by the program;

10 (7) Require the solicitation document accompanying each solicitation to
11 set forth the rules and regulations of the minority business utilization program;

12 (8) Require the geographic location and the principal place of business of
13 the minority business enterprise to be a consideration for participation in this
14 program. Montgomery County businesses and Prince George's County businesses
15 shall each have a targeted percentage of at least 40% of any contracts;

16 (9) Provide for the WSSC to refuse to recognize the certification of any
17 business found to be in violation of the purposes of the program and to permanently
18 bar any active principals of a violating business from future participation in the
19 program; [and]

20 (10) Permit the waiver of all or part of the provisions of the program for a
21 specific contract if the WSSC determines that the application of the program to the
22 contract conflicts with the WSSC's overall objectives and responsibilities, and provide
23 for the WSSC to report annually to the Montgomery County and Prince George's
24 County House and Senate Delegations on those waivers; ~~AND~~

25 (11) REQUIRE THAT AT THE TIME OF SUBMISSION EACH BID OR
26 PROPOSAL THAT IS BASED ON A SOLICITATION WITH AN EXPECTED DEGREE OF
27 MINORITY BUSINESS ENTERPRISE PARTICIPATION TO INCLUDE PROOF OF A
28 CERTIFIED MINORITY BUSINESS ENTERPRISE COMMITMENT AT THE TIME OF
29 SUBMISSION BY STATING:

30 (I) THE POTENTIAL SUBCONTRACT OPPORTUNITIES AVAILABLE IN
31 THE PRIME PROCUREMENT CONTRACT; AND

32 (II) THE NUMBER OF MINORITY BUSINESS ENTERPRISES THAT
33 HAVE CERTIFIED, UNDER THE PENALTIES OF PERJURY, THAT THE MINORITY
34 BUSINESS ENTERPRISE HAS ENTERED INTO AN AGREEMENT WITH THE BIDDER TO
35 PROVIDE GOODS OR SERVICES UNDER SPECIFIC TERMS OUTLINED IN THE
36 CERTIFICATION BEFORE THE BID IS ACCEPTED;

37 (12) REQUIRE EACH GENERAL CONTRACTOR TO SUBMIT MONTHLY
38 REPORTS OF THE NUMBER OF MINORITY BUSINESS ENTERPRISES EMPLOYED BY THE
39 GENERAL CONTRACTOR TO THE WSSC;

1 (13) REQUIRE THAT EACH GENERAL CONTRACTOR PROVIDE PROMPT
2 NOTIFICATION TO THE WSSC IF A CONTRACT WITH A MINORITY BUSINESS
3 ENTERPRISE IS TERMINATED; AND

4 (14) REQUIRE THAT EACH GENERAL CONTRACTOR MAINTAIN A
5 PARTICIPATION LEVEL FROM MINORITY BUSINESS ENTERPRISES THAT IS
6 CONSISTENT WITH THE PARTICIPATION LEVEL REFERENCED UNDER PARAGRAPH
7 (11)(II) OF THIS SUBSECTION OR PROVIDE JUSTIFICATION FOR THE GENERAL
8 CONTRACTOR'S INABILITY TO MAINTAIN THAT PARTICIPATION LEVEL.

9 (d) Before accepting a certification program under subsection (c)(2) of this
10 section, the WSSC shall examine the program to ensure that:

11 (1) It adheres to the guidelines set forth in § 3-102(f)(4) of this article;
12 and

13 (2) The principal owner of an eligible minority business enterprise is in
14 not more than 1 certified business that is participating in the WSSC minority
15 business enterprise program under this section.

16 (e) (1) The WSSC may conduct any fact-finding study in connection with a
17 minority business enterprise program for consistency with applicable law.

18 (2) The WSSC shall report the findings of any review completed under
19 this paragraph to the Montgomery County and Prince George's County Delegations to
20 the General Assembly.

21 (f) By September 15 of each year, the WSSC shall issue a report concerning
22 the implementation and administration of the minority business enterprise program
23 for the fiscal year ending on the preceding June 30, and appropriate
24 recommendations concerning the program, to the Montgomery County and Prince
25 George's County Senate and House Delegations to the Maryland General Assembly.

