

HOUSE BILL 389

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By: **Delegate Wilson**

Introduced and read first time: January 19, 2022

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Minority Business Enterprises – Revisions**

3 FOR the purpose of requiring a procurement officer, in an invitation for bids or a request
4 for proposals, to include a certain summary of the factors used to determine the
5 expected degree of minority business enterprise participation for the contract;
6 authorizing certain entities to retain certification as a minority business enterprise
7 if the entity participates as a mentor in a certain mentorship program and under
8 certain circumstances; requiring the Special Secretary for the Office of Small,
9 Minority, and Women Business Affairs to establish certain statewide minority
10 business enterprise participation goals by industry type in a certain manner;
11 establishing that certain statewide goals by industry type apply under certain
12 circumstances; requiring each unit of the Executive Branch of State government to
13 annually report the results of certain compliance assessments to the Office;
14 authorizing the Special Secretary to waive the requirement for a unit to report
15 certain information under certain circumstances; requiring the Office to maintain
16 and publish on its website a list of prime contractors who, based on the results of the
17 compliance assessments, persistently fail to meet contract goals; requiring certain
18 units of the Executive Branch of State government to designate certain
19 procurements for the small business reserve under certain circumstances;
20 establishing that certain procurements may be exempt from designation for the
21 small business reserve under certain circumstances; making certain provisions of
22 law relating to the prompt payment of subcontractors apply to all State contracts,
23 rather than only State contracts for construction; creating the position of Minority
24 Business Enterprise Ombudsman in the Office; establishing certain duties and
25 authority of the Ombudsman; altering the definition of “responsible bidder or offeror”
26 to exclude contractors who persistently fail to meet contract goals, based on the
27 results of certain compliance assessments; and generally relating to procurement
28 and minority business enterprises.

29 BY repealing and reenacting, without amendments,
30 Article – State Finance and Procurement

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 11–101(a)
2 Annotated Code of Maryland
3 (2021 Replacement Volume)

4 BY repealing and reenacting, with amendments,
5 Article – State Finance and Procurement
6 Section 11–101(s), 13–103(a), 13–104(b), 14–301(f), 14–302(a)(1), 14–303, and
7 14–305; and 15–226 to be under the amended part “Part IV. Prompt Payment
8 of Subcontractors”
9 Annotated Code of Maryland
10 (2021 Replacement Volume)

11 BY adding to
12 Article – State Finance and Procurement
13 Section 14–502.1
14 Annotated Code of Maryland
15 (2021 Replacement Volume)

16 BY adding to
17 Article – State Government
18 Section 9–303.3
19 Annotated Code of Maryland
20 (2021 Replacement Volume)

21 BY repealing and reenacting, with amendments,
22 Article – State Government
23 Section 9–305(b)(7)
24 Annotated Code of Maryland
25 (2021 Replacement Volume)

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

28 **Article – State Finance and Procurement**

29 11–101.

30 (a) In this Division II the following words have the meanings indicated unless:

31 (1) the context clearly requires a different meaning; or

32 (2) a different definition is provided for a particular title or provision.

33 (s) “Responsible bidder or offeror” means a person who:

34 (1) has the capability in all respects to perform fully the requirements for
35 a procurement contract; [and]

1 (2) possesses the integrity and reliability that will ensure good faith
2 performance; AND

3 **(3) IS NOT A CONTRACTOR WHO PERSISTENTLY FAILS TO MEET**
4 **CONTRACT GOALS AS DETERMINED UNDER § 14-305(C)(2) OF THIS ARTICLE.**

5 13-103.

6 (a) (1) Whenever procurement is based on competitive sealed bids, a
7 procurement officer shall seek bids by issuing an invitation for bids.

8 (2) Subject to subsection (b) of this section, an invitation for bids shall
9 include:

10 (i) the specifications of the procurement contract, including the
11 expected degree of minority business enterprise participation, as provided in § 14-303(b) of
12 this article;

13 **(II) A SUMMARY OF THE FACTORS USED TO DETERMINE THE**
14 **EXPECTED DEGREE OF MINORITY BUSINESS ENTERPRISE PARTICIPATION FOR THE**
15 **PROCUREMENT CONTRACT, INCLUDING SUBCONTRACTING OPPORTUNITIES**
16 **IDENTIFIED FOR THE PROJECT, ANY APPLICABLE NORTH AMERICAN INDUSTRY**
17 **CLASSIFICATION SYSTEM CODES LINKED TO THE SUBCONTRACTING**
18 **OPPORTUNITIES, AND THE NUMBER OF CERTIFIED MINORITY BUSINESS**
19 **ENTERPRISES IN THOSE INDUSTRIES;**

