

SENATE BILL 324

P2

5lr2302
CF HB 379

By: **Senator Bates**

Introduced and read first time: February 6, 2015

Assigned to: Education, Health, and Environmental Affairs

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

10 (b) These regulations shall include:

11 (1) provisions:

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

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

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

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

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

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

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

- 1 (5) **EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION**, a
2 requirement that all contracts containing minority business enterprise participation goals
3 shall contain a liquidated damages provision that applies in the event that the contractor
4 fails to comply in good faith with the provisions of this subtitle or the pertinent terms of
5 the applicable contract;
- 6 (6) a requirement that the unit provide a current list of certified minority
7 business enterprises to each prospective contractor;
- 8 (7) provisions to ensure the uniformity of requests for bids on subcontracts;
- 9 (8) provisions relating to the timing of requests for bids on subcontracts
10 and of submission of bids on subcontracts;
- 11 (9) provisions designed to ensure that a fiscal disadvantage to the State
12 does not result from an inadequate response by minority business enterprises to a request
13 for bids;
- 14 (10) provisions relating to joint ventures, under which a bidder may count
15 toward meeting its minority business enterprise participation goal, the minority business
16 enterprise portion of the joint venture;
- 17 (11) consistent with § 14–302(a)(9) of this subtitle, provisions relating to any
18 circumstances under which a unit may waive obligations of the contractor relating to
19 minority business enterprise participation;
- 20 (12) provisions requiring a monthly submission to the unit by minority
21 business enterprises acknowledging all payments received in the preceding 30 days under
22 a contract governed by this subtitle;
- 23 (13) a requirement that a unit shall verify and maintain data concerning
24 payments received by minority business enterprises, including a requirement that, upon
25 completion of a project, the unit shall compare the total dollar value actually received by
26 minority business enterprises with the amount of contract dollars initially awarded, and
27 an explanation of any discrepancies therein;
- 28 (14) a requirement that a unit verify that minority business enterprises
29 listed in a successful bid are actually participating to the extent listed in the project for
30 which the bid was submitted;
- 31 (15) provisions establishing a graduation program based on the financial
32 viability of the minority business enterprise, using annual gross receipts or other economic
33 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.