

Chapter 78

(House Bill 790)

AN ACT concerning

Procurement – Office of Small, Minority, and Women Business Affairs – Small Business Reserve Program and Veteran–Owned Small Business Enterprise Program

FOR the purpose of providing that the Small Business Reserve Program includes certain veteran–owned small business enterprises that meet certain criteria; requiring the Office of Small, Minority, and Women Business Affairs to adopt regulations to establish a certain overall percentage goal of certain procurement contracts to be made with veteran–owned small business enterprises; requiring certain solicitation documents to include certain information; altering the required contents of a certain annual report; creating the Advisory Committee on Veteran–Owned Small Business Enterprises in the Office; providing for the membership, chair, staffing, and duties of the Advisory Committee; altering the duties of the Special Secretary for the Office; altering certain definitions; defining certain terms; and generally relating to the Office of Small, Minority, and Women Business Affairs and procurement preferences.

BY repealing and reenacting, with amendments,
Article – State Finance and Procurement
Section 14–501 and 14–601 through 14–604
Annotated Code of Maryland
(2015 Replacement Volume and 2020 Supplement)

BY adding to
Article – State Finance and Procurement
Section 14–604.1
Annotated Code of Maryland
(2015 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, without amendments,
Article – State Government
Section 9–301(a) and (e)
Annotated Code of Maryland
(2014 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, with amendments,
Article – State Government
Section 9–304
Annotated Code of Maryland
(2014 Replacement Volume and 2020 Supplement)

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

Article – State Finance and Procurement

14–501.

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

(b) “Small business” means:

(1) a certified minority business enterprise, as defined in § 14–301 of this title, that meets the criteria specified under item ~~[(2)] (3)~~ of this subsection;

(2) A VETERAN–OWNED SMALL BUSINESS ENTERPRISE, AS DEFINED IN § 14–601 OF THIS TITLE, THAT MEETS THE CRITERIA SPECIFIED UNDER ITEM (3) OF THIS SUBSECTION; or

~~[(2)] (3)~~ a business, other than a broker, that meets the following criteria:

(i) the business is independently owned and operated;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) “Small business reserve” means those procurements that are limited to responses from small businesses under § 14–502(b) of this subtitle.

14–601.

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

(b) “Veteran” means an individual who is verified [by the State Department of Veterans Affairs] as having served on active duty in the armed forces of the United States, other than for training, and was discharged or released under conditions other than dishonorable.

(c) “Veteran–owned small business enterprise” means a **FOR–PROFIT** business that:

(1) meets the size standards adopted by the United States Small Business Administration in 13 C.F.R. 121.201 and any subsequent revision of that regulation; and

(2) is at least 51% owned by one or more individuals who:

(i) are veterans; and

(ii) control the management and daily operations of the business.

14–602.

(a) **(1)** A unit shall structure procurement procedures, consistent with the purposes of this subtitle, to try to achieve **OR EXCEED** an overall [minimum of 1%] **PERCENTAGE GOAL** of the unit’s total dollar value of procurement contracts to be made directly or indirectly with veteran–owned small business enterprises.

(2) THE OFFICE OF SMALL, MINORITY, AND WOMEN BUSINESS AFFAIRS SHALL ADOPT REGULATIONS THAT ESTABLISH THE OVERALL PERCENTAGE GOAL.

(b) Solicitation documents shall [establish the expected degree] **STATE THE EXPECTED PERCENTAGE** of veteran–owned small business enterprise participation based, in part, on:

(1) the potential [subcontract] **CONTRACTING** opportunities available in the procurement contract, **INCLUDING BOTH PRIME CONTRACTING AND SUBCONTRACTING OPPORTUNITIES, AS DETERMINED THROUGH ANALYSIS OF THE SCOPE OF THE WORK PRESENTED IN THE SOLICITATION DOCUMENTS;** and

(2) the availability of veteran–owned small business enterprises to respond competitively to the potential [subcontract] **CONTRACTING** opportunities.

(c) The provisions of this subtitle do not apply to a unit’s procurement procedures to the extent that any unit determines that those provisions are in conflict with an applicable federal program.

14–603.

(a) For procurements conducted by competitive sealed bidding, a unit shall award the contract to the responsible bidder that submits the responsive bid that:

(1) (i) has the lowest bid price;

(ii) has the lowest evaluated bid price; or

(iii) for procurements subject to § 11–202(3) of this article, is the bid most favorable to the State; and

(2) meets or makes a good faith effort to meet any applicable **OVERALL PERCENTAGE** goal established under this subtitle.

(b) For procurements conducted by competitive sealed proposals, a unit shall award the contract to the responsible offeror:

(1) proposing the most advantageous offer; and

(2) that meets or makes a good faith effort to meet any applicable **OVERALL PERCENTAGE** goal established under this subtitle.

