

Chapter 653

(House Bill 850)

AN ACT concerning

State Procurement – Small Business Preference Procurement

FOR the purpose of requiring each procurement unit to establish a price preference for small businesses; designating the Board of Public Works as the regulatory authority for the Small Business Preference Program; ~~specifying the manner in which a unit may achieve targets for procurement awards to small businesses;~~ and generally relating to small business procurement.

BY repealing and reenacting, with amendments,
Article – State Finance and Procurement
Section 14–202 through 14–207 ~~and 14–502(e)~~
Annotated Code of Maryland
(2021 Replacement Volume and 2023 Supplement)

~~BY repealing and reenacting, without amendments,
Article – State Finance and Procurement
Section 14–502(e)
Annotated Code of Maryland
(2021 Replacement Volume and 2023 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

14–202.

(a) This subtitle applies to procurement of supplies, services, and construction related services by[:

- (1) the Department of General Services;
- (2) the Department of Transportation;
- (3) the University System of Maryland;
- (4) Morgan State University; and

(5) as provided in subsection (b) of this section, the Department of Public Safety and Correctional Services in connection with construction of a State correctional

facility under § 12–107 of this article] **ANY UNIT OR AGENCY OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.**

(b) For procurements in connection with the construction of a State correctional facility, the Department of Public Safety and Correctional Services shall:

(1) apply the percentage price preferences established by the Department of General Services under this subtitle; and

(2) follow the same procedures established by the Department of General Services to comply with this subtitle.

14–203.

(a) By regulation, the [Secretary of General Services, the Secretary of Transportation, the Chancellor of the University System of Maryland, and the President of Morgan State University each] **BOARD** shall specify the criteria that a business must meet to qualify as a small business.

(b) (1) The criteria for qualification as a small business may vary among industries to reflect their particular characteristics.

(2) Regulations adopted under this section shall include, for each class of business, the maximum number of employees a business may have to qualify as a small business.

(c) The regulations adopted under subsection (a) of this section shall require the qualification of a business as a small business for the exclusive purpose of pursuing out-of-state contracts, if the business has:

(1) 250 or fewer employees; or

(2) average annual gross receipts of \$10,000,000 or less averaged over its most recently completed 3 fiscal years.

14–204.

The [Secretary of General Services, the Secretary of Transportation, and the Chancellor of the University System of Maryland each] **BOARD** shall adopt regulations to establish procedures for:

(1) compiling and maintaining a comprehensive bidder's list of small businesses;

(2) locating potential sources for various construction related services, supplies, and services and affirmatively seeking to locate potential minority business enterprise sources for those construction related services, supplies, and services;

(3) helping small businesses to comply with the procedures for bidding on procurement contracts;

(4) examining requests for construction related services, supplies, and services to determine when an invitation for bids may be designated for the Small Business Preference Program;

(5) bidding for a procurement contract designated for a small business preference;

(6) simplifying procurement specifications and terms, to increase the opportunities for small business participation;

(7) investigating the responsibility of bidders on small business preferences; and

(8) explaining to a small business the reason for which its bid for a small business preference was rejected.

14–205.

The Department of Commerce shall help the [Secretaries of General Services and Transportation and the Chancellor of the University System of Maryland] **BOARD** in establishing procedures to carry out § 14–204(1) and (2) of this subtitle.

14–206.

(a) In this section, “percentage preference” means the percent of the lowest responsive bid submitted by a responsible bidder who is not a small business by which a responsive bid by a small business may:

(1) exceed the lowest bid; and

(2) be awarded a procurement contract under this subtitle.

(b) Subject to the approval of the Board, [the Secretary of General Services, the Secretary of Transportation, and the Chancellor of the University System of Maryland] each **UNIT**:

(1) shall establish a percentage preference, not to exceed 8%, for each industry as follows:

(i) a base percentage preference not to exceed 5% for all small businesses; and

(ii) two additional preferences to the percentage preference set forth in item (i) of this paragraph as follows:

1. 2% for veteran-owned small businesses; and
2. 3% for disabled veteran-owned small businesses; and

(2) may vary the percentage preference determined in item (1)(i) of this subsection among industries to account for their particular characteristics.

14-207.

(a) The [Secretary of General Services, the Secretary of Transportation, and the Chancellor of the University System of Maryland each] ~~BOARD UNIT~~ may designate, for the Small Business Preference Program, procurement of certain supplies, services, or construction related services that have been requested through or with the approval of the [Secretary or Chancellor] HEAD OF THE UNIT.

(b) The invitation for bids on a procurement that has been designated for a small business preference shall be sent to small businesses and regular bidders to establish a reasonable price range commensurate with current market conditions.

(c) [The Secretary of General Services, the Secretary of Transportation, or the Chancellor of the University System of Maryland] ~~A UNIT~~ shall award a procurement contract designated for a small business preference to the small business that:

(1) is a responsible bidder; and

(2) submits the lowest responsive bid from a small business if the difference between that bid and the lowest responsive bid submitted by a responsible bidder who is not a small business does not exceed the percentage preference established under § 14-206 of this subtitle.

~~14-502.~~

~~(e) To the extent practicable, a unit shall structure its procurement procedures to achieve a minimum of 15% of the unit's total dollar value of goods, supplies, services, maintenance, construction, construction-related services, and architectural and engineering service contracts to be made directly to small businesses.~~

(e) ~~A unit may [apply toward the unit's overall annual Small Business Reserve payment achievement only those payments resulting from a procurement that is designated a Small Business Reserve procurement]~~ MAY:

~~(1) ACHIEVE THE OBJECTIVES ESTABLISHED UNDER SUBSECTION (C) OF THIS SECTION BY AWARDING CONTRACTS TO SMALL BUSINESSES THROUGH BOTH THE SMALL BUSINESS PREFERENCE PROGRAM AND THE SMALL BUSINESS RESERVE PROGRAM; AND~~

~~(2) APPLY ANY CONTRACT AWARDED TO A SMALL BUSINESS TOWARD THE OBJECTIVE ESTABLISHED UNDER SUBSECTION (C) OF THIS SECTION, EVEN IF THE PROCUREMENT IS NOT DESIGNATED FOR THE SMALL BUSINESS PREFERENCE PROGRAM OR THE SMALL BUSINESS RESERVE PROGRAM.~~

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2024.

Approved by the Governor, May 9, 2024.