

# HOUSE BILL 379

P2

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CF 5lr2302

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By: **Delegate Bromwell**

Introduced and read first time: February 6, 2015

Assigned to: Health and Government Operations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Minority Business Enterprise Participation – Liquidated Damages –**  
3 **Architectural or Engineering Services**

4 FOR the purpose of excluding a contract for certain architectural or engineering services  
5 from the requirement to include a certain liquidated damages provision that applies  
6 in the event a contractor fails to comply in good faith with certain provisions relating  
7 to minority business enterprise participation; and generally relating to liquidated  
8 damages provisions in contracts containing minority business enterprise  
9 participation goals.

10 BY repealing and reenacting, with amendments,  
11 Article – State Finance and Procurement  
12 Section 14–303  
13 Annotated Code of Maryland  
14 (2009 Replacement Volume and 2014 Supplement)

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

17 **Article – State Finance and Procurement**

18 14–303.

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

22 (ii) The Board shall keep a record of information regarding any  
23 waivers requested in accordance with § 14–302(a)(9)(i) of this subtitle and subsection

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (b)(11) of this section and submit a copy of the record to the General Assembly on or before  
2 October 1 of each year, in accordance with § 2–1246 of the State Government Article.

3 (iii) The Board shall keep a record of the aggregate number and the  
4 identity of minority business enterprises that receive certification under the process  
5 established by the Board under subsection (b)(1) of this section and submit a copy of the  
6 record to the General Assembly on or before October 1 of each year, in accordance with §  
7 2–1246 of the State Government Article.

8 (2) The regulations shall establish procedures to be followed by units,  
9 prospective contractors, and successful bidders or offerors to maximize notice to, and the  
10 opportunity to participate in the procurement process by, a broad range of minority  
11 business enterprises.

12 (b) These regulations shall include:

13 (1) provisions:

14 (i) designating one State agency to certify and decertify minority  
15 business enterprises for all units through a single process that meets applicable federal  
16 requirements, including provisions that promote and facilitate the submission of some or  
17 all of the certification application through an electronic process;

18 (ii) for the purpose of certification under this subtitle, that promote  
19 and facilitate certification of minority business enterprises that have received certification  
20 from the U.S. Small Business Administration or a county that uses a certification process  
21 substantially similar to the process established in accordance with item (i) of this item;

22 (iii) requiring the agency designated to certify minority business  
23 enterprises to complete the agency's review of an application for certification and notify the  
24 applicant of the agency's decision within 90 days of receipt of a complete application that  
25 includes all of the information necessary for the agency to make a decision; and

26 (iv) authorizing the agency designated to certify minority business  
27 enterprises to extend the notification requirement established under item (iii) of this item  
28 once, for no more than an additional 60 days, if the agency provides the applicant with a  
29 written notice and explanation;

30 (2) a requirement that the solicitation document accompanying each  
31 solicitation set forth the expected degree of minority business enterprise participation  
32 based, in part, on the factors set forth in § 14–302(a)(3)(ii) of this subtitle;

33 (3) a requirement that bidders or offerors complete a document setting  
34 forth the percentage of the total dollar amount of the contract that the bidder or offeror  
35 agrees will be performed by certified minority business enterprises;

1 (4) a requirement that the solicitation documents completed and submitted  
2 by the bidder or offeror in connection with its minority business enterprise participation  
3 commitment must be attached to and made a part of the contract;

4 (5) **EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION**, a  
5 requirement that all contracts containing minority business enterprise participation goals  
6 shall contain a liquidated damages provision that applies in the event that the contractor  
7 fails to comply in good faith with the provisions of this subtitle or the pertinent terms of  
8 the applicable contract;

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

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

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

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

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

20 (11) consistent with § 14–302(a)(9) of this subtitle, provisions relating to any  
21 circumstances under which a unit may waive obligations of the contractor relating to  
22 minority business enterprise participation;

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

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

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

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

1 (16) a requirement that a bid or proposal based on a solicitation with an  
2 expected degree of minority business enterprise participation identify the specific  
3 commitment of certified minority business enterprises at the time of submission;

4 (17) provisions promoting and providing for the counting and reporting of  
5 certified minority business enterprises as prime contractors;

6 (18) provisions establishing standards to require a minority business  
7 enterprise to perform a commercially useful function on a contract;

8 (19) a requirement that each unit work with the Governor's Office of  
9 Minority Affairs to designate certain procurements as being excluded from the  
10 requirements of § 14-302(a) of this subtitle; and

11 (20) other provisions that the Board considers necessary or appropriate to  
12 encourage participation by minority business enterprises and to protect the integrity of the  
13 procurement process.

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

17 **(D) A CONTRACT FOR THE PERFORMANCE OF ARCHITECTURAL OR**  
18 **ENGINEERING SERVICES THAT IS SUBJECT TO SELECTION AND NEGOTIATION BY**  
19 **THE GENERAL SELECTION BOARD UNDER § 13-308 OF THIS ARTICLE IS NOT**  
20 **SUBJECT TO THE REQUIRED INCLUSION OF A LIQUIDATED DAMAGES PROVISION**  
21 **UNDER SUBSECTION (B)(5) OF THIS SECTION.**

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
23 October 1, 2015.