20 **[(ii)] (III)** whether the procurement contract will be awarded based
21 on the lowest bid price, the lowest evaluated bid price or, if the procurement is subject to §
22 11-202(3) of this article, the bid most favorable to the State;

23 **[(iii)] (IV)** if the procurement contract will be based on evaluated bid
24 price, the objective measurable criteria by which the lowest evaluated bid price will be
25 determined; and

26 **[(iv)] (V)** if the Secretary of General Services, the Secretary of
27 Transportation, or the Chancellor of the University System of Maryland has so designated,
28 the small business preference.

29 13-104.

30 (b) (1) Whenever procurement is based on competitive sealed proposals, a
31 procurement officer shall seek proposals by issuing a request for proposals.

32 (2) A request for proposals shall include a statement of:

1 (i) the scope of the procurement contract, including the expected
2 degree of minority business enterprise participation, as provided in § 14–303(b) of this
3 article;

4 **(II) A SUMMARY OF THE FACTORS USED TO DETERMINE THE**
5 **EXPECTED DEGREE OF MINORITY BUSINESS ENTERPRISE PARTICIPATION FOR THE**
6 **PROCUREMENT CONTRACT, INCLUDING SUBCONTRACTING OPPORTUNITIES**
7 **IDENTIFIED FOR THE PROJECT, ANY APPLICABLE NORTH AMERICAN INDUSTRY**
8 **CLASSIFICATION SYSTEM CODES LINKED TO THE SUBCONTRACTING**
9 **OPPORTUNITIES, AND THE NUMBER OF CERTIFIED MINORITY BUSINESS**
10 **ENTERPRISES IN THOSE INDUSTRIES;**

11 **[(ii)] (III)** the factors, including price, that will be used in evaluating
12 proposals; and

13 **[(iii)] (IV)** the relative importance of each factor.

14 14–301.

15 (f) “Minority business enterprise” means:

16 **(1)** any legal entity, except a joint venture, that is:

17 **[(1)] (I)** organized to engage in commercial transactions;

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

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

23 **(2) AN ENTITY THAT:**

24 **(I) HAS GRADUATED OR OTHERWISE IS NO LONGER CERTIFIED**
25 **UNDER THE TERMS OF THE GRADUATION PROGRAM ESTABLISHED IN ACCORDANCE**
26 **WITH § 14–303(B)(15) OF THIS SUBTITLE; AND**

27 **(II) HAS BEEN AUTHORIZED TO RETAIN CERTIFICATION UNDER**
28 **§ 9–305(B)(7) OF THE STATE GOVERNMENT ARTICLE.**

29 14–302.

30 (a) (1) (i) 1. Except for leases of real property, each unit shall structure
31 procurement procedures, consistent with the purposes of this subtitle, to try to achieve an

1 overall percentage goal of the unit's total dollar value of procurement contracts being made
2 directly or indirectly to certified minority business enterprises.

3 2. Notwithstanding subparagraph 1 of this
4 subparagraph, the following contracts may not be counted as part of a unit's total dollar
5 value of procurement contracts:

6 A. a procurement contract awarded in accordance with
7 Subtitle 1 of this title;

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

10 C. a procurement by the Maryland Developmental
11 Disabilities Administration of the Maryland Department of Health for family and
12 individual support services, community residential services, resource coordination services,
13 behavioral support services, vocational and day services, and respite services, as those
14 terms are defined in regulations adopted by the Maryland Department of Health.

15 (ii) 1. The overall percentage goal shall be established on a
16 biennial basis by the Special Secretary for the Office of Small, Minority, and Women
17 Business Affairs, in consultation with the Secretary of Transportation and the Attorney
18 General.

19 2. During any year in which there is a delay in establishing
20 the overall goal, the previous year's goal will apply.

