

SENATE BILL 628

P2

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By: **Senator Conway**

Introduced and read first time: February 3, 2012

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Minority Business Enterprise Program – Participation Subgoals – Prime**
3 **Contractors**

4 FOR the purpose of requiring, under certain circumstances, a unit of State
5 government to count the dollar value of a procurement contract made directly or
6 indirectly with a prime contractor that is a certified minority business
7 enterprise as meeting half of the certified minority business enterprise
8 participation subgoal on the contract; and generally relating to the participation
9 subgoals under the Minority Business Enterprise Program.

10 BY repealing and reenacting, with amendments,
11 Article – State Finance and Procurement
12 Section 14–302
13 Annotated Code of Maryland
14 (2009 Replacement Volume and 2011 Supplement)

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

17 **Article – State Finance and Procurement**

18 14–302.

19 (a) (1) (i) Except for leases of real property, each unit shall structure
20 procurement procedures, consistent with the purposes of this subtitle, to try to achieve
21 an overall goal of 25% of the unit's total dollar value of procurement contracts being
22 made directly or indirectly to certified minority business enterprises.

23 (ii) In consultation with the State Department of
24 Transportation and the Office of the Attorney General, the Governor's Office of
25 Minority Affairs shall establish guidelines for each unit to consider while determining

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



whether to set subgoals for the minority groups listed in § 14–301(i)(1)(i)1, 2, 3, 4, and 6 of this subtitle.

(2) Each unit shall:

(i) consider the practical severability of contracts; and

(ii) implement a program that will enable the unit to evaluate each contract to determine the appropriate minority business enterprise participation goals for the contract based, in part, on:

1. the potential subcontract opportunities available in the prime procurement contract;

2. the availability of certified minority business enterprises to respond competitively to the potential subcontract opportunities; and

3. the guidelines established under paragraph (1)(ii) of this subsection.

(3) (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.

(4) Each unit shall meet the maximum feasible portion of the goals established in accordance with this subsection by using race-neutral measures to facilitate minority business enterprise participation in the procurement process.

(5) If a unit establishes minority business enterprise participation goals for a contract, 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 paragraph; 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) offer to provide reasonable assistance to 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 or preproposal meetings or other meetings scheduled by the unit; and

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

(6) (i) 1. If a contractor does not achieve all or a part of the minority business enterprise participation goals on a contract, the unit shall make a finding of whether the contractor has demonstrated that the contractor took all necessary and reasonable steps to achieve the goals, including compliance with paragraph (5) of this subsection.

2. A waiver of any part of the minority business enterprise goals for a contract shall be granted if a contractor provides a reasonable demonstration of good-faith efforts to achieve the goals.

(ii) If the unit determines that a waiver should be granted in accordance with subparagraph (i) of this paragraph, the unit may not require the contractor to renegotiate any subcontract in order to achieve a different result.

(iii) The head of the unit may waive any of the requirements of this subsection relating to the establishment, use, and waiver of contract goals for a sole source, expedited, or emergency procurement in which the public interest cannot reasonably accommodate use of those requirements.

(iv) 1. Except for waivers granted in accordance with subparagraph (iii) of this paragraph, when a waiver determination is made, the unit shall issue the determination in writing.

2. The head of the unit shall:

A. keep one copy of the waiver determination and the reasons for the determination; and

B. forward one copy of the waiver determination to the Governor's Office of Minority Affairs.

1 (v) On or before July 31 of each year, each unit shall submit
2 directly to the Board of Public Works and the Governor's Office of Minority Affairs an
3 annual report of waivers requested and waivers granted under this paragraph.

4 (vi) The report required under subparagraph (v) of this
5 paragraph shall contain the following information on those contracts where the unit
6 considered a contractor's request for waiver of all or a portion of the minority business
7 enterprise goals:

- 8 1. the contract titles, numbers, and dates;
- 9 2. the number of waiver requests received;
- 10 3. the number of waiver requests granted; and
- 11 4. any other information specifically requested by the
12 Board.

13 (7) (i) In this paragraph, "MBE participation schedule" means a
14 schedule included in the submission of a bid or offer that identifies:

- 15 1. the certified minority business enterprises that a
16 bidder or offeror agrees to use in the performance of the contract; and
- 17 2. the percentage of contract value attributed to each
18 certified minority business enterprise.

19 (ii) 1. This paragraph applies to a bidder or offeror after
20 submission of a bid or proposal and before the execution of a contract with an expected
21 degree of minority business enterprise participation.

22 2. If the bidder or offeror determines that a minority
23 business enterprise identified in the MBE participation schedule has become or will
24 become unavailable or is ineligible to perform the work required under the contract,
25 the bidder or offeror shall notify the unit within 72 hours of making the determination.

26 (iii) 1. If a minority business enterprise identified in the
27 MBE participation schedule submitted with a bid or offer has become or will become
28 unavailable or is ineligible to perform the work required under the contract, the bidder
29 or offeror may submit a written request with the unit to amend the MBE participation
30 schedule.

31 2. The request to amend the MBE participation schedule
32 shall indicate the bidder's or offeror's efforts to substitute another certified minority
33 business enterprise to perform the work that the unavailable or ineligible minority
34 business enterprise would have performed.

1 3. Except as provided in subsubparagraph 4 of this
2 subparagraph, an MBE participation schedule may not be amended unless the
3 amendment is approved by the unit's procurement officer after consulting with the
4 unit's MBE liaison.

5 4. An MBE participation schedule may not be amended
6 after the date of contract execution unless the request is approved by the head of the
7 unit and the contract is amended.

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

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

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

18 **(9) IF A PRIME CONTRACTOR ON A PROCUREMENT CONTRACT IS**
19 **A CERTIFIED MINORITY BUSINESS ENTERPRISE, THE UNIT SHALL COUNT THE**
20 **DOLLAR VALUE OF THE PROCUREMENT CONTRACT MADE DIRECTLY OR**
21 **INDIRECTLY WITH THE PRIME CONTRACTOR AS MEETING HALF OF THE**
22 **CERTIFIED MINORITY BUSINESS ENTERPRISE SUBGOAL SET BY THE UNIT ON**
23 **THE CONTRACT.**

24 (b) (1) The provisions of §§ 14-301(f) and 14-303 of this subtitle and
25 subsection (a) of this section are inapplicable to the extent that any unit determines
26 the provisions to be in conflict with any applicable federal program requirement.

27 (2) The determination under this subsection shall be included with the
28 report required under § 14-305 of this subtitle.

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2012.