

SENATE BILL 33

P2

1lr1481

(PRE-FILED)

By: **Senator Ellis**

Requested: November 1, 2020

Introduced and read first time: January 13, 2021

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **State and County Procurement – Minority Business Enterprise Program**
3 **Participation Goals**

4 FOR the purpose of requiring the Special Secretary for the Office of Small, Minority, and
5 Women Business Affairs, in consultation with the Secretary of Transportation and
6 the Attorney General, to establish a certain overall percentage participation goal for
7 certain minority business enterprises; requiring the Special Secretary to consider
8 certain information when establishing the goal; requiring each unit of State
9 government to structure procurement procedures in a certain manner to try to
10 achieve a certain goal; requiring certain county procurement officers to establish
11 certain overall percentage participation goals for certain minority business
12 enterprises; requiring the county procurement officer to consider certain information
13 when establishing the goals; requiring each county to structure procurement
14 procedures in a certain manner to try to achieve a certain goal; requiring a certain
15 study of the Minority Business Enterprise Program to evaluate certain amendments
16 made by this Act; providing for the application of certain provisions of this Act;
17 defining “county procurement officer”; altering certain definitions; making
18 conforming and stylistic changes; providing for the effective dates of this Act; making
19 certain provisions of this Act subject to a certain contingency; and generally relating
20 to minority business enterprise program participation goals.

21 BY repealing and reenacting, with amendments,
22 Article – State Finance and Procurement
23 Section 14–301, 14–302, and 14–303(b)(11)
24 Annotated Code of Maryland
25 (2015 Replacement Volume and 2020 Supplement)

26 BY repealing and reenacting, with amendments,
27 Chapter 154 of the Acts of the General Assembly of 2012, as amended by
28 Chapters 200 and 201 of the Acts of the General Assembly of 2013 and Chapter

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 340 of the Acts of the General Assembly of 2017

2 Section 2

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

5 **Article – State Finance and Procurement**

6 14–301.

7 (a) In this subtitle the following words have the meanings indicated.

8 (b) “Certification” means the determination that a legal entity is a minority
9 business enterprise for the purposes of this subtitle.

10 (c) “Certification agency” means the agency designated by the Board of Public
11 Works under § 14–303(b) of this subtitle to certify and decertify minority business
12 enterprises.

13 (d) “Certified minority business enterprise” means a minority business enterprise
14 that holds a certification.

15 (e) “Economically disadvantaged individual” means a socially disadvantaged
16 individual whose ability to compete in the free enterprise system has been impaired due to
17 diminished capital and credit opportunities as compared to others in the same or similar
18 line of business who are not socially disadvantaged.

19 (f) “Minority business enterprise” means any legal entity, except a joint venture,
20 that is:

21 (1) **(I)** organized to engage in commercial transactions;

22 **[(2)] (II)** at least 51% owned and controlled by 1 or more individuals who
23 are socially and economically disadvantaged; and

24 **[(3)] (III)** managed by, and the daily business operations of which are
25 controlled by, one or more of the socially and economically disadvantaged individuals who
26 own it; **OR**

27 **(2) (I) ORGANIZED TO ENGAGE IN COMMERCIAL TRANSACTIONS;**

28 **(II) AT LEAST 51% OWNED AND CONTROLLED BY 1 OR MORE**
29 **INDIVIDUALS WHO HAVE ORIGINS IN ANY OF THE BLACK RACIAL GROUPS OF AFRICA;**

30 **(III) MANAGED BY, AND THE DAILY BUSINESS OPERATIONS OF**
31 **WHICH ARE CONTROLLED BY, ONE OR MORE OF THE INDIVIDUALS WHO HAVE**

1 **ORIGINS IN ANY OF THE BLACK RACIAL GROUPS OF AFRICA WHO OWN IT; AND**

2 **(IV) IS NOT OWNED, CONTROLLED, OR MANAGED BY AN**
3 **INDIVIDUAL WHOSE PERSONAL NET WORTH EXCEEDS \$1,500,000, AS ADJUSTED**
4 **ANNUALLY FOR INFLATION ACCORDING TO THE CONSUMER PRICE INDEX.**

5 (g) “Minority business enterprise participation schedule” means a schedule
6 included in the submission of a bid or offer that identifies:

7 (1) the certified minority business enterprises that a bidder or offeror
8 agrees to use in the performance of the contract; and

9 (2) the percentage of contract value attributed to each certified minority
10 business enterprise.

