

## CHAPTER 715

(House Bill 1297)

AN ACT concerning

### **Procurement – Minority Business Enterprises – Prime Contractors**

FOR the purpose of requiring the Board of Public Works to adopt regulations that ~~require that the solicitation documents include certain information; requiring the Board also to adopt regulations establishing goals for the participation of certified minority business enterprises as prime contractors, concerning the availability of minority business enterprises to respond competitively as prime contractors for certain procurements; promote and provide for the counting and reporting of certified minority business enterprises as prime contractors;~~ requiring certain units to include information in a certain report to the Governor's Office of Minority Affairs concerning the participation of minority business enterprises as prime contractors or as subcontractors in certain procurements; and generally relating to the participation of minority business enterprises as prime contractors in State procurements.

BY repealing and reenacting, with amendments,  
Article – State Finance and Procurement  
Section 14–303 and 14–305  
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**

14–303.

(a) (1) (i) In accordance with Title 10, Subtitle 1 of the State Government Article, the Board shall adopt regulations consistent with the purposes of this Division II to carry out the requirements of this subtitle.

(ii) The Board shall keep a record of the number of waivers requested and the number of waivers granted each year under subsection (b)(8) of this section and submit a copy of the record to the General Assembly on or before October 1 of each year, in accordance with § 2–1246 of the State Government Article.

(2) The regulations shall establish procedures to be followed by units, prospective contractors, and successful bidders or offerors to maximize notice to, and

the opportunity to participate in the procurement process by, a broad range of minority business enterprises.

(b) These regulations shall include:

(1) provisions designating one agency to certify and decertify minority business enterprises for all units through a single process that meets applicable federal requirements;

(2) a requirement that the solicitation document accompanying each solicitation set forth the expected degree of minority business enterprise participation based, in part, on:

~~(I) THE AVAILABILITY OF MINORITY BUSINESS ENTERPRISES TO RESPOND COMPETITIVELY AS A PRIME CONTRACTOR;~~

~~[(i)] (II)~~ the potential subcontract opportunities available in the prime procurement contract; and

~~[(ii)] (III)~~ the availability of certified minority business enterprises to respond competitively to the potential subcontract opportunities;

(3) a requirement that the unit provide a current list of certified minority business enterprises to each prospective contractor;

(4) provisions to ensure the uniformity of requests for bids on subcontracts;

(5) provisions relating to the timing of requests for bids on subcontracts and of submission of bids on subcontracts;

(6) provisions designed to ensure that a fiscal disadvantage to the State does not result from an inadequate response by minority business enterprises to a request for bids;

(7) provisions relating to joint ventures, under which a bidder may count toward meeting its minority business enterprise participation goal, the minority business enterprise portion of the joint venture;

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

(9) provisions requiring a monthly submission to the unit by minority business enterprises acknowledging all payments received in the preceding 30 days under a contract governed by this subtitle;

(10) a requirement that a unit shall verify and maintain data concerning payments received by minority business enterprises, including a requirement that, upon completion of a project, the unit shall compare the total dollar value actually received by minority business enterprises with the amount of contract dollars initially awarded, and an explanation of any discrepancies therein;

(11) a requirement that a unit verify that minority business enterprises listed in a successful bid are actually participating to the extent listed in the project for which the bid was submitted;

(12) provisions establishing a graduation program based on the financial viability of the minority business enterprise, using annual gross receipts or other economic indicators as may be determined by the Board;

(13) a requirement that a bid or proposal based on a solicitation with an expected degree of minority business enterprise participation identify the specific commitment of certified minority business enterprises at the time of submission; [and]

**(14) ~~PROVISIONS ESTABLISHING GOALS FOR THE PARTICIPATION~~  
~~PROMOTING AND PROVIDING FOR THE COUNTING AND REPORTING OF~~  
CERTIFIED MINORITY BUSINESS ENTERPRISES AS PRIME CONTRACTORS; AND**

[(14)] **(15)** other provisions that the Board considers necessary or appropriate to encourage participation by minority business enterprises and to protect the integrity of the procurement process.

(c) The regulations adopted under this section shall specify that a unit may not allow a business to participate as if it were a certified minority business enterprise if the business's certification is pending.

14-305.

(a) (1) Within 90 days after the end of the fiscal year, each unit shall report to the Governor's Office of Minority Affairs and the certification agency.

(2) A report under this subsection shall for the preceding fiscal year:

(i) state the total number and value of procurement contracts between the unit and certified minority business enterprises, by specific category of minority business enterprise, **INCLUDING WHETHER THE MINORITY BUSINESS ENTERPRISE PARTICIPATED AS A PRIME CONTRACTOR OR AS A SUBCONTRACTOR;**

(ii) indicate the percentage that those procurement contracts represent, by specific category of minority business enterprise, of the total number and value of procurement contracts; and

(iii) contain other such information as required by the Governor's Office of Minority Affairs and the certification agency and approved by the Board.

(3) A report under this subsection shall be in a form prescribed by the Governor's Office of Minority Affairs and the certification agency and approved by the Board.

(b) (1) On or before December 31 of each year, the Governor's Office of Minority Affairs shall submit to the Board of Public Works and, subject to § 2-1246 of the State Government Article, to the Legislative Policy Committee a report summarizing the information the Office receives under subsection (a) of this section.

(2) This report may be prepared in conjunction with the annual report required under § 9-306 of the State Government Article.

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

**Approved by the Governor, May 19, 2009.**