

SENATE BILL 721

P2

1r2435
CF HB 797

By: **Senator Hester**

Introduced and read first time: February 5, 2021

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 24, 2021

CHAPTER _____

1 AN ACT concerning

2 **Procurement – Small Business Reserve Program – Administration and**
3 **Application**

4 FOR the purpose of providing that the Small Business Reserve Program applies to certain
5 universities in the State; specifying certain guidelines that the Governor’s Office of
6 Small, Minority, and Women Business Affairs is required to establish for the
7 administration of the Program; requiring that certain guidelines for the Program be
8 developed in partnership with certain persons; requiring the Governor’s Office of
9 Small, Minority, and Women Business Affairs to take certain actions to assist small
10 businesses with procurement procedures and opportunities; requiring that a unit
11 assess certain procurements up to and including a certain dollar value under the
12 guidelines for the Program and either designate the procurement for the Program or
13 request a certain waiver certified by the Governor’s Office of Small, Minority, and
14 Women Business Affairs; requiring the Governor’s Office of Small, Minority, and
15 Women Business Affairs to report to the Board of Public Works on or before a certain
16 date each year on certain matters; making the provisions of this Act severable; and
17 generally relating to the Small Business Reserve Program.

18 BY repealing and reenacting, without amendments,
19 Article – State Finance and Procurement
20 Section 11–203(e)(1) and (2), 14–501, and 14–502
21 Annotated Code of Maryland
22 (2015 Replacement Volume and 2020 Supplement)

23 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Article – State Finance and Procurement
 2 Section 11–203(e)(5), 14–503, ~~and 14–504~~ 14–504, and 14–505(c)
 3 Annotated Code of Maryland
 4 (2015 Replacement Volume and 2020 Supplement)

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

7 **Article – State Finance and Procurement**

8 11–203.

9 (e) (1) In this subsection, “University” means the University System of
 10 Maryland, Morgan State University, or St. Mary’s College of Maryland.

11 (2) Except as otherwise provided in this subsection, this Division II does
 12 not apply to the University System of Maryland, Morgan State University, or St. Mary’s
 13 College of Maryland.

14 (5) (i) Except as provided in paragraph (7) of this subsection, the
 15 following provisions of Division II of this article apply to a University:

- 16 1. § 11–205 of this subtitle (“Collusion”);
- 17 2. § 11–205.1 of this subtitle (“Falsification, concealment,
 18 etc., of material facts”);
- 19 3. § 13–219 of this article (“Required clauses –
 20 Nondiscrimination clause”);
- 21 4. § 13–225 of this article (“Retainage”);
- 22 5. Title 14, Subtitle 3 of this article (“Minority Business
 23 Participation”);
- 24 **6. TITLE 14, SUBTITLE 5 OF THIS ARTICLE (“SMALL
 25 BUSINESS RESERVE PROGRAM”);**

26 [6.] 7. Title 15, Subtitle 1 of this article (“Procurement Contract
 27 Administration”);

28 [7.] 8. § 15–226 of this article (“Policy established; timing of
 29 payments; notice upon nonpayment; disputes; appeals”); and

30 [8.] 9. Title 16 of this article (“Suspension and Debarment of
 31 Contractors”).

1 (ii) If a procurement violates the provisions of this subsection or
2 policies adopted in accordance with this subsection, the procurement contract is void or
3 voidable in accordance with the provisions of § 11–204 of this subtitle.

4 14–501.

