

CHAPTER 621

(House Bill 691)

AN ACT concerning

Washington Suburban Sanitary Commission – Minority and Local Small Business Enterprise Programs

MC/PG 104-07

FOR the purpose of requiring the Washington Suburban Sanitary Commission (WSSC) to establish a mandatory minority business utilization program by resolution or regulation for certain purposes under certain circumstances; requiring the regulations that establish a certain minority business utilization program to contain certain provisions; requiring the WSSC to examine certain certification programs to ensure that they adhere to certain guidelines before accepting the certification programs; authorizing the WSSC to conduct a certain fact-finding study under certain circumstances; requiring the WSSC to report certain findings to certain persons under certain circumstances; requiring the WSSC to issue a certain report to certain persons annually; establishing the Office of Small, Local, and Minority Business Enterprise (Office) in the WSSC; requiring the Office to administer certain minority and local small business enterprise programs; establishing the Director of the Office; imposing certain duties on the Office as to minority business enterprises; imposing certain duties on the WSSC and a contractor as to compliance with certified minority business enterprise subcontract participation goals; requiring a bid or proposal for certain WSSC procurement contracts to include the expected degree of minority business enterprise participation, based on certain factors, under certain circumstances; requiring certain WSSC regulations to require a bid or proposal for certain WSSC procurement contracts to include proof of certified minority business enterprise commitment under certain circumstances; prohibiting the use of a certain sheltered market program unless certain less restrictive remedies have been used and found ineffective under certain circumstances; providing for the awarding of a contract under a certain sheltered market program under certain circumstances; altering the scope of certain business eligibility criteria that the WSSC is required to adopt as to the local small business enterprise program; defining certain terms; making the provisions of this Act severable; ~~making this Act an emergency measure~~; providing for the termination of certain provisions of this Act; and generally relating to minority

and local small business enterprise programs and the Washington Suburban Sanitary Commission.

BY repealing and reenacting, without amendments,
 Article 29 – Washington Suburban Sanitary District
 Section 3–102(b)
 Annotated Code of Maryland
 (2003 Replacement Volume and 2006 Supplement)

BY repealing and reenacting, with amendments,
 Article 29 – Washington Suburban Sanitary District
 Section 3–102(d) and (e) and 3–110
 Annotated Code of Maryland
 (2003 Replacement Volume and 2006 Supplement)

BY adding to
 Article 29 – Washington Suburban Sanitary District
 Section 3–102(f) and 3–109
 Annotated Code of Maryland
 (2003 Replacement Volume and 2006 Supplement)

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

Article 29 – Washington Suburban Sanitary District

3–102.

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

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

(ii) “Evaluated bid price” means the price of a bid after adjustment in accordance with objective measurable criteria.

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

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

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

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

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

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

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

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

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

(ii) Direct the bidder to submit a:

1. Sealed price bid with the unpriced technical offer or sample; or
2. Price bid after the WSSC evaluates the technical offer or sample and finds that the offer or sample is acceptable under the criteria set forth in the invitation to bid.

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

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

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

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

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

(2) A request for proposals shall include:

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

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

(iii) The relative importance of each factor.

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

(i) Obtain the best price for the WSSC; and

(ii) Ensure full understanding of the requirements of the WSSC, as set forth in the request for proposals and in the proposal.

(4) The WSSC:

(i) Shall treat all responsible offerors fairly and equally; and

(ii) May allow each responsible offeror to revise the offeror's initial proposal and submit a best and final offer.

(5) The WSSC shall award a contract based on competitive sealed proposals to the responsible offeror who submits the proposal or best and final offer that the WSSC determines is the most advantageous to the WSSC, considering the evaluation factors set out in the request for proposals.

(F) (1) IN THIS SUBSECTION, "MINORITY BUSINESS ENTERPRISE" HAS THE MEANING STATED IN § 14-301 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

(2) (I) BY RESOLUTION AND BY ADOPTING REGULATIONS, THE WSSC SHALL ESTABLISH A MANDATORY MINORITY BUSINESS UTILIZATION PROGRAM TO FACILITATE THE PARTICIPATION OF RESPONSIBLE CERTIFIED MINORITY BUSINESS ENTERPRISES IN CONTRACTS AWARDED BY THE WSSC IN ACCORDANCE WITH COMPETITIVE BIDDING OR PROPOSAL PROCEDURES.

