

SENATE BILL 978

P2

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By: **Senator Mooney**

Introduced and read first time: February 23, 2009

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Minority Business Enterprises – Goal-Setting**

3 FOR the purpose of requiring a unit to consider certain information before it sets the
4 minority business enterprise participation goal in a procurement contract;
5 making a technical correction; and generally relating to minority business
6 enterprise participation goals.

7 BY repealing and reenacting, with amendments,
8 Article – State Finance and Procurement
9 Section 14–302(a) and 14–303(b)(8)
10 Annotated Code of Maryland
11 (2006 Replacement Volume and 2008 Supplement)

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

14 **Article – State Finance and Procurement**

15 14–302.

16 (a) (1) Except for leases of real property and except as provided in
17 paragraphs (2) and (3) of this subsection, each unit shall structure procurement
18 procedures, consistent with the purposes of this subtitle, to try to achieve the following
19 results:

20 (i) a minimum of 7% of the unit's total dollar value of
21 procurement contracts is to be made directly or indirectly from certified minority
22 business enterprises classified by the certification agency as African American–owned
23 businesses;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (ii) a minimum of 10% of the unit's total dollar value of
2 procurement contracts is to be made directly or indirectly from certified minority
3 business enterprises classified by the certification agency as women-owned
4 businesses; and

5 (iii) an overall minimum of 25% of the unit's total dollar value of
6 procurement contracts is to be made directly or indirectly from all certified minority
7 business enterprises.

8 (2) (i) Except as provided in paragraph (3) of this subsection, in
9 procurement for construction, each unit shall structure procurement procedures,
10 consistent with the purposes of this subtitle, to try to achieve the following results:

11 1. a minimum of 7% of the unit's total dollar value of
12 construction contracts is to be made directly or indirectly from certified minority
13 business enterprises classified by the certification agency as African American-owned
14 businesses;

15 2. a minimum of 10% of the unit's total dollar value of
16 construction contracts is to be made directly or indirectly from certified minority
17 business enterprises classified by the certification agency as women-owned
18 businesses; and

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

22 (ii) The unit shall:

23 1. consider the practical severability of the construction
24 projects; and

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

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

30 **(4) EACH UNIT SHALL CONSIDER THE POTENTIAL POOL OF**
31 **CERTIFIED MINORITY BUSINESS ENTERPRISES THAT HAS THE TECHNICAL**
32 **EXPERTISE, AVAILABILITY, AND WILLINGNESS TO EXECUTE A PROCUREMENT**
33 **CONTRACT BEFORE THE UNIT SETS A MINORITY BUSINESS ENTERPRISE**
34 **PARTICIPATION GOAL FOR THE CONTRACT.**

35 **[(4)] (5)** Each unit shall meet the maximum feasible portion of the
36 goals stated in paragraphs (1), (2), and (3) of this subsection by using race-neutral

1 measures to facilitate minority business enterprise participation in the procurement
2 process.

3 ~~[(5)]~~ **(6)** To achieve the result specified in paragraph (1) or (2) of this
4 subsection, a contractor, including a contractor that is a certified minority business
5 enterprise, shall:

6 (i) identify specific work categories appropriate for
7 subcontracting;

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

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

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

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

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

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

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

24 ~~[(6)]~~ **(7)** (i) The unit shall make a finding whether the contractor
25 complied, in good faith, with paragraph ~~[(5)]~~ **(6)** of this subsection.

26 (ii) If the unit finds the contractor complied with paragraph
27 ~~[(5)]~~ **(6)** of this subsection, the unit may not require the contractor to renegotiate any
28 subcontract in order to achieve a different result.

29 ~~[(7)]~~ **(8)** If, during the performance of a contract, a certified minority
30 business enterprise contractor or subcontractor becomes ineligible to participate in the
31 Minority Business Enterprise Program because one or more of its owners has a
32 personal net worth that exceeds the amount specified in § 14-301(i)(3) of this subtitle:

1 (i) that ineligibility alone may not cause the termination of the
2 certified minority business enterprise's contractual relationship for the remainder of
3 the term of the contract; and

4 (ii) the certified minority business enterprise's participation
5 under the contract shall continue to be counted toward the program and contract
6 goals.

7 14-303.

8 (b) These regulations shall include:

9 (8) consistent with [§ 14-302(a)(5)] § **14-302(A)(6)** of this subtitle,
10 provisions relating to any circumstances under which a unit may waive obligations of
11 the contractor relating to minority business enterprise participation;

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 October 1, 2009.