11 (h) “Nonprofit entity” means a corporation that:

12 (1) is incorporated in the State or otherwise qualified to do business in the
13 State;

14 (2) has been determined by the Internal Revenue Service to be exempt from
15 taxation under § 501(c)(3), (4), or (6) of the Internal Revenue Code; and

16 (3) is organized to promote the interests of physically or mentally disabled
17 individuals.

18 (i) (1) Subject to paragraphs (2) and (3) of this subsection, “personal net
19 worth” means the net value of the assets of an individual remaining after total liabilities
20 are deducted.

21 (2) “Personal net worth” includes the individual’s share of assets held
22 jointly or as community property with the individual’s spouse.

23 (3) “Personal net worth” does not include:

24 (i) the individual’s ownership interest in the applicant or a certified
25 minority business enterprise;

26 (ii) the individual’s equity in his or her primary place of residence;
27 or

28 (iii) up to \$500,000 of the cash value of any qualified retirement
29 savings plans or individual retirement accounts.

30 (j) “Race-neutral measure” means a method that is or can be used to assist all
31 small businesses.

1 (k) (1) Subject to paragraphs (2) and (3) of this subsection, and in accordance
2 with the State's most recent disparity study, "socially and economically disadvantaged
3 individual" means a citizen or lawfully admitted permanent resident of the United States
4 who is:

5 (i) in any of the following minority groups:

6 1. [African American – an individual having origins in any of
7 the black racial groups of Africa;

8 [2.] American Indian/Native American – an individual having
9 origins in any of the original peoples of North America and who is a documented member
10 of a North American tribe, band, or otherwise has a special relationship with the United
11 States or a state through treaty, agreement, or some other form of recognition. This
12 includes an individual who claims to be an American Indian/Native American and who is
13 regarded as such by the American Indian/Native American community of which the
14 individual claims to be a part, but does not include an individual of Eskimo or Aleutian
15 origin;

16 [3.] 2. Asian – an individual having origins in the Far East,
17 Southeast Asia, or the Indian subcontinent, and who is regarded as such by the community
18 of which the person claims to be a part;

19 [4.] 3. Hispanic – an individual of Mexican, Puerto Rican, Cuban,
20 Central or South American, or other Spanish culture or origin, regardless of race, and who
21 is regarded as such by the community of which the person claims to be a part;

22 [5.] 4. physically or mentally disabled – notwithstanding the
23 State's most recent disparity study, an individual who has an impairment that
24 substantially limits one or more major life activities, who is regarded generally by the
25 community as having such a disability, and whose disability has substantially limited his
26 or her ability to engage in competitive business; or

27 [6.] 5. women – a woman, regardless of race or ethnicity; or

28 (ii) otherwise found by the certification agency to be a socially and
29 economically disadvantaged individual.

30 (2) There is a rebuttable presumption that an individual who is a member
31 of a minority group under paragraph (1)(i) of this subsection is socially and economically
32 disadvantaged.

33 (3) An individual whose personal net worth exceeds \$1,500,000, as
34 adjusted annually for inflation according to the Consumer Price Index, may not be found to
35 be economically disadvantaged.

1 (l) “Socially disadvantaged individual” means an individual who has been
2 subjected to racial or ethnic prejudice or cultural bias within American society because of
3 membership in a group and without regard to individual qualities. Social disadvantage
4 must stem from circumstances beyond the control of the individual.

5 14–302.

6 (a) (1) (i) 1. Except for leases of real property, each unit shall structure
7 procurement procedures, consistent with the purposes of this subtitle, to try to achieve [an]
8 overall percentage [goal] **PARTICIPATION GOALS** of the unit’s total dollar value of
9 procurement contracts being made directly or indirectly to:

10 **A. certified minority business enterprises DESCRIBED**
11 **UNDER § 14–301(F)(1) OF THIS SUBTITLE; AND**

12 **B. CERTIFIED MINORITY BUSINESS ENTERPRISES**
13 **DESCRIBED UNDER § 14–301(F)(2) OF THIS SUBTITLE.**

14 2. Notwithstanding subparagraph 1 of this
15 subparagraph, the following contracts may not be counted as part of a unit’s total dollar
16 value of procurement contracts:

17 **A.** a procurement contract awarded in accordance with
18 Subtitle 1 of this title;

19 **B.** a procurement contract awarded to a nonprofit entity in
20 accordance with requirements mandated by State or federal law; and

21 **C.** a procurement by the Maryland Developmental
22 Disabilities Administration of the Maryland Department of Health for family and
23 individual support services, community residential services, resource coordination services,
24 behavioral support services, vocational and day services, and respite services, as those
25 terms are defined in regulations adopted by the Maryland Department of Health.