21 **(iii) 1. IN CONSULTATION WITH THE SECRETARY OF**
22 **TRANSPORTATION AND THE ATTORNEY GENERAL, THE SPECIAL SECRETARY FOR**
23 **THE OFFICE OF SMALL, MINORITY, AND WOMEN BUSINESS AFFAIRS SHALL**
24 **ESTABLISH STATEWIDE GOALS BY INDUSTRY TYPE ON A BIENNIAL BASIS.**

25 **2. IN ESTABLISHING STATEWIDE GOALS BY INDUSTRY**
26 **TYPE, THE SPECIAL SECRETARY FOR THE OFFICE OF SMALL, MINORITY, AND**
27 **WOMEN BUSINESS AFFAIRS SHALL USE THE SAME METHODOLOGY USED TO**
28 **DEVELOP THE OVERALL STATEWIDE GOAL UNDER SUBPARAGRAPH (II) OF THIS**
29 **PARAGRAPH, WITH CONSIDERATION GIVEN TO AVAILABILITY AND UTILIZATION OF**
30 **MINORITY BUSINESS ENTERPRISES IN THE INDUSTRY.**

31 **3. DURING ANY YEAR IN WHICH THERE IS A DELAY IN**
32 **ESTABLISHING THE STATEWIDE GOALS BY INDUSTRY TYPE, THE PREVIOUS YEAR'S**
33 **GOALS WILL APPLY.**

34 [(iii)] **(iv) 1. In consultation with the Secretary of**
35 **Transportation and the Attorney General, the Special Secretary for the Office of Small,**
36 **Minority, and Women Business Affairs shall establish guidelines on a biennial basis for**

1 each unit to consider while determining whether to set subgoals for the minority groups
2 listed in § 14–301(k)(1)(i)1, 2, 3, 4, and 6 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)] (v)** 1. The Special Secretary for the Office of Small,
6 Minority, and Women Business Affairs, in consultation with the Secretary of
7 Transportation and the Attorney General, shall establish goals and subgoal guidelines that,
8 to the maximum extent feasible, approximate the level of minority business enterprise
9 participation that would be 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)] (VI)** In establishing overall goals, the factors to be considered
22 shall 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 **[(vi)] (VII)** Notwithstanding § 12–101 of this article, the Special
30 Secretary for the Office of Small, Minority, and Women Business Affairs shall adopt
31 regulations in accordance with Title 10, Subtitle 1 of the State Government Article setting
32 forth the State’s overall goal.

33 14–303.

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

4 (ii) The Board shall keep a record of information regarding any
5 waivers requested in accordance with § 14–302(a)(9)(i) of this subtitle and subsection
6 (b)(12) of this section and submit a copy of the record to the General Assembly on or before
7 October 1 of each year, in accordance with § 2–1257 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 a federal or a county program that uses a certification process substantially similar
21 to the process established in accordance with item (i) of this item, including a provision that
22 provides for certification of a business as a minority business enterprise if the business:

23 1. has obtained certification under the federal
24 Disadvantaged Business Enterprise Program; and

25 2. meets the eligibility requirements of the Minority
26 Business Enterprise Program;

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

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

35 (2) a requirement that the solicitation document accompanying each
36 solicitation:

1 (I) set forth the expected degree of minority business enterprise
2 participation based, in part, on the factors set forth in § 14-302(a)(3)(ii) of this subtitle;
3 AND

4 (II) INCLUDE A SUMMARY OF THE FACTORS USED TO
5 DETERMINE THE EXPECTED DEGREE OF MINORITY BUSINESS ENTERPRISE
6 PARTICIPATION, INCLUDING SUBCONTRACTING OPPORTUNITIES IDENTIFIED FOR
7 THE PROJECT, ANY APPLICABLE NORTH AMERICAN INDUSTRY CLASSIFICATION
8 SYSTEM CODES LINKED TO THE SUBCONTRACTING OPPORTUNITIES, AND THE
9 NUMBER OF CERTIFIED MINORITY BUSINESS ENTERPRISES IN THOSE INDUSTRIES;

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

13 (4) a requirement that within 10 days after notice from the prime
14 contractor of the State's intent to award a contract, each minority business enterprise
15 serving as a subcontractor on the contract complete a document setting forth the percentage
16 and type of work assigned to the subcontractor under the contract and submit copies of the
17 completed form to both the procurement officer and the contractor;

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

21 (6) [(i) a requirement that all contracts containing minority business
22 enterprise participation goals shall contain a liquidated damages provision that applies in
23 the event that the contractor fails to comply in good faith with the provisions of this subtitle
24 or the pertinent terms of the applicable contract; and