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

6 (b) “Small business” means:

7 (1) a certified minority business enterprise, as defined in § 14–301 of this
8 title, that meets the criteria specified under item (2) of this subsection; or

9 (2) a business, other than a broker, that meets the following criteria:

10 (i) the business is independently owned and operated;

11 (ii) the business is not a subsidiary of another business;

12 (iii) the business is not dominant in its field of operation; and

13 (iv) 1. A. the wholesale operations of the business did not
14 employ more than 50 persons in its most recently completed 3 fiscal years;

15 B. the retail operations of the business did not employ more
16 than 25 persons in its most recently completed 3 fiscal years;

17 C. the manufacturing operations of the business did not
18 employ more than 100 persons in its most recently completed 3 fiscal years;

19 D. the service operations of the business did not employ more
20 than 100 persons in its most recently completed 3 fiscal years;

21 E. the construction operations of the business did not employ
22 more than 50 persons in its most recently completed 3 fiscal years; and

23 F. the architectural and engineering services of the business
24 did not employ more than 100 persons in its most recently completed 3 fiscal years; or

25 2. A. the gross sales of the wholesale operations of the
26 business did not exceed an average of \$4,000,000 in its most recently completed 3 fiscal
27 years;

28 B. the gross sales of the retail operations of the business did
29 not exceed an average of \$3,000,000 in its most recently completed 3 fiscal years;

1 C. the gross sales of the manufacturing operations of the
2 business did not exceed an average of \$2,000,000 in its most recently completed 3 fiscal
3 years;

4 D. the gross sales of the service operations of the business did
5 not exceed an average of \$10,000,000 in its most recently completed 3 fiscal years;

6 E. the gross sales of the construction operations of the
7 business did not exceed an average of \$7,000,000 in its most recently completed 3 fiscal
8 years; and

9 F. the gross sales of the architectural and engineering
10 services of the business did not exceed an average of \$4,500,000 in its most recently
11 completed 3 fiscal years.

12 (c) "Small business reserve" means those procurements that are limited to
13 responses from small businesses under § 14-502(b) of this subtitle.

14 14-502.

15 (a) Except as provided in subsection (d) of this section, this subtitle applies to all
16 procurements by a unit.

17 (b) This subsection does not apply to procurements subject to Subtitle 1 of this
18 title.

19 (c) To the extent practicable, a unit shall structure its procurement procedures to
20 achieve a minimum of 15% of the unit's total dollar value of goods, supplies, services,
21 maintenance, construction, construction-related services, and architectural and
22 engineering service contracts to be made directly to small businesses.

23 (d) The total dollar value of procurements by a unit does not include the value of
24 contracts to which this section does not apply because of a conflict with federal law.

25 (e) A unit may apply toward the unit's overall annual Small Business Reserve
26 payment achievement only those payments resulting from a procurement that is
27 designated a Small Business Reserve procurement.

28 (f) The Special Secretary for the Office of Small, Minority, and Women Business
29 Affairs, in consultation with the Attorney General, shall establish standards and guidelines
30 for participation in the Small Business Reserve Program every 5 years.

31 14-503.

32 (a) The Governor's Office of Small, Minority, and Women Business Affairs shall
33 adopt regulations to establish procedures for compiling and maintaining a comprehensive
34 bidder's list of qualified small businesses that shall be posted on the Internet.

1 (b) The Governor's Office of Small, Minority, and Women Business Affairs shall:

2 (1) establish guidelines for **THE ADMINISTRATION OF THE** Small
3 Business Reserve Program [administration], **INCLUDING GUIDELINES THAT:**

4 **(I) IN CONSULTATION WITH THE OFFICE OF THE ATTORNEY**
5 **GENERAL, ENSURE OPERATION OF THE SMALL BUSINESS RESERVE PROGRAM IN**
6 **COMPLIANCE WITH FEDERAL LAW;**

7 **(II) IN CONSULTATION WITH THE DEPARTMENT OF GENERAL**
8 **SERVICES OFFICE OF STATE PROCUREMENT, PROVIDE FOR THE EFFICIENT**
9 **EXEMPTION OF PROCUREMENTS FROM THE SMALL BUSINESS RESERVE PROGRAM,**
10 **INCLUDING CERTAIN TERM AND MASTER CONTRACTS; AND**

11 **(III) PROMOTE THE POLICIES ESTABLISHED IN SUBTITLE 3 OF**
12 **THIS TITLE;**

13 (2) ensure agency compliance with the Small Business Reserve Program;

14 (3) provide training and technical assistance to agency personnel;

