

CHAPTER 293

(House Bill 389)

AN ACT concerning

Minority Business Enterprise Program – Prohibitions ~~and Penalties for~~ Contractors

FOR the purpose of prohibiting certain ~~contractors~~ persons from engaging in certain acts when submitting a bid or proposal or performing a contract under certain circumstances; ~~requiring the Board of Public Works to impose certain penalties against certain contractors; requiring the Board to consider certain factors when determining certain penalties;~~ requiring the Governor's Office of Minority Affairs to make available a certain hotline for ~~the use of certain minority business enterprises to report a certain violation by a contractor~~ reporting certain violations of this Act; and generally relating to prohibitions ~~and penalties for contractors~~ under the Minority Business Enterprise Program.

BY repealing and reenacting, with amendments,
Article – State Finance and Procurement
Section 14–308
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

14–308.

- (a) (1) A person may not:
- (i) fraudulently obtain, hold, or attempt to obtain or hold certification;
 - (ii) aid another person in performing an act prohibited under item (i) of this paragraph;
 - (iii) willfully obstruct, impede, or attempt to obstruct or impede a State official or employee investigating the qualifications of a business entity that has requested certification;

(iv) fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain, public moneys to which the person is not entitled under this subtitle; or

(v) in any minority business enterprise matter administered under this subtitle:

1. willfully falsify, conceal, or cover up a material fact by any scheme or device;

2. make a false or fraudulent statement or representation; or

3. use a false writing or document that the person knows to contain a false or fraudulent statement or entry.

(2) EXCEPT AS OTHERWISE PROVIDED BY LAW, A CONTRACTOR MAY NOT IDENTIFY A CERTIFIED MINORITY BUSINESS ENTERPRISE IN A BID OR PROPOSAL AND:

(I) FAIL TO REQUEST, RECEIVE, OR OTHERWISE OBTAIN AUTHORIZATION FROM THE CERTIFIED MINORITY BUSINESS ENTERPRISE TO IDENTIFY THE CERTIFIED MINORITY BUSINESS ENTERPRISE IN ITS BID OR PROPOSAL;

(II) FAIL TO NOTIFY THE CERTIFIED MINORITY BUSINESS ENTERPRISE BEFORE EXECUTION OF THE CONTRACT OF ITS INCLUSION OF THE BID OR PROPOSAL;

(III) FAIL TO USE THE CERTIFIED MINORITY BUSINESS ENTERPRISE IN THE PERFORMANCE OF THE CONTRACT; OR

(IV) PAY THE CERTIFIED MINORITY BUSINESS ENTERPRISE SOLELY FOR THE USE OF ITS NAME IN THE BID OR PROPOSAL.

~~(2)~~ **(3)** A person who violates any provision of this subsection is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding 5 years or both.

(b) (1) A person may not make a false statement about whether an entity has certification.

(2) A person who violates this subsection is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$2,500 or imprisonment not exceeding 1 year or both.

~~(C) (1) UNLESS A WAIVER HAS BEEN GRANTED OR AN AMENDMENT TO A BID OR PROPOSAL HAS BEEN AUTHORIZED, A CONTRACTOR MAY NOT IDENTIFY A CERTIFIED MINORITY BUSINESS ENTERPRISE IN A BID OR PROPOSAL AND:~~

~~(I) FAIL TO NOTIFY THE CERTIFIED MINORITY BUSINESS ENTERPRISE OF ITS INCLUSION IN THE BID OR PROPOSAL;~~

~~(II) FAIL TO REQUEST A QUOTE FROM THE CERTIFIED MINORITY BUSINESS ENTERPRISE;~~

~~(III) FAIL TO UTILIZE THE CERTIFIED MINORITY BUSINESS ENTERPRISE IN THE PERFORMANCE OF THE CONTRACT; OR~~

~~(IV) PAY THE CERTIFIED MINORITY BUSINESS ENTERPRISE SOLELY FOR THE USE OF ITS NAME IN THE BID OR PROPOSAL.~~

~~(2) THE BOARD SHALL IMPOSE ONE OF THE FOLLOWING PENALTIES AGAINST A CONTRACTOR WHO VIOLATES PARAGRAPH (1) OF THIS SUBSECTION:~~

~~(I) SUSPENSION FROM BIDDING AND WORKING ON STATE CONTRACTS FOR AT LEAST 6 MONTHS; OR~~

~~(II) DEBARMENT FROM BIDDING OR PERFORMING ON STATE CONTRACTS.~~

~~(3) IN DETERMINING THE PENALTY TO BE IMPOSED UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE BOARD SHALL CONSIDER:~~

~~(I) THE GOOD FAITH OF THE CONTRACTOR; AND~~

~~(II) ANY HISTORY OF PREVIOUS VIOLATIONS BY THE CONTRACTOR.~~

~~(4) (C) THE GOVERNOR'S OFFICE OF MINORITY AFFAIRS SHALL MAKE AVAILABLE A FRAUD HOTLINE TO BE USED BY CERTIFIED MINORITY BUSINESS ENTERPRISES TO REPORT A VIOLATION OF THIS SUBSECTION BY A CONTRACTOR FOR REPORTING VIOLATIONS OF THIS SECTION.~~

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

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MARTIN O'MALLEY, Governor

Approved by the Governor, May 7, 2009.