25 (ii) a provision that prohibits a unit from assessing liquidated
26 damages for an indefinite delivery contract or an indefinite performance contract if a unit
27 fails to request the performance or delivery of a task for which:

28 1. a minority business enterprise subcontractor was named
29 on the participation schedule; or

30 2. a minority business enterprise subcontractor was named
31 on the participation schedule and qualified based on the subcontractor's existing North
32 American Industry Classification System code;

33 (7)] a requirement that the unit provide a current list of certified minority
34 business enterprises to each prospective contractor;

1 **[(8)] (7)** provisions to ensure the uniformity of requests for bids on
2 subcontracts;

3 **[(9)] (8)** provisions relating to the timing of requests for bids on
4 subcontracts and of submission of bids on subcontracts;

5 **[(10)] (9)** provisions designed to ensure that a fiscal disadvantage to the
6 State does not result from an inadequate response by minority business enterprises to a
7 request for bids;

8 **[(11)] (10)** provisions relating to joint ventures, under which a bidder may
9 count toward meeting its minority business enterprise participation goal, the minority
10 business enterprise portion of the joint venture;

11 **[(12)] (11)** consistent with § 14–302(a)(9) of this subtitle, provisions relating
12 to any circumstances under which a unit may waive obligations of the contractor relating
13 to minority business enterprise participation;

14 **[(13)] (12)** provisions requiring a monthly submission to the unit by
15 minority business enterprises acknowledging all payments received in the preceding 30
16 days under a contract governed by this subtitle;

17 **[(14)] (13)** a requirement that a unit shall verify and maintain data
18 concerning payments received by minority business enterprises, including a requirement
19 that, upon completion of a project, the unit shall compare the total dollar value actually
20 received by minority business enterprises with the amount of contract dollars initially
21 awarded, and an explanation of any discrepancies therein;

22 **[(15)] (14)** a requirement that a unit verify that minority business
23 enterprises listed in a successful bid are actually participating to the extent listed in the
24 project for which the bid was submitted;

25 **[(16)] (15)** provisions establishing a graduation program based on the
26 financial viability of the minority business enterprise, using annual gross receipts or other
27 economic indicators as may be determined by the Board;

28 **[(17)] (16)** a requirement that a bid or proposal based on a solicitation with
29 an expected degree of minority business enterprise participation identify the specific
30 commitment of certified minority business enterprises at the time of submission;

31 **[(18)] (17)** provisions promoting and providing for the counting and
32 reporting of certified minority business enterprises as prime contractors;

33 **[(19)] (18)** provisions establishing standards to require a minority business
34 enterprise to perform a commercially useful function on a contract;

1 ~~[(20)]~~ **(19)** a requirement that each unit work with the Governor's Office of
2 Small, Minority, and Women Business Affairs to designate certain procurements as being
3 excluded from the requirements of § 14-302(a) of this subtitle;

4 ~~[(21)]~~ **(20)** provisions promoting and providing for the counting and
5 reporting of minority business enterprises certified as both a woman-owned business and
6 a business owned by a member of an ethnic or racial group in accordance with §
7 14-302(a)(5) of this subtitle; and

8 ~~[(22)]~~ **(21)** other provisions that the Board considers necessary or
9 appropriate to encourage participation by minority business enterprises and to protect the
10 integrity of the procurement process.

11 (c) The regulations adopted under this section shall specify that:

12 **(1)** a unit may not allow a business to participate as if it were a certified
13 minority business enterprise if the business's certification is pending; **AND**

14 **(2) A UNIT SHALL ALLOW A BUSINESS TO PARTICIPATE AS A**
15 **CERTIFIED MINORITY BUSINESS ENTERPRISE IF THE CERTIFICATION HAS BEEN**
16 **GRANTED UNDER § 9-305(B)(7) OF THE STATE GOVERNMENT ARTICLE.**

17 14-305.

18 (a) (1) Within 90 days after the end of the fiscal year, each unit shall report to
19 the Governor's Office of Small, Minority, and Women Business Affairs, the certification
20 agency, and, subject to § 2-1257 of the State Government Article, the Joint Committee on
21 Fair Practices and Personnel Oversight.

