

SENATE BILL 862

P2

7lr2840
CF 7lr2874

By: **Senator Pugh**

Introduced and read first time: February 19, 2007

Assigned to: Rules

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; requiring the Board of Public Works to
18 engage the services of certain entities to evaluate and document certain efforts
19 of certain entities to meet certain goals with regard to certain procurements for
20 school construction and to issue a report of their findings and recommendations
21 on or before a certain date; and generally relating to policies governing
22 contractors' utilization of socially and economically disadvantaged individuals
23 and minority business enterprises for certain procurement contracts.

24 BY adding to
25 Article – State Finance and Procurement

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 14-306
2 Annotated Code of Maryland
3 (2006 Replacement Volume and 2006 Supplement)

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

6 **Article – State Finance and Procurement**

7 **14-306.**

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

12 (B) A UNIT MAY AWARD A CONTRACT ONLY TO A BIDDER OR OFFEROR
13 THAT MAKES A GOOD FAITH EFFORT TO MEET THE GOALS OF THE MINORITY
14 BUSINESS ENTERPRISE PROGRAM AND AFTER THE UNIT DETERMINES THAT THE
15 BIDDER OR OFFEROR DOCUMENTS THAT:

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

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

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

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

28 (I) THE NAME, ADDRESS, DATE CONTACTED, AND
29 TELEPHONE NUMBER OF THE SOCIALLY AND ECONOMICALLY DISADVANTAGED
30 INDIVIDUALS AND MINORITY BUSINESS ENTERPRISES CONTACTED;

1 (II) THE DESCRIPTION OF THE INFORMATION PROVIDED TO
2 SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS AND MINORITY
3 BUSINESS ENTERPRISES REGARDING THE PLANS, SPECIFICATIONS, AND
4 ANTICIPATED TIME SCHEDULE FOR PORTIONS OF THE WORK TO BE
5 PERFORMED;

6 (III) A DETAILED STATEMENT OF THE REASONS WHY EACH
7 REJECTED QUOTATION SUBMITTED BY A SOCIALLY AND ECONOMICALLY
8 DISADVANTAGED INDIVIDUAL OR MINORITY BUSINESS ENTERPRISE WAS
9 DEEMED UNACCEPTABLE; AND

10 (IV) A LIST OF MINORITY BUSINESS ENTERPRISE
11 SUBCONTRACTORS FOUND TO BE UNAVAILABLE, ACCOMPANIED BY AN
12 AFFIDAVIT BY EACH SUCH SUBCONTRACTOR ATTESTING TO ITS
13 UNAVAILABILITY OR A STATEMENT BY THE BIDDER OR OFFEROR EXPLAINING
14 WHY AN AFFIDAVIT IS NOT INCLUDED.

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

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

22 (2) WHETHER THE BIDDER OR OFFEROR APPORTIONED THE
23 WORK TO BE PERFORMED IN A MANNER THAT WOULD INCREASE THE
24 LIKELIHOOD THAT THE GOAL FOR PARTICIPATION BY SOCIALLY AND
25 ECONOMICALLY DISADVANTAGED INDIVIDUALS OR MINORITY BUSINESS
26 ENTERPRISES WOULD BE ACHIEVED;

27 (3) WHETHER THE BIDDER OR OFFEROR PROVIDED SOCIALLY
28 AND ECONOMICALLY DISADVANTAGED INDIVIDUALS OR MINORITY BUSINESS
29 ENTERPRISES WITH ADEQUATE INFORMATION ABOUT THE PLANS,
30 SPECIFICATIONS, AND REQUIREMENTS OF THE CONTRACT IN A TIMELY MANNER
31 TO ASSIST THEM IN RESPONDING TO THE SOLICITATION;

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

4 (I) MAKE A PORTION OF THE WORK AVAILABLE TO
5 SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS OR MINORITY
6 BUSINESS ENTERPRISES;

7 (II) SELECT THOSE PORTIONS OF THE WORK OR MATERIAL
8 NEEDS IN A MANNER CONSISTENT WITH THE AVAILABILITY OF SOCIALLY AND
9 ECONOMICALLY DISADVANTAGED INDIVIDUALS OR MINORITY BUSINESS
10 ENTERPRISES; AND

11 (III) EVALUATE IN A FAIR AND OBJECTIVE MANNER ANY
12 ADDITIONAL COSTS THAT MIGHT BE INVOLVED IN FINDING AND USING
13 SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS OR MINORITY
14 BUSINESS ENTERPRISES;