26 (ii) 1. The overall percentage [goal] **PARTICIPATION GOALS**
27 **FOR CERTIFIED MINORITY BUSINESS ENTERPRISES DESCRIBED UNDER §**
28 **14–301(F)(1) AND (2) OF THIS SUBTITLE** shall be established on a biennial basis by the
29 Special Secretary for the Office of Small, Minority, and Women Business Affairs, in
30 consultation with the Secretary of Transportation and the Attorney General.

31 2. During any year in which there is a delay in establishing
32 the overall [goal] **GOALS**, the previous year’s [goal] **GOALS** will apply.

33 (iii) 1. In consultation with the Secretary of Transportation and
34 the Attorney General, the Special Secretary for the Office of Small, Minority, and Women
35 Business Affairs shall establish guidelines on a biennial basis for each unit to consider

1 while determining whether to set subgoals for the minority groups listed in §
2 14–301(k)(1)(i)1, 2, 3, 4, [and 6] **AND 5** of this subtitle.

3 2. During any year in which there is a delay in establishing
4 the subgoal guidelines, the previous year’s subgoal guidelines will apply.

5 (iv) 1. The Special Secretary for the Office of Small, Minority,
6 and Women Business Affairs, in consultation with the Secretary of Transportation and the
7 Attorney General, shall establish goals and subgoal guidelines that, to the maximum extent
8 feasible, approximate the level of minority business enterprise participation that would be
9 expected in the absence of discrimination.

10 2. In establishing overall goals and subgoal guidelines, the
11 Special Secretary for the Office of Small, Minority, and Women Business Affairs shall
12 provide for public participation by consulting with minority, women’s, and general
13 contractor groups, community organizations, and other officials or organizations that could
14 be expected to have information concerning:

15 A. the availability of minority– and women–owned
16 businesses;

17 B. the effects of discrimination on opportunities for
18 minority– and women–owned businesses; and

19 C. the State’s operation of the Minority Business Enterprise
20 Program.

21 (v) In establishing overall goals, the factors to be considered shall
22 include:

23 1. the relative availability of minority– and women–owned
24 businesses to participate in State procurement as demonstrated by the State’s most recent
25 disparity study;

26 2. past participation of minority business enterprises in
27 State procurement, except for procurement related to leases of real property; [and]

28 3. other factors that contribute to constitutional goal setting;

29 **AND**

30 4. **THE PERCENTAGE OF THE POPULATION OF THE**
31 **STATE WHO HAVE ORIGINS IN ANY OF THE BLACK RACIAL GROUPS OF AFRICA.**

32 (vi) Notwithstanding § 12–101 of this article, the Special Secretary
33 for the Office of Small, Minority, and Women Business Affairs shall adopt regulations in
34 accordance with Title 10, Subtitle 1 of the State Government Article setting forth the

1 State's overall [goal] GOALS.

2 (2) The Special Secretary for the Office of Small, Minority, and Women
3 Business Affairs, in consultation with the Secretary of Transportation and the Attorney
4 General, shall establish guidelines for each unit to consider when determining the
5 appropriate minority business enterprise [participation] percentage [goal]
6 PARTICIPATION GOALS for a procurement contract in accordance with paragraph (3) of
7 this subsection.

8 (3) Each unit shall:

9 (i) consider the practical severability of all contracts and, in
10 accordance with § 11-201 of this article, may not bundle contracts;

11 (ii) implement a program that will enable the unit to evaluate each
12 contract to determine the appropriate minority business enterprise participation goals, if
13 any, for the contract based on:

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

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

18 3. the contract [goal] PARTICIPATION GOALS guidelines
19 established under paragraph (2) of this subsection;

20 4. the subgoal guidelines established under paragraph (1)(iii)
21 of this subsection; and

22 5. other factors that contribute to constitutional goal setting;

23 (iii) monitor and collect data with respect to prime contractor
24 compliance with contract PARTICIPATION goals; and

25 (iv) institute corrective action when prime contractors do not make
26 good-faith efforts to comply with contract PARTICIPATION goals.

27 (4) Units may not use quotas or any project goal-setting process that:

28 (i) solely relies on the State's overall numerical [goal] GOALS, or
29 any other jurisdiction's overall numerical [goal] GOALS; or

30 (ii) fails to incorporate the analysis outlined in paragraph (3)(ii) of
31 this subsection.