(II) THE OFFICE OF SMALL, LOCAL, AND MINORITY BUSINESS ENTERPRISE, ESTABLISHED UNDER § 3-109 OF THIS SUBTITLE, SHALL ADMINISTER THE MINORITY BUSINESS UTILIZATION PROGRAM ESTABLISHED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH.

(3) THE REGULATIONS THAT ESTABLISH THE PROGRAM UNDER PARAGRAPH (2) OF THIS SUBSECTION SHALL INCLUDE PROVISIONS THAT:

(I) RECOGNIZE THE CERTIFICATION OF MINORITY BUSINESS ENTERPRISES BY THE STATE CERTIFICATION AGENCY DESIGNATED UNDER § 14-303(B) OF THE STATE FINANCE AND PROCUREMENT ARTICLE;

(II) RECOGNIZE ANY OTHER CERTIFICATION PROGRAM THAT, IN THE JUDGMENT OF THE WSSC, SUBSTANTIALLY DUPLICATES THE REQUIREMENTS OF THE STATE CERTIFICATION AGENCY;

(III) PROVIDE FOR AN INCREASE IN MINORITY BUSINESS PARTICIPATION AS PRIME CONTRACTORS AND SUBCONTRACTORS;

(IV) PERMIT THE WAIVER OF ALL OR PART OF THE PROVISIONS OF THE PROGRAM FOR A SPECIFIC CONTRACT IF THE WSSC DETERMINES THAT THE APPLICATION OF THE PROGRAM TO THE CONTRACT CONFLICTS WITH THE WSSC'S OVERALL OBJECTIVES AND RESPONSIBILITIES;

(V) PROVIDE FOR THE GRADUATION OF A MINORITY BUSINESS ENTERPRISE FROM THE PROGRAM IF THE WSSC DETERMINES THAT THE MINORITY BUSINESS ENTERPRISE NO LONGER REQUIRES THE ASSISTANCE OR BENEFITS OFFERED BY THE PROGRAM;

(VI) REQUIRE AT THE TIME OF SUBMISSION A BID OR PROPOSAL BASED ON A SOLICITATION WITH AN EXPECTED DEGREE OF MINORITY BUSINESS ENTERPRISE PARTICIPATION TO INCLUDE PROOF OF A CERTIFIED MINORITY BUSINESS ENTERPRISE COMMITMENT BY STATING:

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

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

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

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

(IX) REQUIRE EACH GENERAL CONTRACTOR TO:

1. MAINTAIN A PARTICIPATION LEVEL FROM MINORITY BUSINESS ENTERPRISES THAT IS CONSISTENT WITH THE PARTICIPATION LEVEL REFERENCED UNDER ITEM (VI)² OF THIS PARAGRAPH; OR

2. PROVIDE JUSTIFICATION FOR THE GENERAL CONTRACTOR'S INABILITY TO MAINTAIN THAT PARTICIPATION LEVEL.

(4) (I) BEFORE ACCEPTING A CERTIFICATION PROGRAM UNDER PARAGRAPH (3)(II) OF THIS SUBSECTION, THE WSSC SHALL EXAMINE THE PROGRAM TO ENSURE THAT IT ADHERES TO THE GUIDELINES PROVIDED IN THIS PARAGRAPH.

(II) UNLESS THE ~~STATE CERTIFICATION~~ CERTIFYING AGENCY DETERMINES THAT AN INDIVIDUAL'S CLAIM IS INVALID, BONA FIDE MINORITY GROUP MEMBERSHIP SHALL BE ESTABLISHED ON THE BASIS OF THE INDIVIDUAL'S CLAIM THAT THE INDIVIDUAL IS A MEMBER OF A MINORITY GROUP AND IS SO REGARDED BY THAT PARTICULAR MINORITY COMMUNITY.

(III) 1. AN ELIGIBLE MINORITY BUSINESS ENTERPRISE SHALL BE AN INDEPENDENT BUSINESS.

2. THE OWNERSHIP AND CONTROL OF THE ELIGIBLE MINORITY BUSINESS ENTERPRISE BY MINORITIES SHALL BE REAL, SUBSTANTIAL, AND CONTINUING AND SHALL GO BEYOND THE PRO FORMA OWNERSHIP OF THE BUSINESS AS REFLECTED IN ITS OWNERSHIP DOCUMENTS.

