

HOUSE BILL 224

P2

8lr1636

By: **Delegates J. Lewis, Barron, Angel, Chang, Hayes, Jones, Sanchez, Sydnor, A. Washington, and P. Young**

Introduced and read first time: January 18, 2018

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 28, 2018

CHAPTER _____

1 AN ACT concerning

2 **Procurement – Small Businesses and Minority Businesses – Qualification and**
3 **Certification**

4 FOR the purpose of requiring the Secretary of General Services, the Secretary of
5 Transportation, the Chancellor of the University System of Maryland, and the
6 President of Morgan State University to adopt regulations to require the
7 qualification of a business as a small business in a certain manner if the business
8 has obtained a certain federal certification; altering a requirement that certain
9 regulations promote and facilitate certification of minority business enterprises that
10 have received a certain federal certification; requiring the Board of Public Works to
11 adopt regulations ~~to require that provide for~~ the certification of a business as a
12 minority business enterprise ~~in a certain manner~~ if the business has obtained a
13 certain federal certification and meets certain eligibility requirements; and generally
14 relating to procurement by small businesses and minority businesses.

15 BY repealing and reenacting, with amendments,
16 Article – State Finance and Procurement
17 Section 14–203 and 14–303
18 Annotated Code of Maryland
19 (2015 Replacement Volume and 2017 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



Article – State Finance and Procurement

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 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:

(1) IF THE BUSINESS HAS OBTAINED CERTIFICATION AS A SMALL BUSINESS UNDER A FEDERAL SMALL BUSINESS CERTIFICATION PROGRAM; AND

(2) WITHOUT FILING ANY ADDITIONAL PAPERWORK OTHER THAN EVIDENCE OF THE FEDERAL CERTIFICATION.

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 § 2–1246 of the State Government Article.

(iii) The Board shall keep a record of the aggregate number and the identity of minority business enterprises that receive certification under the process established by the Board under subsection (b)(1) 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 § 2–1246 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.

1 (b) These regulations shall include:

2 (1) provisions:

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

7 (ii) for the purpose of certification under this subtitle, that promote
8 and facilitate certification of minority business enterprises that have received certification
9 from [the U.S. Small Business Administration] A FEDERAL or a county PROGRAM that
10 uses a certification process substantially similar to the process established in accordance
11 with item (i) of this item, **INCLUDING A PROVISION THAT ~~REQUIRES~~ PROVIDES FOR**
12 **CERTIFICATION OF A BUSINESS AS A MINORITY BUSINESS ENTERPRISE IF THE**
13 **BUSINESS:**

14 **1. ~~IF THE BUSINESS HAS OBTAINED CERTIFICATION AS A~~**
15 **~~MINORITY BUSINESS UNDER A FEDERAL MINORITY BUSINESS CERTIFICATION~~**
16 **~~PROGRAM UNDER THE FEDERAL DISADVANTAGED BUSINESS ENTERPRISE~~**
17 **PROGRAM; AND**

18 **~~2. WITHOUT FILING ANY ADDITIONAL PAPERWORK~~**
19 **~~OTHER THAN EVIDENCE OF THE FEDERAL CERTIFICATION;~~**

20 **2. MEETS THE ELIGIBILITY REQUIREMENTS OF THE**
21 **MINORITY BUSINESS ENTERPRISE PROGRAM;**

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

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

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

33 (3) a requirement that bidders or offerors complete a document setting
34 forth the percentage of the total dollar amount of the contract that the bidder or offeror
35 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) 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;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 October 1, 2018.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.