1 (5) (i) A woman who is also a member of an ethnic or racial minority
2 group may be certified in that category in addition to the gender category.

3 (ii) For purposes of achieving the goals in this subsection, a certified
4 minority business enterprise may participate in a procurement contract and be counted as
5 a woman–owned business, or as a business owned by a member of an ethnic or racial group,
6 but not both, if the business has been certified in both categories.

7 (6) Each unit shall meet the maximum feasible portion of the State’s
8 overall [goal] GOALS established in accordance with this subsection by using race–neutral
9 measures to facilitate minority business enterprise participation in the procurement
10 process.

11 (7) If a unit establishes minority business enterprise participation goals for
12 a contract, a contractor, including a contractor that is a certified minority business
13 enterprise, shall:

14 (i) identify specific work categories appropriate for subcontracting;

15 (ii) at least 10 days before bid opening, solicit minority business
16 enterprises, through written notice that:

17 1. describes the categories of work under item (i) of this
18 paragraph; and

19 2. provides information regarding the type of work being
20 solicited and specific instructions on how to submit a bid;

21 (iii) attempt to make personal contact with the firms in item (ii) of
22 this paragraph;

23 (iv) offer to provide reasonable assistance to minority business
24 enterprises to fulfill bonding requirements or to obtain a waiver of those requirements;

25 (v) in order to publicize contracting opportunities to minority
26 business enterprises, attend prebid or preproposal meetings or other meetings scheduled
27 by the unit; and

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

31 (8) The Special Secretary for the Office of Small, Minority, and Women
32 Business Affairs shall:

33 (i) in consultation with the Secretary of Transportation and the
34 Attorney General, establish procedures governing how the participation of minority

1 business enterprise prime contractors is counted toward contract **PARTICIPATION** goals;
2 and

3 (ii) notwithstanding § 12–101 of this article, adopt regulations
4 setting forth the procedures established in accordance with this paragraph.

5 (9) (i) 1. If a contractor, including a certified minority business
6 enterprise, does not achieve all or a part of the minority business enterprise participation
7 goals on a contract, the unit shall make a finding of whether the contractor has
8 demonstrated that the contractor took all necessary and reasonable steps to achieve the
9 goals, including compliance with paragraph (7) of this subsection.

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

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

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

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

23 2. The head of the unit shall:

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

26 B. forward one copy of the waiver determination to the
27 Governor’s Office of Small, Minority, and Women Business Affairs.

28 (v) On or before July 31 of each year, each unit shall submit directly
29 to the Board of Public Works and the Governor’s Office of Small, Minority, and Women
30 Business Affairs an annual report of waivers requested and waivers granted under this
31 paragraph.

32 (vi) The report required under subparagraph (v) of this paragraph
33 shall contain the following information on those contracts where the unit considered a
34 contractor’s request for waiver of all or a portion of the minority business enterprise
35 **PARTICIPATION** goals:

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

5 (10) (i) 1. This paragraph applies to a bidder or offeror after
6 submission of a bid or proposal and before the execution of a contract with an expected
7 degree of minority business enterprise participation.

8 2. If the bidder or offeror determines that a minority
9 business enterprise identified in the minority business enterprise participation schedule
10 has become or will become unavailable or ineligible to perform the work required under the
11 contract, the bidder or offeror shall notify the unit within 72 hours of making the
12 determination.

13 (ii) 1. If a minority business enterprise identified in the minority
14 business enterprise participation schedule submitted with a bid or offer has become or will
15 become unavailable or ineligible to perform the work required under the contract, the
16 bidder or offeror may submit a written request with the unit to amend the minority
17 business enterprise participation schedule.

18 2. The request to amend the minority business enterprise
19 participation schedule shall indicate the bidder's or offeror's efforts to substitute another
20 certified minority business enterprise to perform the work that the unavailable or ineligible
21 minority business enterprise would have performed.

22 (iii) A minority business enterprise participation schedule may not
23 be amended unless:

24 1. the bidder or offeror provides a satisfactory explanation of
25 the reason for inclusion of the unavailable or ineligible firm on the minority business
26 enterprise participation schedule; and

27 2. the amendment is approved by the unit's procurement
28 officer after consulting with the unit's minority business enterprise liaison.

29 (11) (i) This paragraph applies after execution of a contract with an
30 expected degree of minority business enterprise participation.

