

SENATE BILL 9

P2
SB 703/21 – EHE

(PRE-FILED)

2lr0767

By: **Senator West**

Requested: October 15, 2021

Introduced and read first time: January 12, 2022

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Minority Business Enterprises – Qualification and Certification**

3 FOR the purpose of requiring the Board of Public Works to adopt regulations to require the
4 certification of a business as a minority business enterprise in a certain manner if
5 the business has obtained a certain federal certification and remains certified; and
6 generally relating to procurement by minority businesses.

7 BY repealing and reenacting, with amendments,

8 Article – State Finance and Procurement

9 Section 14–303

10 Annotated Code of Maryland

11 (2021 Replacement Volume)

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

14 **Article – State Finance and Procurement**

15 14–303.

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

19 (ii) The Board shall keep a record of information regarding any
20 waivers requested in accordance with § 14–302(a)(9)(i) of this subtitle and subsection
21 (b)(12) of this section and submit a copy of the record to the General Assembly on or before
22 October 1 of each year, in accordance with § 2–1257 of the State Government Article.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

5 (b) These regulations shall include:

6 (1) provisions:

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

11 (ii) for the purpose of certification under this subtitle, that promote
12 and facilitate certification of minority business enterprises that have received certification
13 from a federal or a county program that uses a certification process substantially similar
14 to the process established in accordance with item (i) of this item, including a provision that
15 **[provides for] REQUIRES** certification of a business as a minority business enterprise
16 **WITHOUT REQUIRING THE BUSINESS TO FILE ANY ADDITIONAL PAPERWORK OTHER**
17 **THAN EVIDENCE OF CERTIFICATION UNDER THE FEDERAL DISADVANTAGED**
18 **BUSINESS ENTERPRISE PROGRAM** if the business[:

19 1.] has obtained certification **AND REMAINS CERTIFIED**
20 under the federal Disadvantaged Business Enterprise Program; [and

21 2. meets the eligibility requirements of the Minority
22 Business Enterprise Program;]

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

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

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

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

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

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

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

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

16 1. a minority business enterprise subcontractor was named
17 on the participation schedule; or

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

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

23 (8) provisions to ensure the uniformity of requests for bids on subcontracts;

24 (9) provisions relating to the timing of requests for bids on subcontracts
25 and of submission of bids on subcontracts;

26 (10) provisions designed to ensure that a fiscal disadvantage to the State
27 does not result from an inadequate response by minority business enterprises to a request
28 for bids;

29 (11) provisions relating to joint ventures, under which a bidder may count
30 toward meeting its minority business enterprise participation goal, the minority business
31 enterprise portion of the joint venture;

32 (12) consistent with § 14-302(a)(9) of this subtitle, provisions relating to any
33 circumstances under which a unit may waive obligations of the contractor relating to
34 minority business enterprise participation;

1 (13) provisions requiring a monthly submission to the unit by minority
2 business enterprises acknowledging all payments received in the preceding 30 days under
3 a contract governed by this subtitle;

4 (14) a requirement that a unit shall verify and maintain data concerning
5 payments received by minority business enterprises, including a requirement that, upon
6 completion of a project, the unit shall compare the total dollar value actually received by
7 minority business enterprises with the amount of contract dollars initially awarded, and
8 an explanation of any discrepancies therein;

9 (15) a requirement that a unit verify that minority business enterprises
10 listed in a successful bid are actually participating to the extent listed in the project for
11 which the bid was submitted;

12 (16) provisions establishing a graduation program based on the financial
13 viability of the minority business enterprise, using annual gross receipts or other economic
14 indicators as may be determined by the Board;

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

18 (18) provisions promoting and providing for the counting and reporting of
19 certified minority business enterprises as prime contractors;

20 (19) provisions establishing standards to require a minority business
21 enterprise to perform a commercially useful function on a contract;

22 (20) a requirement that each unit work with the Governor's Office of Small,
23 Minority, and Women Business Affairs to designate certain procurements as being
24 excluded from the requirements of § 14-302(a) of this subtitle;

25 (21) provisions promoting and providing for the counting and reporting of
26 minority business enterprises certified as both a woman-owned business and a business
27 owned by a member of an ethnic or racial group in accordance with § 14-302(a)(5) of this
28 subtitle; and

29 (22) other provisions that the Board considers necessary or appropriate to
30 encourage participation by minority business enterprises and to protect the integrity of the
31 procurement process.

32 (c) The regulations adopted under this section shall specify that a unit may not
33 allow a business to participate as if it were a certified minority business enterprise if the
34 business's certification is pending.

35 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
36 October 1, 2022.