

Chapter 514

(Senate Bill 9)

AN ACT concerning

**Procurement – Minority Business Enterprises – ~~Qualification and Certification~~
Study**

FOR the purpose of ~~requiring the Board of Public Works to adopt regulations to require the certification of a business as a minority business enterprise in a certain manner if the business has obtained a certain federal certification and remains certified;~~ requiring the certification agency designated by the Board of Public Works to study and report recommendations for streamlining the process for certification of minority business enterprises; requiring certain entities to provide certain information to the certification agency; and generally relating to procurement by minority businesses.

~~BY repealing and reenacting, with amendments,
Article – State Finance and Procurement
Section 14-303
Annotated Code of Maryland
(2021 Replacement Volume)~~

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

(a) (1) The certification agency designated by the Board of Public Works under § 14-303(b) of the State Finance and Procurement Article shall study options for streamlining the process for certification of minority business enterprises.

(2) The study conducted under paragraph (1) of this subsection shall include:

(i) a review of options to allow other State and federal certifications to be accepted as satisfying a requirement for certification as a minority business enterprise; and

(ii) recommendations to streamline and improve the process for certification of a minority business enterprise that do not disadvantage Maryland businesses.

(b) The certification agency shall submit the findings of the study required under subsection (a) of this section to the Legislative Policy Committee, in accordance with § 2-1257 of the State Government Article, on or before December 1, 2022, so that the General Assembly may review the findings and recommendations before the 2023 Regular Session.

~~Article – State Finance and Procurement~~

~~14-303.~~

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

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

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

~~(b) These regulations shall include:~~

~~(1) provisions:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) This section applies to the following entities:

(1) the Natalie M. LaPrade Medical Cannabis Commission;

(2) the Public Service Commission;

(3) the Maryland Lottery and Gaming Control Commission;

(4) units that are parties to a public-private partnership agreement under Title 10A of the State Finance and Procurement Article; and

(5) the Department of ~~Budget and Management~~ General Services with respect to projects in the capital grant program under Title 3, Subtitle 6 of the State Finance and Procurement Article.

(b) Each entity identified under subsection (a) of this section shall provide, within ~~60~~ 75 days of a request, the information the certification agency designated by the Board of Public Works under § 14-303(b) of the State Finance and Procurement Article deems necessary to assess the need for remedial measures, including the application of a program to assist businesses owned by women or minorities.

(c) (1) An entity listed in subsection (a) of this section shall require licensees, preapproved licensees, applicants, grantees, and other program participants to provide any information deemed necessary to assess the need for remedial measures under subsection (b) of this section.

(2) The information required under paragraph (1) of this subsection may include, without limitation, the following data broken down by State fiscal year for the period beginning July 1, 2016, and ending June 30, 2022:

(i) a list of each program participant's expenditures for each State fiscal year; and

(ii) for each expenditure, a description of:

1. the work performed;

2. the dollar value of the expenditure; and

3. whether the work was performed by the program participant or a contractor or subcontractor and, if performed by a contractor or subcontractor, the name of the entity that performed the work.

(3) Each licensee, preapproved licensee, applicant, grantee, and other program participant shall provide the data requested within 60 days of a request.

(d) An entity listed in subsection (a) of this section shall provide the data collected under subsection (c) of this section to the certification agency within 10 days of receipt of the data.

(e) (1) Data provided in accordance with this section by each licensee, preapproved licensee, applicant, grantee, or other program participant shall constitute confidential commercial information and confidential financial information and shall be treated as confidential by the entity and the State.

(2) Data provided in accordance with this section may be used only for purposes authorized under this section and may be disclosed to the public only in an anonymized or aggregated format.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2022.

Enacted under Article II, § 17(c) of the Maryland Constitution, May 29, 2022.