26 (G) (1) THE OFFICE SHALL:

27 (I) CARRY OUT EACH WSSC PROGRAM THAT IS CREATED TO
28 PROMOTE THE GROWTH OF OR PARTICIPATION BY MINORITY BUSINESS
29 ENTERPRISES;

30 (II) PROMOTE AND COORDINATE THE PLANS, PROGRAMS, AND
31 OPERATIONS OF THE WSSC THAT PROMOTE OR OTHERWISE AFFECT THE
32 ESTABLISHMENT, PRESERVATION, AND STRENGTHENING OF MINORITY BUSINESS
33 ENTERPRISES;

34 (III) PROMOTE ACTIVITIES AND THE USE OF THE RESOURCES OF
35 THE WSSC, LOCAL GOVERNMENTS, AND PRIVATE ENTITIES FOR THE GROWTH OF
36 MINORITY BUSINESS ENTERPRISES;

37 (IV) PROVIDE TECHNICAL AND MANAGERIAL ASSISTANCE TO
38 MINORITY BUSINESS ENTERPRISES; AND

1 (V) SCHEDULE SEMINARS AND WORKSHOPS TO EDUCATE
2 MINORITY BUSINESSES ON THE WAY THE WSSC CONDUCTS BUSINESS.

3 (2) TO ENSURE COMPLIANCE WITH CERTIFIED MINORITY BUSINESS
4 ENTERPRISE SUBCONTRACT PARTICIPATION GOALS, THE OFFICE SHALL VERIFY
5 THAT THE CERTIFIED MINORITY BUSINESS ENTERPRISES LISTED IN THE SCHEDULE
6 OF PARTICIPATION ARE ACTUALLY PERFORMING WORK AND RECEIVING
7 COMPENSATION AS SET FORTH IN THE SCHEDULE.

8 (3) TO FACILITATE THE OFFICE COMPLETING ITS DUTIES UNDER
9 PARAGRAPH (2) OF THIS SUBSECTION, A CONTRACTOR SHALL:

10 (I) PERMIT THE OFFICE TO INSPECT ANY RELEVANT MATTER,
11 INCLUDING RECORDS AND THE JOB SITE;

12 (II) PERMIT THE OFFICE TO INTERVIEW THE CONTRACTOR'S
13 SUBCONTRACTORS AND EMPLOYEES;

14 (III) IF PERFORMING A CONSTRUCTION CONTRACT, ENSURE THAT
15 ALL SUBCONTRACTORS:

16 1. ARE PAID ANY UNDISPUTED AMOUNT TO WHICH THAT
17 SUBCONTRACTOR IS ENTITLED ~~WITHIN 10 CALENDAR DAYS OF RECEIVING~~
18 ~~PROGRESS OR FINAL PAYMENT FROM THE WSSC AND~~ AS PROVIDED UNDER § 15-226
19 OF THE STATE FINANCE AND PROCUREMENT ARTICLE; AND

20 2. OTHERWISE COMPLY WITH WSSC REGULATIONS;

21 (IV) SUBMIT MONTHLY TO THE WSSC A REPORT LISTING UNPAID
22 INVOICES OVER 30 DAYS OLD RECEIVED FROM A CERTIFIED MINORITY BUSINESS
23 ENTERPRISE SUBCONTRACTOR AND THE REASON PAYMENT HAS NOT BEEN MADE;
24 AND

25 (V) INCLUDE IN ITS AGREEMENTS WITH ITS CERTIFIED MINORITY
26 BUSINESS ENTERPRISE SUBCONTRACTORS A REQUIREMENT THAT THE
27 SUBCONTRACTORS SUBMIT MONTHLY TO THE WSSC A REPORT THAT:

28 1. IDENTIFIES THE PRIME CONTRACT; AND

29 2. LISTS PAYMENT RECEIVED FROM THE CONTRACTOR IN
30 THE PRECEDING 30 DAYS AND INVOICES FOR WHICH THE SUBCONTRACTOR HAS NOT
31 BEEN PAID.

32 (4) (I) ON DETERMINING A CONTRACTOR'S NONCOMPLIANCE, THE
33 WSSC SHALL NOTIFY THE CONTRACTOR IN WRITING OF THE FINDINGS AND SPECIFY
34 WHAT CORRECTIVE ACTIONS ARE REQUIRED.