3. THE MINORITY OWNERS SHALL ENJOY THE CUSTOMARY INCIDENTS OF OWNERSHIP AND SHALL SHARE IN THE RISKS AND PROFITS COMMENSURATE WITH THEIR OWNERSHIP INTERESTS AS DEMONSTRATED BY AN EXAMINATION OF THE SUBSTANCE RATHER THAN FORM OF ARRANGEMENTS.

4. RECOGNITION OF THE BUSINESS AS A SEPARATE ENTITY FOR TAX OR CORPORATE PURPOSES IS NOT NECESSARILY SUFFICIENT FOR RECOGNITION AS A MINORITY BUSINESS ENTERPRISE.

5. IN DETERMINING WHETHER A POTENTIAL MINORITY BUSINESS ENTERPRISE IS AN INDEPENDENT BUSINESS, THE ~~STATE CERTIFICATION~~ CERTIFYING AGENCY SHALL CONSIDER ALL RELEVANT FACTORS, INCLUDING:

A. THE DATE THE BUSINESS WAS ESTABLISHED;

B. THE ADEQUACY OF ITS RESOURCES FOR THE WORK OF THE CONTRACT; AND

C. THE DEGREE TO WHICH FINANCIAL, EQUIPMENT LEASING, AND OTHER RELATIONSHIPS WITH NONMINORITY BUSINESSES VARY FROM INDUSTRY PRACTICE.

(IV) 1. THE MINORITY OWNERS ALSO SHALL POSSESS THE POWER TO DIRECT OR CAUSE THE DIRECTION OF THE MANAGEMENT AND POLICIES OF THE BUSINESS AND TO MAKE THE DAY-TO-DAY AS WELL AS MAJOR DECISIONS ON MATTERS OF MANAGEMENT, POLICY, AND OPERATIONS.

2. THE BUSINESS MAY NOT BE SUBJECT TO ANY FORMAL OR INFORMAL RESTRICTIONS, THROUGH BYLAW PROVISIONS, PARTNERSHIP AGREEMENTS, OR CHARTER REQUIREMENTS FOR CUMULATIVE

VOTING RIGHTS OR OTHERWISE THAT PREVENT THE MINORITY OWNERS, WITHOUT THE COOPERATION OR VOTE OF ANY OWNER WHO IS NOT A MINORITY, FROM MAKING A BUSINESS DECISION OF THE BUSINESS.

(V) 1. IF THE OWNERS OF THE BUSINESS WHO ARE NOT MINORITIES ARE DISPROPORTIONATELY RESPONSIBLE FOR THE OPERATION OF THE FIRM, THE FIRM IS NOT CONTROLLED BY MINORITIES AND MAY NOT BE CONSIDERED A MINORITY BUSINESS ENTERPRISE WITHIN THE MEANING OF THIS SECTION.

2. WHERE THE ACTUAL MANAGEMENT OF THE BUSINESS IS CONTRACTED OUT TO INDIVIDUALS OTHER THAN THE OWNER, THOSE PERSONS WHO HAVE THE ULTIMATE POWER TO HIRE AND FIRE THE MANAGERS MAY, FOR THE PURPOSES OF THIS SUBSECTION, BE CONSIDERED AS CONTROLLING THE BUSINESS.

(VI) 1. ALL SECURITIES THAT CONSTITUTE OWNERSHIP OR CONTROL OF A CORPORATION FOR PURPOSES OF ESTABLISHING IT AS A MINORITY BUSINESS ENTERPRISE UNDER THIS SECTION SHALL BE HELD DIRECTLY BY MINORITIES.

2. SECURITIES HELD IN TRUST, OR BY ANY GUARDIAN FOR A MINOR, MAY NOT BE CONSIDERED AS HELD BY MINORITIES IN DETERMINING THE OWNERSHIP OR CONTROL OF A CORPORATION.

(VII) 1. THE CONTRIBUTIONS OF CAPITAL OR EXPERTISE BY THE MINORITY OWNERS TO ACQUIRE THEIR INTERESTS IN THE BUSINESS SHALL BE REAL AND SUBSTANTIAL.

