

HOUSE BILL 856

P2

4lr1584

By: **Delegate Alston**

Introduced and read first time: February 2, 2024

Assigned to: Health and Government Operations and Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Minority Business Enterprise Program – Work Performed by a**
3 **Regulated Lobbyist or Government Relations Firm**

4 FOR the purpose of authorizing the costs for certain work performed on a procurement
5 contract by a regulated lobbyist or government relations firm that is a certified
6 minority business enterprise to be applied toward certain minority business
7 enterprise goals under certain circumstances; and generally relating to procurement
8 preferences.

9 BY repealing and reenacting, with amendments,
10 Article – State Finance and Procurement
11 Section 14–302
12 Annotated Code of Maryland
13 (2021 Replacement Volume and 2023 Supplement)

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

16 **Article – State Finance and Procurement**

17 14–302.

18 (a) (1) (i) 1. Except for leases of real property, each unit shall structure
19 procurement procedures, consistent with the purposes of this subtitle, to try to achieve an
20 overall percentage goal of the unit’s total dollar value of procurement contracts being made
21 directly or indirectly to certified minority business enterprises.

22 2. Notwithstanding subsubparagraph 1 of this
23 subparagraph, the following contracts may not be counted as part of a unit’s total dollar
24 value of procurement contracts:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 A. a procurement contract awarded in accordance with
2 Subtitle 1 of this title;

3 B. a procurement contract awarded to a nonprofit entity in
4 accordance with requirements mandated by State or federal law; and

5 C. a procurement by the Maryland Developmental
6 Disabilities Administration of the Maryland Department of Health for family and
7 individual support services, community residential services, resource coordination services,
8 behavioral support services, vocational and day services, and respite services, as those
9 terms are defined in regulations adopted by the Maryland Department of Health.

10 (ii) 1. The overall percentage goal shall be established on a
11 biennial basis by the Special Secretary for the Office of Small, Minority, and Women
12 Business Affairs, in consultation with the Secretary of Transportation and the Attorney
13 General.

14 2. During any year in which there is a delay in establishing
15 the overall goal, the previous year's goal will apply.

16 (iii) 1. In consultation with the Secretary of Transportation and
17 the Attorney General, the Special Secretary for the Office of Small, Minority, and Women
18 Business Affairs shall establish guidelines on a biennial basis for each unit to consider
19 while determining whether to set subgoals for the minority groups listed in §
20 14-301(k)(1)(i)1, 2, 3, 4, and 6 of this subtitle.

21 2. During any year in which there is a delay in establishing
22 the subgoal guidelines, the previous year's subgoal guidelines will apply.

23 (iv) 1. The Special Secretary for the Office of Small, Minority,
24 and Women Business Affairs, in consultation with the Secretary of Transportation and the
25 Attorney General, shall establish goals and subgoal guidelines that, to the maximum extent
26 feasible, approximate the level of minority business enterprise participation that would be
27 expected in the absence of discrimination.

28 2. In establishing overall goals and subgoal guidelines, the
29 Special Secretary for the Office of Small, Minority, and Women Business Affairs shall
30 provide for public participation by consulting with minority, women's, and general
31 contractor groups, community organizations, and other officials or organizations that could
32 be expected to have information concerning:

33 A. the availability of minority- and women-owned
34 businesses;

35 B. the effects of discrimination on opportunities for
36 minority- and women-owned businesses; and

1 C. the State's operation of the Minority Business Enterprise
2 Program.

3 (v) In establishing overall goals, the factors to be considered shall
4 include:

5 1. the relative availability of minority- and women-owned
6 businesses to participate in State procurement as demonstrated by the State's most recent
7 disparity study;

8 2. past participation of minority business enterprises in
9 State procurement, except for procurement related to leases of real property; and

10 3. other factors that contribute to constitutional goal setting.

11 (vi) Notwithstanding § 12-101 of this article, the Special Secretary
12 for the Office of Small, Minority, and Women Business Affairs shall adopt regulations in
13 accordance with Title 10, Subtitle 1 of the State Government Article setting forth the
14 State's overall goal.