22 (2) A report under this subsection shall for the preceding fiscal year:

23 (i) state the total number and value of procurement contracts
24 between the unit and certified minority business enterprises, by specific category of
25 minority business enterprise **AND BY INDUSTRY TYPE**, including whether the minority
26 business enterprise participated as a prime contractor or as a subcontractor;

27 (ii) indicate the percentage that those procurement contracts
28 represent, by specific category of minority business enterprise **AND BY INDUSTRY TYPE**,
29 of the total number and value of procurement contracts;

30 (iii) state the total number and the names of certified minority
31 business enterprises that participated as prime contractors or as subcontractors on
32 procurement contracts awarded by a unit;

1 (iv) for each minority business included in the report under item (iii)
2 of this paragraph, list all procurement contracts awarded by a unit to the minority business
3 enterprise, including a description of the contract AND INDUSTRY TYPE; [and]

4 (V) THE RESULTS OF EACH COMPLIANCE ASSESSMENT
5 CONDUCTED BY THE UNIT UNDER § 14-303(B)(14) OF THIS SUBTITLE, INCLUDING
6 FOR EACH CONTRACT COMPLETED DURING THE FISCAL YEAR:

7 1. THE NAMES OF EACH PRIME CONTRACTOR AND EACH
8 MINORITY BUSINESS THAT PARTICIPATED IN THE CONTRACT;

9 2. THE TYPE OF GOOD OR SERVICE PROVIDED BY THE
10 CONTRACT;

11 3. THE MINORITY BUSINESS ENTERPRISE
12 PARTICIPATION GOAL FOR THE CONTRACT;

13 4. WHETHER A WAIVER WAS GRANTED FOR THE
14 MINORITY BUSINESS ENTERPRISE PARTICIPATION GOAL;

15 5. THE TOTAL DOLLAR VALUE OF PAYMENTS MADE TO
16 EACH PRIME CONTRACTOR AND BY EACH PRIME CONTRACTOR TO EACH
17 SUBCONTRACTOR DURING THE CONTRACT TERM;

18 6. WHETHER EACH SUBCONTRACTOR IS A CERTIFIED
19 MINORITY BUSINESS ENTERPRISE; AND

20 7. IF APPLICABLE, A DESCRIPTION OF FACTORS THAT
21 MAY HAVE CONTRIBUTED TO FAILURE TO ACHIEVE THE MINORITY BUSINESS
22 ENTERPRISE PARTICIPATION GOAL FOR THE CONTRACT, INCLUDING DOCUMENTED
23 NONPERFORMANCE OR UNAVAILABILITY OF A MINORITY BUSINESS ENTERPRISE;
24 AND

25 [(v)] (VI) contain other such information as required by the
26 Governor's Office of Small, Minority, and Women Business Affairs and the certification
27 agency and approved by the Board.

28 (3) As to procurement contracts for architectural services and engineering
29 services reported under paragraph (2) of this subsection, the report shall identify by
30 separate category of minority business enterprise procurements for:

31 (i) architectural services; and

32 (ii) engineering services.

1 (4) A report under this subsection shall be in a form prescribed by the
2 Governor's Office of Small, Minority, and Women Business Affairs and the certification
3 agency and approved by the Board.

4 **(5) THE SPECIAL SECRETARY FOR THE OFFICE OF SMALL,
5 MINORITY, AND WOMEN BUSINESS AFFAIRS MAY WAIVE THE REQUIREMENT FOR A
6 UNIT TO REPORT MINORITY BUSINESS PARTICIPATION BY INDUSTRY TYPE UNDER
7 PARAGRAPH (2) OF THIS SUBSECTION IF THE SPENDING THRESHOLD FOR THE
8 INDUSTRY TYPE IS TOO LOW FOR THE UNIT TO PROVIDE SUFFICIENT DATA.**

9 (b) (1) On or before December 31 of each year, the Governor's Office of Small,
10 Minority, and Women Business Affairs shall submit to the Board of Public Works and,
11 subject to § 2-1257 of the State Government Article, to the Legislative Policy Committee a
12 report summarizing the information the Office receives under subsection (a) of this section.

13 (2) This report may be prepared in conjunction with the annual report
14 required under § 9-306 of the State Government Article.

