

Chapter 145

(House Bill 245)

AN ACT concerning

Minority Business Enterprise Program – Reporting – ~~List of Units~~

FOR the purpose of requiring the ~~Office of State Procurement in the Department of General Services to maintain a list of certain units of the Executive Branch of State government required to report certain information annually to the~~ Governor's Office of Small, Minority, and Women Business Affairs to include a certain attestation in its annual report beginning on a certain date; requiring the Office to conduct a certain periodic audit to ensure the accuracy of the attestation; requiring a certain annual report to be submitted to the Joint Committee on Fair Practices and State Personnel Oversight; and generally relating to procurement and minority business enterprises.

BY repealing and reenacting, with amendments,
 Article – State Finance and Procurement
 Section 14–305
 Annotated Code of Maryland
 (2021 Replacement Volume and 2022 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

14–305.

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

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

(i) state the total number and value of procurement contracts between the unit and certified minority business enterprises, by specific category of minority business enterprise and by industry type, including whether the minority business enterprise participated as a prime contractor or as a subcontractor;

(ii) indicate the percentage that those procurement contracts represent, by specific category of minority business enterprise and by industry type, of the total number and value of procurement contracts;

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

(iv) for each minority business included in the report under item (iii) of this paragraph, list all procurement contracts awarded by a unit to the minority business enterprise, including a description of the contract and industry type;

(v) provide the results of each compliance assessment conducted by the unit under § 14–303(b)(15) of this subtitle, including for each contract completed during the fiscal year:

1. the names of each prime contractor and each subcontractor that participated in the contract;

2. the type of good or service provided by the contract;

3. the minority business enterprise participation goal for the contract;

4. whether a waiver was granted for the minority business enterprise participation goal;

5. the total dollar value of payments made to each prime contractor and by each prime contractor to each subcontractor during the contract term;

6. whether each subcontractor is a certified minority business enterprise; and

7. if applicable, a description of factors that may have contributed to failure to achieve the minority business enterprise participation goal for the contract, including documented nonperformance or unavailability of a minority business enterprise; and

(vi) contain other such information as required by the Governor's Office of Small, Minority, and Women Business Affairs and the certification agency and approved by the Board.

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

(i) architectural services; and

(ii) engineering services.

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

(5) The Special Secretary for the Office of Small, Minority, and Women Business Affairs may waive the requirement for a unit to report minority business participation by industry type under paragraph (2) of this subsection if the spending threshold for the industry type is too low for the unit to provide sufficient data.

(b) (1) On or before December 31 of each year, the Governor's Office of Small, Minority, and Women Business Affairs shall submit to the Board of Public Works and, subject to § 2-1257 of the State Government Article, to the Legislative Policy Committee **AND THE JOINT COMMITTEE ON FAIR PRACTICES AND STATE PERSONNEL OVERSIGHT** a report summarizing the information the Office receives under subsection (a) of this section.

(2) If applicable, the report submitted under paragraph (1) of this subsection shall include minority business enterprise participation data for each unit by industry type.

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

(4) (I) BEGINNING WITH THE REPORT SUBMITTED UNDER PARAGRAPH (1) OF THIS SUBSECTION ON DECEMBER 31, 2023, AND EACH YEAR THEREAFTER, THE GOVERNOR'S OFFICE OF SMALL, MINORITY, AND WOMEN BUSINESS AFFAIRS SHALL INCLUDE IN THE REPORT AN ATTESTATION THAT ALL UNITS REQUIRED TO REPORT UNDER SUBSECTION (A) OF THIS SECTION ARE REPRESENTED IN THE REPORT.

(II) TO ENSURE ACCURACY OF THE ATTESTATION MADE UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, ON OR BEFORE DECEMBER 31, 2023, AND EVERY 3 YEARS THEREAFTER, THE GOVERNOR'S OFFICE OF SMALL, MINORITY, AND WOMEN BUSINESS AFFAIRS SHALL CONDUCT AN AUDIT OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT TO DETERMINE WHAT ENTITIES ARE INCLUDED IN THE DEFINITION OF "UNIT" UNDER § 11-101 OF THIS ARTICLE.

(c) (1) In this subsection, "mitigating factors" includes documented nonperformance or unavailability of a minority business enterprise designated for a contract.

(2) The Governor's Office of Small, Minority, and Women Business Affairs and the Office of State Procurement in the Department of General Services, in consultation with the Office of the Attorney General and the Board of Public Works, shall adopt by

regulation criteria used to determine that a prime contractor has persistently failed to meet contract goals in the absence of mitigating factors.

(3) The criteria adopted under paragraph (2) of this subsection shall include the results of the compliance assessments made under subsection (a)(2)(v) of this section.

(4) The Governor's Office of Small, Minority, and Women Business Affairs shall refer prime contractors identified under the criteria adopted under paragraph (2) of this subsection to the Office of the Attorney General for debarment under § 16-203(d)(4) of this article.

~~(D) THE OFFICE OF STATE PROCUREMENT IN THE DEPARTMENT OF GENERAL SERVICES SHALL MAINTAIN A LIST OF THE UNITS REQUIRED TO REPORT UNDER SUBSECTION (A) OF THIS SECTION.~~

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2023.

Approved by the Governor, April 24, 2023.