31 (ii) The minority business enterprise participation schedule,
32 including any amendment, shall be attached to and made a part of the executed contract.

33 (iii) 1. A. Except as provided in subsubsubparagraph B of this
34 subsubparagraph, for purposes of this subparagraph, good cause for removal of a certified

1 minority business enterprise after contract execution includes documented
2 nonperformance by the minority business enterprise or election by the certified minority
3 business enterprise to cease work on the contract.

4 B. Failure of a certified minority business enterprise to
5 provide a bond requested by a contractor in violation of § 13–227 of this article may not be
6 considered nonperformance by the minority business enterprise.

7 2. A contractor may not terminate or otherwise cancel the
8 contract of a certified minority business enterprise subcontractor listed in the minority
9 business enterprise participation schedule without showing good cause and obtaining the
10 prior written consent of the minority business enterprise liaison and approval of the head
11 of the unit.

12 3. The unit shall send a copy of the written consent obtained
13 under subsubparagraph 2 of this subparagraph to the Governor’s Office of Small, Minority,
14 and Women Business Affairs.

15 (iv) A minority business enterprise participation schedule may not
16 be amended after the date of contract execution unless the request is approved by the head
17 of the unit and the contract is amended.

18 (12) If, during the performance of a contract, a certified minority business
19 enterprise contractor or subcontractor becomes ineligible to participate in the Minority
20 Business Enterprise Program because one or more of its owners has a personal net worth
21 that exceeds the amount specified in [§ 14–301(k)(3)] **§ 14–301(F)(2)(IV) OR (K)(3)** of this
22 subtitle, **AS APPLICABLE**:

23 (i) that ineligibility alone may not cause the termination of the
24 certified minority business enterprise’s contractual relationship for the remainder of the
25 term of the contract; and

26 (ii) the certified minority business enterprise’s participation under
27 the contract shall continue to be counted toward the program and contract
28 **PARTICIPATION** goals.

29 (13) (i) Except as provided in subparagraph (ii) of this paragraph, a
30 nonprofit entity participating as a minority business enterprise on a procurement contract
31 awarded by a unit before July 1, 2015, may continue to participate in the contract until the
32 contract expires or otherwise terminates, including all options, renewals, and other
33 extensions.

34 (ii) 1. The nonprofit entity’s participation may not be counted
35 toward achieving the minority business enterprise participation goals in this subsection.

36 2. The unit may not require that a certified minority
37 business enterprise be substituted for the nonprofit entity in order to meet the minority

1 business enterprise goals for the procurement contract.

2 (14) (i) For purposes of this paragraph and paragraph (15) of this
3 subsection, “regular dealer”:

4 1. means a firm that owns, operates, or maintains a store, a
5 warehouse, or any other establishment in which the materials, supplies, articles, or
6 equipment are of the general character described by the specifications required under the
7 contract and are bought, kept in stock, or regularly sold or leased to the public in the usual
8 course of business; and

9 2. does not include a packager, a broker, a manufacturer’s
10 representative, or any other person that arranges or expedites transactions.

11 (ii) A unit may apply only 60% of the costs of the materials and
12 supplies provided by the certified minority business enterprise if the certified minority
13 business enterprise is a regular dealer for purposes of achieving the minority business
14 enterprise contract [goal] GOALS.

15 (15) With respect to materials or supplies purchased from a certified
16 minority business enterprise that is neither a manufacturer nor a regular dealer:

17 (i) a unit may apply the entire amount of fees or commissions
18 charged for assistance in the procurement of the materials and supplies, fees, or
19 transportation charges for the delivery of materials and supplies required on a procurement
20 toward minority business enterprise contract PARTICIPATION goals, provided a unit
21 determines the fees to be reasonable and not excessive as compared with fees customarily
22 allowed for similar services; and

23 (ii) a unit may not apply any portion of the costs of the materials and
24 supplies toward minority business enterprise goals.