15 **(C) (1) IN THIS SUBSECTION, "MITIGATING FACTORS" INCLUDES
16 DOCUMENTED NONPERFORMANCE OR UNAVAILABILITY OF A MINORITY BUSINESS
17 ENTERPRISE DESIGNATED FOR A CONTRACT.**

18 **(2) THE GOVERNOR'S OFFICE OF SMALL, MINORITY, AND WOMEN
19 BUSINESS AFFAIRS SHALL MAINTAIN AND PUBLISH ON ITS WEBSITE A LIST OF
20 PRIME CONTRACTORS WHO, BASED ON THE RESULTS OF THE COMPLIANCE
21 ASSESSMENTS RECEIVED UNDER SUBSECTION (A)(2)(V) OF THIS SECTION,
22 PERSISTENTLY FAIL TO MEET CONTRACT GOALS IN THE ABSENCE OF MITIGATING
23 FACTORS.**

24 **(3) THE SPECIAL SECRETARY FOR THE OFFICE OF SMALL,
25 MINORITY, AND WOMEN BUSINESS AFFAIRS MAY ADOPT REGULATIONS NECESSARY
26 TO CARRY OUT THE REQUIREMENTS OF THIS SUBSECTION.**

27 **14-502.1.**

28 **(A) (1) THIS SECTION APPLIES TO A PROCUREMENT BY ANY UNIT OR
29 AGENCY OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT FOR GOODS,
30 SUPPLIES, SERVICES, MAINTENANCE, CONSTRUCTION, CONSTRUCTION-RELATED
31 SERVICES, ARCHITECTURAL SERVICES, OR ENGINEERING SERVICES.**

32 **(2) THIS SECTION DOES NOT APPLY TO:**

33 **(1) PROCUREMENTS MADE UNDER SUBTITLE 1 OF THIS TITLE;**

1 **(II) PROCUREMENTS INVOLVING EXPENDITURES OF FEDERAL**
2 **DOLLARS, TO THE EXTENT THAT INCLUSION IN THE SMALL BUSINESS RESERVE**
3 **PROGRAM CONFLICTS WITH FEDERAL LAW OR GRANT PROVISIONS;**

4 **(III) PROCUREMENTS WITH A TOTAL DOLLAR VALUE UNDER**
5 **\$50,000;**

6 **(IV) THE PROCUREMENT OF HUMAN, SOCIAL, CULTURAL, OR**
7 **EDUCATIONAL SERVICES; OR**

8 **(V) TERM AND MASTER CONTRACTS EXEMPTED UNDER**
9 **SUBSECTION (C) OF THIS SECTION.**

10 **(B) (1) A PROCUREMENT WITH A TOTAL DOLLAR VALUE BETWEEN**
11 **\$50,000 AND \$500,000 SHALL BE DESIGNATED FOR THE SMALL BUSINESS RESERVE.**

12 **(2) EACH UNIT OR AGENCY SHALL IMPLEMENT THIS SUBSECTION IN**
13 **A MANNER CONSISTENT WITH ALL APPLICABLE STATUTES, INCLUDING THE**
14 **REQUIREMENTS OF SUBTITLE 3 OF THIS TITLE.**

15 **(C) (1) A PROCUREMENT MAY BE EXEMPT FROM DESIGNATION UNDER**
16 **SUBSECTION (B) OF THIS SECTION IF THE GOVERNOR'S OFFICE OF SMALL,**
17 **MINORITY, AND WOMEN BUSINESS AFFAIRS CERTIFIES, CONCURRENTLY WITH**
18 **REVIEW OF ANY WAIVER DETERMINATIONS FOR CERTIFIED MINORITY BUSINESS**
19 **ENTERPRISE PARTICIPATION CONTRACT GOALS, THAT IT IS NOT PRACTICABLE TO**
20 **DO SO.**

21 **(2) THE OFFICE OF STATE PROCUREMENT IN THE DEPARTMENT OF**
22 **GENERAL SERVICES SHALL ASSIST THE GOVERNOR'S OFFICE OF SMALL,**
23 **MINORITY, AND WOMEN BUSINESS AFFAIRS IN ESTABLISHING PROCEDURES AND**
24 **GUIDELINES FOR THE EXEMPTION OF PROCUREMENTS UNDER PARAGRAPH (1) OF**
25 **THIS SUBSECTION.**

26 Part IV. [Construction Contracts –] Prompt Payment of Subcontractors.

27 15–226.

28 (a) In this section, “undisputed amount” means an amount owed by a contractor
29 to a subcontractor for which there is no good faith dispute, including any retainage
30 withheld.

31 (b) It is the policy of the State that, for work under a State procurement contract
32 [for construction]:

1 (1) a contractor shall promptly pay to a subcontractor any undisputed
2 amount to which the subcontractor is entitled; and

3 (2) a subcontractor shall promptly pay to a lower tier subcontractor any
4 undisputed amount to which the lower tier subcontractor is entitled.