15 (2) The Special Secretary for the Office of Small, Minority, and Women
16 Business Affairs, in consultation with the Secretary of Transportation and the Attorney
17 General, shall establish guidelines for each unit to consider when determining the
18 appropriate minority business enterprise participation percentage goal for a procurement
19 contract in accordance with paragraph (3) of this subsection.

20 (3) Each unit shall:

21 (i) consider the practical severability of all contracts and, in
22 accordance with § 11-201 of this article, may not bundle contracts;

23 (ii) implement a program that will enable the unit to evaluate each
24 contract to determine the appropriate minority business enterprise participation goals, if
25 any, for the contract based on:

26 1. the potential subcontract opportunities available in the
27 prime procurement contract;

28 2. the availability of certified minority business enterprises
29 to respond competitively to the potential subcontract opportunities;

30 3. the contract goal guidelines established under paragraph
31 (2) of this subsection;

32 4. the subgoal guidelines established under paragraph (1)(iii)
33 of this subsection; and

1 5. other factors that contribute to constitutional goal setting;

2 (iii) monitor and collect data with respect to prime contractor
3 compliance with contract goals; and

4 (iv) institute corrective action when prime contractors do not make
5 good-faith efforts to comply with contract goals.

6 (4) Units may not use quotas or any project goal-setting process that:

7 (i) solely relies on the State's overall numerical goal, or any other
8 jurisdiction's overall numerical goal; or

9 (ii) fails to incorporate the analysis outlined in paragraph (3)(ii) of
10 this subsection.

11 (5) (i) A woman who is also a member of an ethnic or racial minority
12 group may be certified in that category in addition to the gender category.

13 (ii) For purposes of achieving the goals in this subsection, a certified
14 minority business enterprise may participate in a procurement contract and be counted as
15 a woman-owned business, a business owned by a member of an ethnic or racial group, or
16 both, if the business has been certified in both categories.

17 (6) Each unit shall meet the maximum feasible portion of the State's
18 overall goal established in accordance with this subsection by using race-neutral measures
19 to facilitate minority business enterprise participation in the procurement process.

20 (7) If a unit establishes minority business enterprise participation goals for
21 a contract, a contractor, including a contractor that is a certified minority business
22 enterprise, shall:

23 (i) identify specific work categories appropriate for subcontracting;

24 (ii) at least 10 days before bid opening, solicit minority business
25 enterprises, through written notice that:

26 1. describes the categories of work under item (i) of this
27 paragraph; and

28 2. provides information regarding the type of work being
29 solicited and specific instructions on how to submit a bid;

30 (iii) attempt to make personal contact with the firms in item (ii) of
31 this paragraph;

1 (iv) offer to provide reasonable assistance to minority business
2 enterprises to fulfill bonding requirements or to obtain a waiver of those requirements;

3 (v) in order to publicize contracting opportunities to minority
4 business enterprises, attend prebid or preproposal meetings or other meetings scheduled
5 by the unit; and

6 (vi) upon acceptance of a bid or proposal, provide the unit with a list
7 of minority businesses with whom the contractor negotiated, including price quotes from
8 minority and nonminority firms.

9 (8) The Special Secretary for the Office of Small, Minority, and Women
10 Business Affairs shall:

11 (i) in consultation with the Secretary of Transportation and the
12 Attorney General, establish procedures governing how the participation of minority
13 business enterprise prime contractors is counted toward contract goals; and

14 (ii) notwithstanding § 12–101 of this article, adopt regulations
15 setting forth the procedures established in accordance with this paragraph.

16 (9) (i) 1. If a contractor, including a certified minority business
17 enterprise, does not achieve all or a part of the minority business enterprise participation
18 goals on a contract, the unit shall make a finding of whether the contractor has
19 demonstrated that the contractor took all necessary and reasonable steps to achieve the
20 goals, including compliance with paragraph (7) of this subsection.

21 2. A waiver of any part of the minority business enterprise
22 goals for a contract shall be granted if a contractor provides a reasonable demonstration of
23 good–faith efforts to achieve the goals.