15 (5) WHETHER THE BIDDER OR OFFEROR REJECTED SOCIALLY
16 AND ECONOMICALLY DISADVANTAGED INDIVIDUALS OR MINORITY BUSINESS
17 ENTERPRISES AS UNQUALIFIED WITHOUT SOUND REASONS BASED ON A
18 THOROUGH INVESTIGATION OF THEIR CAPABILITIES;

19 (6) WHETHER THE BIDDER OR OFFEROR UNDERTOOK EFFORTS
20 TO ASSIST INTERESTED SOCIALLY AND ECONOMICALLY DISADVANTAGED
21 INDIVIDUALS OR MINORITY BUSINESS ENTERPRISES TO OBTAIN BONDING,
22 LINES OF CREDIT, OR INSURANCE AS REQUIRED BY THE UNIT OR THE
23 CONTRACTOR;

24 (7) WHETHER THE BIDDER OR OFFEROR ASSISTED SOCIALLY AND
25 ECONOMICALLY DISADVANTAGED INDIVIDUALS OR MINORITY BUSINESS
26 ENTERPRISES TO OBTAIN NECESSARY EQUIPMENT, SUPPLIES, MATERIALS, OR
27 RELATED ASSISTANCE OR SERVICES;

28 (8) WHETHER THE BIDDER OR OFFEROR UTILIZED THE SERVICES
29 OF MINORITY OR WOMEN COMMUNITY ORGANIZATIONS, CONTRACTOR GROUPS,
30 STATE OR LOCAL GOVERNMENT MINORITY BUSINESS ENTERPRISE ASSISTANCE
31 OFFICES, AND SIMILAR ORGANIZATIONS TO HELP RECRUIT SOCIALLY AND

1 ECONOMICALLY DISADVANTAGED INDIVIDUALS OR MINORITY BUSINESS
2 ENTERPRISES;

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

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

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

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

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

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

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

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

5 **(1) REVIEW THE CONTRACTOR'S COMPLIANCE WITH THE**
6 **MINORITY BUSINESS ENTERPRISE PROGRAM GOALS SPECIFIED UNDER THIS**
7 **SUBTITLE;**

8 **(2) REPORT AND VERIFY THE CONTRACTOR'S ACTUAL PAYMENTS**
9 **TO SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS OR MINORITY**
10 **BUSINESS ENTERPRISES TO DETERMINE THE PRIME CONTRACTOR'S LEVEL OF**
11 **COMPLIANCE WITH THOSE GOALS;**

12 **(3) HAVE ITS PROCUREMENT REVIEW TEAM EXAMINE THE**
13 **CONTRACTOR'S GOALS FOR THE UTILIZATION OF SOCIALLY AND ECONOMICALLY**
14 **DISADVANTAGED INDIVIDUALS OR MINORITY BUSINESS ENTERPRISES UNDER**
15 **THE ORIGINAL CONTRACT AND DETERMINE WHETHER NEW OR REVISED GOALS**
16 **SHOULD BE ESTABLISHED FOR THE CONTRACTOR;**

17 **(4) APPLY ADMINISTRATIVE SANCTIONS IF A CONTRACTOR HAS**
18 **FAILED TO COMPLY WITH SOCIALLY AND ECONOMICALLY DISADVANTAGED**
19 **INDIVIDUALS OR MINORITY BUSINESS ENTERPRISE PROGRAM REQUIREMENTS;**
20 **AND**

21 **(5) BY JUNE 30 OF EACH YEAR, REPORT THE RESULTS OF ANY**
22 **CONTRACT MODIFICATION PROCEDURES IT UNDERTAKES UNDER THIS**
23 **SUBSECTION TO THE SPECIAL SECRETARY FOR THE OFFICE OF MINORITY**
24 **AFFAIRS.**

25 **(F) A UNIT SHALL MAKE A FAIR AND REASONABLE JUDGMENT**
26 **WHETHER A BIDDER OR OFFEROR WHO FAILS TO MEET THE GOALS FOR**
27 **MINORITY BUSINESS ENTERPRISE PARTICIPATION UNDER THIS SUBTITLE MADE**
28 **AN ADEQUATE GOOD FAITH EFFORT TO DO SO.**

29 SECTION 2. AND BE IT FURTHER ENACTED, That the Board of Public
30 Works shall designate a State entity and engage the services of an independent
31 nonprofit entity jointly to evaluate and document the good faith effort of units,
32 bidders, and offerors to meet the goals of the Minority Business Enterprise Program
33 under Title 14, Subtitle 3 of the State Finance and Procurement Article with respect to

1 fiscal 2008 procurements for school construction. On or before December 1, 2008, the
2 designated State entity and the independent nonprofit entity shall issue a report of
3 their findings and recommendations to the Governor and, in accordance with § 2-1246
4 of the State Government Article, the General Assembly.

5 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 July 1, 2007.