2. INSUFFICIENT CONTRIBUTIONS INCLUDE:

A. A PROMISE TO CONTRIBUTE CAPITAL;

B. A NOTE PAYABLE TO THE BUSINESS OR ITS OWNERS WHO ARE NOT SOCIALLY AND ECONOMICALLY DISADVANTAGED; AND

C. THE MERE PARTICIPATION AS AN EMPLOYEE, RATHER THAN AS A MANAGER.

(VIII) THE CERTIFYING AGENCY SHALL GIVE SPECIAL CONSIDERATION TO THE FOLLOWING ADDITIONAL CIRCUMSTANCES IN DETERMINING ELIGIBILITY:

1. NEWLY FORMED BUSINESSES AND BUSINESSES WHOSE OWNERSHIP OR CONTROL HAS CHANGED SINCE THE DATE OF THE ADVERTISEMENT OF THE CONTRACT SHALL BE CLOSELY SCRUTINIZED TO DETERMINE THE REASONS FOR THE TIMING OF THE FORMATION OF OR CHANGE IN THE BUSINESSES;

2. A PREVIOUS OR CONTINUING EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN OR AMONG PRESENT OWNERS SHALL BE CAREFULLY REVIEWED TO ENSURE THAT THE EMPLOYEE-OWNER HAS MANAGEMENT RESPONSIBILITIES AND CAPABILITIES DISCUSSED IN THIS SECTION; AND

3. ANY RELATIONSHIP BETWEEN A MINORITY BUSINESS ENTERPRISE AND A BUSINESS THAT IS NOT A MINORITY BUSINESS ENTERPRISE THAT HAS AN INTEREST IN THE MINORITY BUSINESS ENTERPRISE SHALL BE CAREFULLY REVIEWED TO DETERMINE IF THE INTEREST OF THE NONMINORITY BUSINESS CONFLICTS WITH THE OWNERSHIP AND CONTROL REQUIREMENTS OF THIS SECTION.

(5) (I) THE WSSC MAY CONDUCT ANY IMPARTIAL FACT-FINDING STUDY IN CONNECTION WITH A MINORITY BUSINESS ENTERPRISE PROGRAM FOR CONSISTENCY WITH APPLICABLE LAW.

(II) THE WSSC SHALL REPORT THE FINDINGS OF ANY REVIEW COMPLETED UNDER THIS PARAGRAPH TO THE MONTGOMERY COUNTY AND PRINCE GEORGE'S COUNTY DELEGATIONS TO THE MARYLAND GENERAL ASSEMBLY.

(6) BY SEPTEMBER 15 OF EACH YEAR, THE WSSC SHALL ISSUE A REPORT CONCERNING THE IMPLEMENTATION AND ADMINISTRATION OF THE MINORITY BUSINESS ENTERPRISE PROGRAM FOR THE FISCAL YEAR ENDING ON THE PRECEDING JUNE 30, AND APPROPRIATE RECOMMENDATIONS CONCERNING THE PROGRAM, TO THE MONTGOMERY COUNTY AND PRINCE GEORGE'S COUNTY SENATE AND HOUSE DELEGATIONS TO THE MARYLAND GENERAL ASSEMBLY.

(7) THE PROVISIONS OF THIS SUBSECTION SHALL BE NULL AND VOID AND MAY NOT BE ENFORCED AFTER JULY 1, 2012.

3-109.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

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

(3) "MINORITY BUSINESS ENTERPRISE" MEANS ANY LEGAL ENTITY THAT IS ORGANIZED TO ENGAGE IN COMMERCIAL TRANSACTIONS AND AT LEAST 51% OWNED AND CONTROLLED BY ONE OR MORE INDIVIDUALS WHO ARE MEMBERS OF A GROUP THAT IS:

(I) DISADVANTAGED SOCIALLY OR ECONOMICALLY BY THE EFFECTS OF PAST DISCRIMINATION, INCLUDING DISCRIMINATION AS TO CERTIFICATION; AND

(II) IDENTIFIED BY A STUDY CONDUCTED IN ACCORDANCE WITH THIS SECTION OR A SIMILAR STUDY PREVIOUSLY CONDUCTED.

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

(B) (1) BY RESOLUTION AND BY ADOPTING REGULATIONS, THE WSSC SHALL ESTABLISH A MINORITY BUSINESS UTILIZATION PROGRAM TO FACILITATE THE PARTICIPATION OF RESPONSIBLE CERTIFIED MINORITY BUSINESS ENTERPRISES IN CONTRACTS AWARDED BY THE WSSC FOR GOODS AND SERVICES NOT COVERED BY § 3-102 OF THIS SUBTITLE IF:

(I) THE WSSC DETERMINES THAT MINORITY BUSINESS ENTERPRISES ARE UNDERREPRESENTED IN THE AWARD OF THESE CONTRACTS DUE TO THE EFFECTS OF PAST DISCRIMINATION; AND

(II) THE WSSC DETERMINES THAT SUCH A PROGRAM IS NECESSARY TO REMEDY THE EFFECTS OF PAST DISCRIMINATION AGAINST MINORITY BUSINESS ENTERPRISES IN CONTRACTING WITH THE WSSC.