14-604.

The Governor's Office of Small, Minority, and Women Business Affairs shall:

(1) adopt regulations to implement this subtitle;

(2) establish procedures for tracking and reporting participation of veteran-owned small business enterprises under this subtitle; and

(3) on or before December 1 of each year, report to the Legislative Policy Committee on:

(i) the number and [amount] **DOLLAR VALUE** of contracts awarded to veteran-owned small business enterprises under this subtitle, **INCLUDING THE TOTAL DOLLAR VALUE OF PAYMENTS MADE TO VETERAN-OWNED SMALL BUSINESS ENTERPRISES UNDER EXISTING CONTRACTS**; and

(ii) **AN EVALUATION OF** the effectiveness of the program under this subtitle.

14-604.1.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "ADVISORY COMMITTEE" MEANS THE ADVISORY COMMITTEE ON VETERAN-OWNED SMALL BUSINESS ENTERPRISES.

(3) "OFFICE" MEANS THE OFFICE OF SMALL, MINORITY, AND WOMEN BUSINESS AFFAIRS.

(4) "SPECIAL SECRETARY" MEANS THE SPECIAL SECRETARY FOR THE OFFICE.

(B) THE OFFICE SHALL ESTABLISH AN ADVISORY COMMITTEE ON VETERAN-OWNED SMALL BUSINESS ENTERPRISES.

(C) THE SPECIAL SECRETARY SHALL BE CHAIR OF THE ADVISORY COMMITTEE AND THE OFFICE SHALL PROVIDE STAFF SUPPORT.

(D) THE ADVISORY COMMITTEE CONSISTS OF INDIVIDUALS THAT THE SPECIAL SECRETARY CONSIDERS WILL ASSIST THE OFFICE IN STUDYING AND DEVELOPING POLICIES TO FURTHER THE PURPOSES OF THIS SUBTITLE, INCLUDING REPRESENTATIVES FROM:

- (1) THE DEPARTMENT OF COMMERCE;**
- (2) THE DEPARTMENT OF GENERAL SERVICES;**
- (3) THE GOVERNOR’S OFFICE OF PERFORMANCE IMPROVEMENT;**
- (4) THE DEPARTMENT OF VETERANS AFFAIRS; AND**
- (5) CERTIFIED VETERAN-OWNED SMALL BUSINESS ENTERPRISES.**

(E) THE ADVISORY COMMITTEE SHALL MEET AT LEAST TWO TIMES EACH YEAR.

(F) THE ADVISORY COMMITTEE SHALL:

(1) REVIEW THE ANNUAL REPORT AND EVALUATION SUBMITTED TO THE LEGISLATIVE POLICY COMMITTEE IN ACCORDANCE WITH § 14-604 OF THIS SUBTITLE TO:

(I) IDENTIFY ANY AREAS OF THE PROGRAM THAT NEED IMPROVEMENT; AND

(II) RECOMMEND POSSIBLE ACTIONS THAT MAY ACHIEVE THE NECESSARY IMPROVEMENTS; AND

(2) ENSURE THAT A CONTINUOUS OVERSIGHT AND IMPROVEMENT STRUCTURE EXISTS FOR THE PROGRAM.

Article – State Government

9-301.

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

(e) “Special Secretary” means the Special Secretary for the Office of Small, Minority, and Women Business Affairs.

9-304.

Subject to the limitations of any law that governs the activities of other units of the Executive Branch of the State government, the Special Secretary shall:

(1) advise the Governor on:

(i) the activities of the State government that are intended to promote:

1. the employment of minority persons in the State; and

2. **STATE CONTRACTING OPPORTUNITIES AVAILABLE TO AND THE ACCESSIBILITY OF THOSE CONTRACTING OPPORTUNITIES TO COMPANIES OWNED BY MINORITY PERSONS, SMALL BUSINESSES, AND VETERAN-OWNED SMALL BUSINESSES; AND**

(ii) each other matter that affects the rights and interests of minority persons, **SMALL BUSINESSES, AND VETERAN-OWNED SMALL BUSINESSES** and the communities in which they live, **WORK, AND PROVIDE EMPLOYMENT OPPORTUNITIES TO OTHERS;** and

(2) as authorized by the Governor:

(i) provide help to minority persons, **SMALL BUSINESSES, AND VETERAN-OWNED SMALL BUSINESSES** and the communities in which they live, **WORK, AND EMPLOY OTHERS;**

(ii) represent the Governor in any matter that relates to minority persons, **SMALL BUSINESSES, AND VETERAN-OWNED SMALL BUSINESSES** or generally to the promotion of equality among the people of the State; and

(iii) perform any other responsibility that the Governor assigns.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2021.

Approved by the Governor, April 13, 2021.