24 (ii) If the unit determines that a waiver should be granted in
25 accordance with subparagraph (i) of this paragraph, the unit may not require the contractor
26 to renegotiate any subcontract in order to achieve a different result.

27 (iii) The head of the unit may waive any of the requirements of this
28 subsection relating to the establishment, use, and waiver of contract goals for a sole source,
29 expedited, or emergency procurement in which the public interest cannot reasonably
30 accommodate use of those requirements.

31 (iv) 1. Except for waivers granted in accordance with
32 subparagraph (iii) of this paragraph, when a waiver determination is made, the unit shall
33 issue the determination in writing.

34 2. The head of the unit shall:

1 A. keep one copy of the waiver determination and the reasons
2 for the determination; and

3 B. forward one copy of the waiver determination to the
4 Governor's Office of Small, Minority, and Women Business Affairs.

5 (v) On or before July 31 of each year, each unit shall submit directly
6 to the Board of Public Works and the Governor's Office of Small, Minority, and Women
7 Business Affairs an annual report of waivers requested and waivers granted under this
8 paragraph.

9 (vi) The report required under subparagraph (v) of this paragraph
10 shall contain the following information on those contracts where the unit considered a
11 contractor's request for waiver of all or a portion of the minority business enterprise goals:

- 12 1. the contract titles, numbers, and dates;
- 13 2. the number of waiver requests received;
- 14 3. the number of waiver requests granted; and
- 15 4. any other information specifically requested by the Board.

16 (10) (i) 1. This paragraph applies to a bidder or offeror after
17 submission of a bid or proposal and before the execution of a contract with an expected
18 degree of minority business enterprise participation.

19 2. If the bidder or offeror determines that a minority
20 business enterprise identified in the minority business enterprise participation schedule
21 has become or will become unavailable or ineligible to perform the work required under the
22 contract, the bidder or offeror shall notify the unit within 72 hours of making the
23 determination.

24 (ii) 1. If a minority business enterprise identified in the minority
25 business enterprise participation schedule submitted with a bid or offer has become or will
26 become unavailable or ineligible to perform the work required under the contract, the
27 bidder or offeror may submit a written request with the unit to amend the minority
28 business enterprise participation schedule.

29 2. The request to amend the minority business enterprise
30 participation schedule shall indicate the bidder's or offeror's efforts to substitute another
31 certified minority business enterprise to perform the work that the unavailable or ineligible
32 minority business enterprise would have performed.

33 (iii) A minority business enterprise participation schedule may not
34 be amended unless:

1 1. the bidder or offeror provides a satisfactory explanation of
2 the reason for inclusion of the unavailable or ineligible firm on the minority business
3 enterprise participation schedule; and

4 2. the amendment is approved by the unit's procurement
5 officer after consulting with the unit's minority business enterprise liaison.

6 (11) (i) This paragraph applies after execution of a contract with an
7 expected degree of minority business enterprise participation.

8 (ii) The minority business enterprise participation schedule,
9 including any amendment, shall be attached to and made a part of the executed contract.

10 (iii) 1. A. Except as provided in subsubsubparagraph B of this
11 subsubparagraph, for purposes of this subparagraph, good cause for removal of a certified
12 minority business enterprise after contract execution includes documented
13 nonperformance by the minority business enterprise or election by the certified minority
14 business enterprise to cease work on the contract.

15 B. Failure of a certified minority business enterprise to
16 provide a bond requested by a contractor in violation of § 13–227 of this article may not be
17 considered nonperformance by the minority business enterprise.

18 2. A contractor may not terminate or otherwise cancel the
19 contract of a certified minority business enterprise subcontractor listed in the minority
20 business enterprise participation schedule without showing good cause and obtaining the
21 prior written consent of the minority business enterprise liaison and approval of the head
22 of the unit.

23 3. The unit shall send a copy of the written consent obtained
24 under subsubparagraph 2 of this subparagraph to the Governor's Office of Small, Minority,
25 and Women Business Affairs.