5 (c) (1) A contractor shall pay a subcontractor an undisputed amount to which
6 the subcontractor is entitled within 10 days of receiving a progress or final payment from
7 the State.

8 (2) If a contractor withholds payment from a subcontractor, within the time
9 period in which payment normally would be made, the contractor shall:

10 (i) notify the subcontractor in writing and state the reason why
11 payment is being withheld; and

12 (ii) provide a copy of the notice to the procurement officer.

13 (d) (1) If a subcontractor does not receive a payment within the required time
14 period, the subcontractor may give written notice of the nonpayment to the procurement
15 officer.

16 (2) The notice shall:

17 (i) indicate the name of the contractor, the project under which the
18 dispute exists, and the amount in dispute;

19 (ii) provide an itemized description on which the amount is based;
20 and

21 (iii) if known, provide an explanation for any dispute concerning
22 payment by the contractor.

23 (e) (1) Within 2 business days of receipt of written notice from a subcontractor,
24 a representative of the unit designated by the procurement officer shall verbally contact
25 the contractor to ascertain whether the amount withheld is an undisputed amount.

26 (2) If the representative of the unit decides that a part or all of the amount
27 withheld is an undisputed amount, the representative of the unit shall instruct the
28 contractor to pay the subcontractor the undisputed amount within 3 business days.

29 (3) The representative of the unit shall verbally communicate to the
30 subcontractor the results of discussions with the contractor.

1 (4) If the contractor is instructed to pay the subcontractor and the
2 subcontractor is not paid within the time instructed under paragraph (2) of this subsection,
3 the subcontractor may report the nonpayment in writing to the procurement officer.

4 (f) (1) If the subcontractor notifies the procurement officer under subsection
5 (e)(4) of this section that payment has not been made, the representative of the unit shall
6 schedule a meeting to discuss the dispute with the unit's project manager, the contractor,
7 and the subcontractor:

8 (i) at a time and location designated by the representative of the
9 unit; but

10 (ii) not later than 10 days after receiving notice from the
11 subcontractor under subsection (e)(4) of this section.

12 (2) The purpose of the meeting is to establish why the contractor has not
13 paid the subcontractor in the required time period.

14 (3) The representative of the unit shall require the parties to provide at the
15 meeting any information that the representative believes necessary to evaluate the dispute.

16 (4) If the representative of the unit determines that the contractor is
17 delinquent in payment of an undisputed amount to the subcontractor, further progress
18 payments to the contractor may be withheld until the subcontractor is paid.

19 (5) If payment is not paid to the subcontractor within 7 days after the
20 representative of the unit determines that the contractor is delinquent in paying the
21 subcontractor under this subsection, the representative shall schedule a second meeting to
22 address the dispute:

23 (i) at a time and location designated by the representative of the
24 unit; but

25 (ii) not later than 5 days after the close of the 7-day period.

26 (6) If, at the completion of the second meeting, the representative of the
27 unit determines that the contractor continues to be delinquent in payments owed to the
28 subcontractor, the representative:

29 (i) shall order that further payments to the contractor not be
30 processed until payment to the subcontractor is verified;

31 (ii) may order that work under the contract be suspended based on
32 the failure of the contractor to meet obligations under the contract; and

1 (iii) subject to paragraph (7) of this subsection, may require that the
2 contractor pay a penalty to the subcontractor, in an amount not exceeding \$100 per day,
3 from the date that payment was required under subsection (e)(2) of this section.

4 (7) A penalty may not be imposed under paragraph (6)(iii) of this
5 subsection for any period that the representative of the unit determines the subcontractor
6 was not diligent in reporting nonpayment to the procurement officer.

7 (g) (1) A contractor or a subcontractor may appeal a decision under subsection
8 (f)(6) of this section to the procurement officer.

9 (2) The contractor shall comply with the procurement officer's decision.

10 (h) An act, failure to act, or decision of a procurement officer or a representative
11 of a unit concerning a payment dispute between a contractor and subcontractor or between
12 subcontractors under this section may not:

13 (1) affect the rights of the contracting parties under any other provision of
14 law;

15 (2) be used as evidence on the merits of a dispute between the unit and the
16 contractor or the contractor and subcontractor in any other proceeding; or

17 (3) result in liability against or prejudice the rights of the unit.