15 **(4) ASSIST SMALL BUSINESSES IN COMPLYING WITH PROCEDURES**
16 **FOR BIDDING ON OR RESPONDING TO A REQUEST FOR PROPOSALS FOR**
17 **PROCUREMENT CONTRACTS;**

18 **(5) INCREASE AWARENESS OF PROCUREMENT OPPORTUNITIES FOR**
19 **SMALL BUSINESSES, FOCUSING PARTICULARLY ON THOSE BUSINESSES THAT HAVE**
20 **BEEN OPERATING FOR 3 YEARS OR LESS; and**

21 ~~(4)~~ **(6)** collect data regarding the State's utilization of small business reserve
22 vendors.

23 (c) Each unit shall ensure compliance with the regulations set forth in subsection
24 (a) of this section.

25 14-504.

26 (a) **(1)** Any procurement by a unit of goods, supplies, services, maintenance,
27 construction, construction-related services, architectural services, and engineering
28 services shall be eligible for designation for the small business reserve.

29 **(2) FOR ANY PROCUREMENT BY A UNIT ELIGIBLE FOR DESIGNATION**
30 **FOR THE SMALL BUSINESS RESERVE UNDER PARAGRAPH (1) OF THIS SUBSECTION**
31 **THAT HAS A TOTAL DOLLAR VALUE OF \$500,000 OR LESS, A UNIT SHALL:**

1 (I) ASSESS THE PROCUREMENT UNDER THE GUIDELINES FOR
 2 THE ADMINISTRATION OF THE SMALL BUSINESS RESERVE PROGRAM ESTABLISHED
 3 UNDER § 14-503(B) OF THIS SUBTITLE; AND

4 (II) 1. DESIGNATE THE PROCUREMENT FOR THE SMALL
 5 BUSINESS RESERVE; OR

6 2. REQUEST AND BE APPROVED FOR AN EXEMPTION,
 7 CERTIFIED BY THE GOVERNOR'S OFFICE OF SMALL, MINORITY, AND WOMEN
 8 BUSINESS AFFAIRS, THAT IT IS NOT PRACTICABLE TO DESIGNATE THE
 9 PROCUREMENT FOR THE SMALL BUSINESS RESERVE.

10 (b) A solicitation for procurement that has been designated for a small business
 11 reserve shall be published in the same manner as required for an invitation for bids as set
 12 forth in § 13-103(c) of this article.

13 (c) The procurement officer of a unit shall award a procurement contract
 14 designated for a small business reserve to the small business that submits a responsive bid
 15 that:

16 (1) is the lowest bid price;

17 (2) if the invitation for bids so provides, is the lowest evaluated bid price;

18 or

19 (3) is the bid or proposal most favorable to the State within the small
 20 business reserve.

21 14-505.

22 (c) (1) ON OR BEFORE JUNE 30 EACH YEAR, THE GOVERNOR'S OFFICE
 23 OF SMALL, MINORITY, AND WOMEN BUSINESS AFFAIRS SHALL REPORT TO THE
 24 BOARD OF PUBLIC WORKS AND, IN ACCORDANCE WITH § 2-1257 OF THE STATE
 25 GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY ON THE ADMINISTRATION AND
 26 EFFECTIVENESS OF THE SMALL BUSINESS RESERVE PROGRAM UNDER THIS
 27 SUBTITLE.

28 (2) On or before December 31 of each year, the Governor's Office of Small,
 29 Minority, and Women Business Affairs shall submit to the Board of Public Works and,
 30 subject to § 2-1257 of the State Government Article, to the Legislative Policy Committee a
 31 report summarizing the information the Office receives under subsection (b) of this section.

32 SECTION 2. AND BE IT FURTHER ENACTED, That, if any provision of this Act or
 33 the application thereof to any person or circumstance is held invalid for any reason in a
 34 court of competent jurisdiction, the invalidity does not affect other provisions or any other

1 application of this Act that can be given effect without the invalid provision or application,
2 and for this purpose the provisions of this Act are declared severable.

3 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2021.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.