26 (iv) A minority business enterprise participation schedule may not
27 be amended after the date of contract execution unless the request is approved by the head
28 of the unit and the contract is amended.

29 (12) If, during the performance of a contract, a certified minority business
30 enterprise contractor or subcontractor becomes ineligible to participate in the Minority
31 Business Enterprise Program because one or more of its owners has a personal net worth
32 that exceeds the amount specified in § 14–301(k)(3) of this subtitle:

33 (i) that ineligibility alone may not cause the termination of the
34 certified minority business enterprise's contractual relationship for the remainder of the
35 term of the contract; and

1 (ii) the certified minority business enterprise's participation under
2 the contract shall continue to be counted toward the program and contract goals.

3 (13) (i) Except as provided in subparagraph (ii) of this paragraph, a
4 nonprofit entity participating as a minority business enterprise on a procurement contract
5 awarded by a unit before July 1, 2015, may continue to participate in the contract until the
6 contract expires or otherwise terminates, including all options, renewals, and other
7 extensions.

8 (ii) 1. The nonprofit entity's participation may not be counted
9 toward achieving the minority business enterprise participation goals in this subsection.

10 2. The unit may not require that a certified minority
11 business enterprise be substituted for the nonprofit entity in order to meet the minority
12 business enterprise goals for the procurement contract.

13 (14) (i) For purposes of this paragraph and paragraph (15) of this
14 subsection, "regular dealer":

15 1. means a firm that owns, operates, or maintains a store, a
16 warehouse, or any other establishment in which the materials, supplies, articles, or
17 equipment are of the general character described by the specifications required under the
18 contract and are bought, kept in stock, or regularly sold or leased to the public in the usual
19 course of business; and

20 2. does not include a packager, a broker, a manufacturer's
21 representative, or any other person that arranges or expedites transactions.

22 (ii) A unit may apply only 60% of the costs of the materials and
23 supplies provided by the certified minority business enterprise if the certified minority
24 business enterprise is a regular dealer for purposes of achieving the minority business
25 enterprise contract goal.

26 (15) With respect to materials or supplies purchased from a certified
27 minority business enterprise that is neither a manufacturer nor a regular dealer:

28 (i) a unit may apply the entire amount of fees or commissions
29 charged for assistance in the procurement of the materials and supplies, fees, or
30 transportation charges for the delivery of materials and supplies required on a procurement
31 toward minority business enterprise contract goals, provided a unit determines the fees to
32 be reasonable and not excessive as compared with fees customarily allowed for similar
33 services; and

34 (ii) a unit may not apply any portion of the costs of the materials and
35 supplies toward minority business enterprise goals.

1 **(16) (I) IN THIS PARAGRAPH, “REGULATED LOBBYIST” HAS THE**
2 **MEANING STATED IN § 5–101 OF THE GENERAL PROVISIONS ARTICLE.**

3 **(II) IF A CONTRACTOR OR SUBCONTRACTOR HAS CONTRACTED**
4 **WITH A REGULATED LOBBYIST OR GOVERNMENT RELATIONS FIRM IN CONNECTION**
5 **WITH A PROCUREMENT CONTRACT AND THE REGULATED LOBBYIST OR**
6 **GOVERNMENT RELATIONS FIRM IS A CERTIFIED MINORITY BUSINESS ENTERPRISE,**
7 **THE CONTRACTOR OR SUBCONTRACTOR MAY APPLY THE COSTS FOR THE WORK**
8 **PERFORMED BY THE REGULATED LOBBYIST OR GOVERNMENT RELATIONS FIRM**
9 **UNDER THE CONTRACT TOWARD MINORITY BUSINESS ENTERPRISE GOALS.**

10 (b) (1) The provisions of §§ 14–301(f) and 14–303 of this subtitle and
11 subsection (a) of this section are inapplicable to the extent that any unit determines the
12 provisions to be in conflict with any applicable federal program requirement.

13 (2) The determination under this subsection shall be included with the
14 report required under § 14–305 of this subtitle.

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