25 **(B) (1) IN THIS SUBSECTION, “COUNTY PROCUREMENT OFFICER” MEANS**
26 **THE INDIVIDUAL RESPONSIBLE FOR OVERSEEING THE PROCUREMENT PROCESSES**
27 **OF THE COUNTY.**

28 **(2) THIS SUBSECTION APPLIES TO ANY COUNTY THAT HAS**
29 **ESTABLISHED A PROCUREMENT PROGRAM UNDER THE LAWS OF THE COUNTY THAT**
30 **SEEKS TO ENCOURAGE AND ASSIST THE PARTICIPATION OF MINORITY BUSINESSES**
31 **IN THE COUNTY PROCUREMENT PROCESS.**

32 **(3) (I) EACH COUNTY PROCUREMENT OFFICER SHALL ESTABLISH,**
33 **ON A BIENNIAL BASIS, AN OVERALL PERCENTAGE PARTICIPATION GOAL FOR**
34 **MINORITY BUSINESS ENTERPRISES DESCRIBED UNDER § 14-301(F)(2) OF THIS**
35 **SUBTITLE.**

1 **(ii) IN ESTABLISHING THE GOAL UNDER SUBPARAGRAPH (I) OF**
 2 **THIS PARAGRAPH, EACH COUNTY PROCUREMENT OFFICER SHALL CONSIDER THE**
 3 **PERCENTAGE OF THE POPULATION OF THE COUNTY WHO HAVE ORIGINS IN ANY OF**
 4 **THE BLACK RACIAL GROUPS OF AFRICA.**

5 **(4) EXCEPT FOR LEASES OF REAL PROPERTY, EACH COUNTY SHALL**
 6 **STRUCTURE PROCUREMENT PROCEDURES, CONSISTENT WITH THE PURPOSES OF**
 7 **THIS SUBTITLE, TO TRY TO ACHIEVE THE OVERALL PERCENTAGE PARTICIPATION**
 8 **GOAL OF THE COUNTY'S TOTAL DOLLAR VALUE OF PROCUREMENT CONTRACTS**
 9 **BEING MADE DIRECTLY OR INDIRECTLY TO CERTIFIED MINORITY BUSINESS**
 10 **ENTERPRISES DESCRIBED UNDER § 14-301(F)(2) OF THIS SUBTITLE.**

11 **[(b)] (C) (1)** The provisions of §§ 14-301(f) and 14-303 of this subtitle and
 12 **[subsection] SUBSECTIONS (a) AND (B)** of this section are inapplicable to the extent that
 13 any unit determines the provisions to be in conflict with any applicable federal program
 14 requirement.

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

17 14-303.

18 (b) These regulations shall include:

19 (11) provisions relating to joint ventures, under which a bidder may count
 20 toward meeting its minority business enterprise participation **[goal] GOALS**, the minority
 21 business enterprise portion of the joint venture;

22 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
 23 as follows:

24 **Chapter 154 of the Acts of 2012, as amended by Chapters 200 and 201 of the Acts**
 25 **of 2013 and Chapter 340 of the Acts of 2017**

26 SECTION 2. AND BE IT FURTHER ENACTED, That the Certification Agency, in
 27 consultation with the General Assembly and the Office of the Attorney General, shall
 28 initiate a study of the Minority Business Enterprise Program, **AS AMENDED BY CHAPTER**
 29 **__ (1LR1481), SECTION 1 OF THE ACTS OF THE GENERAL ASSEMBLY OF 2021**, to
 30 evaluate the Program's continued compliance with the requirements of the Croson decision
 31 and any subsequent federal or constitutional requirements. In preparation for the study,
 32 the Board of Public Works may adopt regulations authorizing a unit of State government
 33 to require bidders and offerors to submit information necessary for the conduct of the study.
 34 The Board of Public Works may designate that certain information received in accordance
 35 with regulations adopted under this section shall be confidential. Notwithstanding that
 36 certain information may be designated by the Board of Public Works as confidential, the
 37 Certification Agency may provide the information to any person that is under contract with

1 the Certification Agency to assist in conducting the study. The study shall also evaluate
2 race-neutral programs and other methods that can be used to address the needs of minority
3 businesses. The final report on the study shall be submitted to the Legislative Policy
4 Committee of the General Assembly, in accordance with [§ 2-1246] § 2-1257 of the State
5 Government Article, before September 30, 2021, so that the General Assembly may review
6 the report before the 2022 Session.

7 SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall take
8 effect October 1, 2021, contingent on:

9 (1) receipt by the Legislative Policy Committee of the General Assembly
10 before September 30, 2021, of the final report required under Section 2 of this Act; and

11 (2) a finding in the report that the Minority Business Enterprise Program,
12 as amended by Section 1 of this Act, is in compliance with the Croson decision and any
13 subsequent federal or constitutional requirements.

14 SECTION 4. AND BE IT FURTHER ENACTED, That, except as provided in Section
15 3 of this Act, this Act shall take effect June 1, 2021.