35 (II) A NONCOMPLIANT CONTRACTOR SHALL INITIATE THE
36 CORRECTIVE ACTIONS WITHIN 10 DAYS OF RECEIVING THE WRITTEN NOTICE AND
37 COMPLETE THE CORRECTIVE ACTION WITHIN THE TIME SPECIFIED BY THE WSSC.

1 (5) IF THE WSSC DETERMINES THAT A MATERIAL NONCOMPLIANCE
2 WITH MINORITY BUSINESS ENTERPRISE CONTRACT PROVISIONS EXISTS AND THE
3 PRIME CONTRACTOR REFUSES OR FAILS TO TAKE THE CORRECTIVE ACTIONS
4 REQUIRED BY THE WSSC, THE WSSC MAY IMPOSE THE FOLLOWING SANCTIONS:

5 (I) TERMINATION OF THE CONTRACT;

6 (II) REFERRAL TO THE GENERAL MANAGER OR COMMISSIONERS
7 OF THE WSSC FOR APPROPRIATE ACTION; OR

8 (III) INITIATION OF ANY OTHER SPECIFIC REMEDY IDENTIFIED BY
9 CONTRACT.

10 (6) (I) ON COMPLETION OF A CONTRACT OR BEFORE FINAL PAYMENT
11 OR RELEASE OF RETAINAGE, THE WSSC MAY REQUIRE A PRIME CONTRACTOR ON
12 ANY CONTRACT HAVING A MINORITY BUSINESS ENTERPRISE SUBCONTRACT GOAL
13 TO SUBMIT TO THE WSSC A FINAL REPORT, IN AFFIDAVIT FORM AND UNDER
14 PENALTY OF PERJURY, OF ALL PAYMENTS MADE TO OR WITHHELD FROM MINORITY
15 BUSINESS ENTERPRISE SUBCONTRACTORS.

16 (II) EACH SOLICITATION SHALL CONTAIN NOTICE OF THE
17 REQUIREMENTS UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH.

18 [(g)] (H) The provisions of this section shall be void and may not be enforced
19 after July 1, [2006] ~~2011~~ 2010.

20 3-110.

21 (a) (1) By resolution or regulation, the WSSC may implement a local small
22 business enterprise program.

23 (2) THE OFFICE OF SMALL, LOCAL, AND MINORITY BUSINESS
24 ENTERPRISE, ESTABLISHED UNDER § 3-109(B)(2) OF THIS SUBTITLE, SHALL
25 ADMINISTER THE LOCAL SMALL BUSINESS ENTERPRISE PROGRAM ESTABLISHED
26 UNDER PARAGRAPH (1) OF THIS SUBSECTION.

27 (b) The purpose of the program is to assist small businesses that are located in
28 Montgomery County and Prince George's County through the establishment of a
29 sheltered market or other appropriate preference or assistance involving the award of
30 construction contracts or the procurement of goods and services by the WSSC.

31 (c) The WSSC shall adopt:

32 (1) Eligibility criteria for businesses to qualify for the local small
33 business enterprise program, including:

34 (i) A net worth not exceeding \$250,000 under WSSC guidelines;

35 (ii) An average net income after federal income taxes for the
36 preceding 2 years, excluding any carryover losses, not exceeding \$100,000;

1 (iii) A principal place of business IN MONTGOMERY COUNTY OR
2 PRINCE GEORGE'S COUNTY or A significant [employment] EMPLOYEE presence IN
3 MONTGOMERY COUNTY OR PRINCE GEORGE'S COUNTY WITH NO LESS THAN ~~25%~~ 30%
4 OF THE BUSINESS'S TOTAL NUMBER OF EMPLOYEES BEING DOMICILED in
5 Montgomery County or Prince George's County; and

6 (iv) Any other eligibility criteria that the WSSC determines to be
7 necessary or otherwise appropriate for the promotion of local small businesses in its
8 service area; and

9 (2) Administrative procedures for conducting the program.

10 (d) A business enterprise may qualify as a local small business for purposes of
11 the program without regard to the race, ethnicity, or gender of the participants in the
12 business enterprise.

13 (e) The WSSC shall establish graduation criteria from the program for local
14 small businesses that the WSSC determines no longer require the assistance or
15 benefits offered by the program.

16 (f) The WSSC shall review the eligibility criteria and administrative
17 procedures of the program each year to assess their effectiveness in furthering the
18 purposes of the program.

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