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

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

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

(C) THE REGULATIONS THAT ESTABLISH THE PROGRAM UNDER SUBSECTION (B) OF THIS SECTION SHALL INCLUDE PROVISIONS THAT:

(1) RECOGNIZE THE CERTIFICATION OF MINORITY BUSINESS ENTERPRISES BY THE STATE CERTIFICATION AGENCY DESIGNATED UNDER § 14-303(B) OF THE STATE FINANCE AND PROCUREMENT ARTICLE;

(2) RECOGNIZE ANY OTHER CERTIFICATION PROGRAM THAT IN THE JUDGMENT OF THE WSSC SUBSTANTIALLY DUPLICATES THE REQUIREMENTS OF THE STATE CERTIFICATION AGENCY;

(3) PROVIDE FOR MINORITY BUSINESS PARTICIPATION THROUGH SUBCONTRACTING;

(4) EXCEPT AS PROVIDED IN ITEM (5) OF THIS SUBSECTION, PROVIDE FOR A SYSTEM OF GRANTING A PREFERENCE OF UP TO THE LESSER OF 5% OR \$50,000 TO MINORITY BUSINESS ENTERPRISES IN EVALUATING BIDS AND PROPOSALS;

(5) SUBJECT TO THE PROVISIONS OF SUBSECTION (E) OF THIS SECTION, ESTABLISH A SHELTERED MARKET PROGRAM IN WHICH BIDDING ON PROCUREMENT CONTRACTS DESIGNATED BY THE WSSC AS APPROPRIATE IS RESTRICTED TO CERTIFIED MINORITY BUSINESS ENTERPRISES;

(6) PROVIDE FOR THE GRADUATION OF A MINORITY BUSINESS ENTERPRISE FROM THE PROGRAM IF THE WSSC DETERMINES THAT THE

MINORITY BUSINESS ENTERPRISE NO LONGER REQUIRES THE ASSISTANCE OR BENEFITS OFFERED BY THE PROGRAM;

(7) REQUIRE THE SOLICITATION DOCUMENT ACCOMPANYING EACH SOLICITATION TO SET FORTH THE REGULATIONS OF THE MINORITY BUSINESS UTILIZATION PROGRAM;

(8) REQUIRE THE GEOGRAPHIC LOCATION AND THE PRINCIPAL PLACE OF BUSINESS OF THE MINORITY BUSINESS ENTERPRISE TO BE A CONSIDERATION FOR PARTICIPATION IN THIS PROGRAM, INCLUDING REQUIRING MONTGOMERY COUNTY BUSINESSES AND PRINCE GEORGE'S COUNTY BUSINESSES TO EACH HAVE A TARGETED PERCENTAGE OF AT LEAST 40% OF ANY CONTRACTS;

(9) AUTHORIZE THE WSSC TO REFUSE TO RECOGNIZE THE CERTIFICATION OF ANY BUSINESS FOUND TO BE IN VIOLATION OF THE PURPOSES OF THE PROGRAM AND TO PERMANENTLY BAR ANY ACTIVE PRINCIPALS OF A VIOLATING BUSINESS FROM FUTURE PARTICIPATION IN THE PROGRAM;

(10) PERMIT THE WAIVER OF ALL OR PART OF THE PROVISIONS OF THE PROGRAM FOR A SPECIFIC CONTRACT IF THE WSSC DETERMINES THAT THE APPLICATION OF THE PROGRAM TO THE CONTRACT CONFLICTS WITH THE WSSC'S OVERALL OBJECTIVES AND RESPONSIBILITIES, AND REQUIRE THE WSSC TO REPORT ANNUALLY TO THE MONTGOMERY COUNTY AND PRINCE GEORGE'S COUNTY HOUSE AND SENATE DELEGATIONS ON THOSE WAIVERS;

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

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

(II) THE NUMBER OF MINORITY BUSINESS ENTERPRISES THAT HAVE CERTIFIED, UNDER THE PENALTIES OF PERJURY, THAT THE MINORITY BUSINESS ENTERPRISE HAS ENTERED INTO AN AGREEMENT WITH