18 (i) A decision of a procurement officer or a representative of the unit designated
19 by the procurement officer under this section is not subject to judicial review or the
20 provisions of Part III of this subtitle.

21 (j) (1) A unit shall include in each State procurement contract [for
22 construction] a provision:

23 (i) governing prompt payment to subcontractors; and

24 (ii) requiring inclusion of a similar provision in each subcontract at
25 any tier.

26 (2) The contract provision shall establish procedures and remedies for the
27 resolution of payment disputes similar to the process and remedies prescribed in
28 subsections (c) through (g) of this section.

29 Article – State Government

30 **9–303.3.**

1 (A) IN THIS SECTION, "OMBUDSMAN" MEANS THE MINORITY BUSINESS
2 ENTERPRISE OMBUDSMAN IN THE OFFICE.

3 (B) THERE IS A MINORITY BUSINESS ENTERPRISE OMBUDSMAN
4 APPOINTED BY THE SPECIAL SECRETARY.

5 (C) IN ACCORDANCE WITH THE STATE BUDGET, THE SPECIAL SECRETARY
6 SHALL ALLOCATE THE STAFF AND OFFICE RESOURCES TO THE OMBUDSMAN
7 NECESSARY FOR THE OMBUDSMAN TO FULFILL THE DUTIES OF THE OMBUDSMAN.

8 (D) THE OMBUDSMAN SHALL:

9 (1) MAKE REASONABLE ATTEMPTS TO RESOLVE DISPUTES BETWEEN
10 MINORITY BUSINESS ENTERPRISES AND PRIME CONTRACTORS, INCLUDING
11 DISPUTES OVER CONTRACT SCOPE AND PAYMENTS; AND

12 (2) SERVE AS A RESOURCE TO UNITS OF STATE GOVERNMENT, PRIME
13 CONTRACTORS, AND MINORITY BUSINESS ENTERPRISES IN RESOLVING DISPUTES
14 RELATED TO CONTRACTS THAT INCLUDE A MINORITY BUSINESS ENTERPRISE
15 PARTICIPATION GOAL.

16 (E) IN RESOLVING A DISPUTE UNDER SUBSECTION (D) OF THIS SECTION,
17 THE OMBUDSMAN MAY:

18 (1) COMPEL PRIME CONTRACTORS AND MINORITY BUSINESS
19 ENTERPRISES TO PROVIDE DOCUMENTATION RELATED TO CONTRACT
20 PERFORMANCE AND PAYMENTS; AND

21 (2) ORDER ANY RELEVANT PAYMENTS TO BE MADE IN CONJUNCTION
22 WITH A DISPUTE RESOLUTION.

23 (F) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,
24 WHEN RESOLVING A DISPUTE UNDER SUBSECTION (D) OF THIS SECTION, THE
25 OMBUDSMAN MAY NOT DISCLOSE INFORMATION RECEIVED FROM A UNIT OF STATE
26 GOVERNMENT, PRIME CONTRACTOR, OR MINORITY BUSINESS ENTERPRISE
27 WITHOUT THE WRITTEN CONSENT OF THE PARTY FROM WHOM THE INFORMATION
28 WAS OBTAINED.

29 (2) THE OMBUDSMAN MAY DISCLOSE INFORMATION RECEIVED
30 UNDER THIS SECTION TO THE ASSISTANT ATTORNEY GENERAL ASSIGNED TO THE
31 OFFICE.

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

3 (7) establish a mentoring program:

4 (i) in which larger and more established minority businesses can
5 mentor start-up and small minority businesses; and

6 (ii) that incentivizes mentor participation by providing benefits to
7 mentors, including:

8 1. special recognition on the Office website, and in the Office
9 newsletter and participation updates;

10 2. a certificate of participation awarded by the Office;

11 3. the opportunity to present highlights of mentor and
12 protege relationships at an annual appreciation event sponsored by the Office; [and]

13 4. increased networking and educational opportunities; AND

14 **5. AUTHORIZATION FOR MINORITY BUSINESSES THAT**
15 **HELD CERTIFICATION UNDER TITLE 14, SUBTITLE 3 OF THE STATE FINANCE AND**
16 **PROCUREMENT ARTICLE AND HAVE BEEN DECERTIFIED TO OBTAIN OR RETAIN**
17 **CERTIFICATION FOR A PERIOD OF TIME SET BY THE SPECIAL SECRETARY;**

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
19 1, 2022.