

CHAPTER 223

(House Bill 641)

AN ACT concerning

Minority Business Enterprise Program – Participation by Race or Gender

FOR the purpose of authorizing a woman who is also a member of an ethnic or racial minority group to be certified in that category in addition to the gender category; authorizing a woman-owned business to participate in certain procurement contracts as either a woman-owned business or a business owned by a member of an ethnic or racial minority group for certain purposes within the Minority Business Enterprise Program; ~~altering a provision relating to the Department of Transportation and the application of certain requirements to certain of its procurement contracts~~; altering a certain definition; and generally relating to participation in the Minority Business Enterprise Program.

BY repealing and reenacting, without amendments,
Article – State Finance and Procurement
Section 11–101(e) and (m)
Annotated Code of Maryland
(2006 Replacement Volume and 2008 Supplement)

BY repealing and reenacting, with amendments,
Article – State Finance and Procurement
Section 14–301(i) and 14–302(a)
Annotated Code of Maryland
(2006 Replacement Volume and 2008 Supplement)

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

Article – State Finance and Procurement

11–101.

(e) (1) “Construction” means the process of building, altering, improving, or demolishing an improvement to real property.

(2) “Construction” includes any major work necessary to repair, prevent damage to, or sustain existing components of an improvement to real property.

(3) "Construction" does not include the maintenance or routine operation of an existing improvement to real property, or activities related to an energy performance contract.

(m) (1) "Procurement" means the process of:

(i) leasing real or personal property as lessee; or

(ii) buying or otherwise obtaining supplies, services, construction, construction related services, architectural services, engineering services, or services provided under an energy performance contract.

(2) "Procurement" includes the solicitation and award of procurement contracts and all phases of procurement contract administration.

14-301.

(i) (1) Subject to paragraphs (2) and (3) of this subsection, "socially and economically disadvantaged individual" means a citizen or lawfully admitted permanent resident of the United States who is:

(i) in any of the following minority groups:

1. African American – an individual having origins in any of the black racial groups of Africa;

2. American Indian/Native American – an individual having origins in any of the original peoples of North America and who is a documented member of a North American tribe, band, or otherwise has a special relationship with the United States or a state through treaty, agreement, or some other form of recognition. This includes an individual who claims to be an American Indian/Native American and who is regarded as such by the American Indian/Native American community of which the individual claims to be a part, but does not include an individual of Eskimo or Aleutian origin;

3. Asian – an individual having origins in the Far East, Southeast Asia, or the Indian subcontinent, and who is regarded as such by the community of which the person claims to be a part;

4. Hispanic – an individual of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race, and who is regarded as such by the community of which the person claims to be a part;

5. physically or mentally disabled – an individual who has an impairment that substantially limits one or more major life activity, who is

regarded generally by the community as having such a disability, and whose disability has substantially limited his or her ability to engage in competitive business; or

6. women – a woman, regardless of race or ethnicity[, unless she is also a member of an ethnic or racial minority group and elects that category in lieu of the gender category], ~~BUT IF SHE IS ALSO A MEMBER OF AN ETHNIC OR RACIAL MINORITY GROUP, A WOMAN MAY BE CERTIFIED IN THAT CATEGORY IN ADDITION TO THE GENDER CATEGORY~~; or

(ii) otherwise found by the certification agency to be a socially and economically disadvantaged individual.

(2) There is a rebuttable presumption that an individual who is a member of a minority group under paragraph (1)(i) of this subsection is socially and economically disadvantaged.

(3) An individual whose personal net worth exceeds \$1,500,000 may not be found to be economically disadvantaged.

14–302.

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

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

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

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

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

1. a minimum of 7% of the unit's total dollar value of construction contracts is to be made directly or indirectly from certified minority

business enterprises classified by the certification agency as African American–owned businesses;

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

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

(ii) The unit shall:

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

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

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

(4) (I) A WOMAN WHO IS ALSO A MEMBER OF AN ETHNIC OR RACIAL MINORITY GROUP MAY BE CERTIFIED IN THAT CATEGORY IN ADDITION TO THE GENDER CATEGORY.

(II) FOR PURPOSES OF ACHIEVING THE GOALS IN THIS SUBSECTION, A CERTIFIED MINORITY BUSINESS ENTERPRISE MAY PARTICIPATE IN A PROCUREMENT CONTRACT AND BE COUNTED AS A WOMAN–OWNED BUSINESS, OR AS A BUSINESS OWNED BY A MEMBER OF AN ETHNIC OR RACIAL GROUP, BUT NOT BOTH, IF THE BUSINESS HAS BEEN CERTIFIED IN BOTH CATEGORIES.

~~**(H) THE SPECIFIC CATEGORY USED FOR PARTICIPATION AS A CERTIFIED MINORITY BUSINESS ENTERPRISE UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH MUST BE IDENTIFIED AT THE TIME THE BID OR PROPOSAL IS SUBMITTED TO THE PROCURING AGENCY.**~~

[(4)] (5) Each unit shall meet the maximum feasible portion of the goals stated in paragraphs (1), (2), and (3) of this subsection by using race–neutral measures to facilitate minority business enterprise participation in the procurement process.

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

(i) identify specific work categories appropriate for subcontracting;

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

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

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

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

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

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

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

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

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

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

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

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

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

Approved by the Governor, May 7, 2009.