THE BIDDER TO PROVIDE GOODS OR SERVICES UNDER SPECIFIC TERMS OUTLINED IN THE CERTIFICATION BEFORE THE BID IS ACCEPTED;

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

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

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

(D) BEFORE ACCEPTING A CERTIFICATION PROGRAM UNDER SUBSECTION (C)(2) OF THIS SECTION, THE WSSC SHALL EXAMINE THE PROGRAM TO ENSURE THAT:

(1) IT ADHERES TO THE GUIDELINES SET FORTH IN § 3-102(F)(4) OF THIS SUBTITLE; AND

(2) THE PRINCIPAL OWNER OF AN ELIGIBLE MINORITY BUSINESS ENTERPRISE IS IN NOT MORE THAN ONE CERTIFIED BUSINESS THAT IS PARTICIPATING IN THE WSSC MINORITY BUSINESS ENTERPRISE PROGRAM UNDER THIS SECTION.

(E) (1) THE SHELTERED MARKET PROGRAM ESTABLISHED IN SUBSECTION (C)(5) OF THIS SECTION MAY NOT BE USED UNTIL ALL LESS RESTRICTIVE REMEDIES UNDER SUBSECTION (C) OF THIS SECTION AND RACE-NEUTRAL REMEDIES SUCH AS ASSISTANCE WITH BONDING REQUIREMENTS, FINANCING, OR BIDDING PROCEDURES FOR SMALL FIRMS HAVE BEEN USED AND FOUND TO BE INEFFECTIVE.

(2) ON THE BID OF AT LEAST THREE CERTIFIED MINORITY BUSINESS CONTRACTORS, A CONTRACT SHALL BE AWARDED UNDER THE SHELTERED MARKET PROGRAM TO THE LOWEST OF THOSE BIDDERS.

(3) IF FEWER THAN THREE CERTIFIED MINORITY BUSINESS ENTERPRISES BID ON A CONTRACT UNDER THE SHELTERED MARKET PROGRAM, THE CONTRACT SHALL BE AWARDED UNDER THE GENERAL PROVISIONS OF SUBSECTION (C)(4) OF THIS SECTION.

(F) (1) THE OFFICE SHALL:

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

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

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

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

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

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

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

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

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

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

1. ARE PAID ANY UNDISPUTED AMOUNT TO WHICH THAT SUBCONTRACTOR IS ENTITLED AS PROVIDED UNDER § 15-226 OF THE STATE FINANCE AND PROCUREMENT ARTICLE; AND

2. OTHERWISE COMPLY WITH WSSC REGULATIONS;

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

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

1. IDENTIFIES THE PRIME CONTRACT; AND

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

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

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

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

(I) TERMINATION OF THE CONTRACT;

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

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

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

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

(G) (1) THE WSSC MAY CONDUCT ANY FACT-FINDING STUDY IN CONNECTION WITH A MINORITY BUSINESS ENTERPRISE PROGRAM FOR CONSISTENCY WITH APPLICABLE LAW.

(2) THE WSSC SHALL REPORT THE FINDINGS OF ANY REVIEW COMPLETED UNDER THIS SUBSECTION TO THE MONTGOMERY COUNTY AND PRINCE GEORGE'S COUNTY DELEGATIONS TO THE MARYLAND GENERAL ASSEMBLY.

(H) BY SEPTEMBER 15 OF EACH YEAR, THE WSSC SHALL ISSUE A REPORT CONCERNING THE IMPLEMENTATION AND ADMINISTRATION OF THE MINORITY BUSINESS ENTERPRISE PROGRAM FOR THE FISCAL YEAR ENDING ON THE PRECEDING JUNE 30, AND APPROPRIATE RECOMMENDATIONS CONCERNING THE PROGRAM, TO THE MONTGOMERY COUNTY AND PRINCE GEORGE'S COUNTY SENATE AND HOUSE DELEGATIONS TO THE MARYLAND GENERAL ASSEMBLY.

(I) THE PROVISIONS OF THIS SECTION SHALL BE VOID AND MAY NOT BE ENFORCED AFTER JULY 1, 2012.

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

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

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

(c) The WSSC shall adopt:

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

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

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

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

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

(2) Administrative procedures for conducting the program.

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

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

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

SECTION 2. AND BE IT FURTHER ENACTED, That if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act which can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable.

~~SECTION 3. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.~~

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

Approved by the Governor, May 17, 2007.