

SENATE BILL 703

P2

11r2405

By: **Senator West**

Introduced and read first time: February 3, 2021

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Minority Business Enterprises – Qualification and Certification**

3 FOR the purpose of requiring the Board of Public Works to adopt regulations to require the
4 certification of a business as a minority business enterprise in a certain manner if
5 the business has obtained a certain federal certification and remains certified; and
6 generally relating to procurement by minority businesses.

7 BY repealing and reenacting, with amendments,
8 Article – State Finance and Procurement
9 Section 14–303
10 Annotated Code of Maryland
11 (2015 Replacement Volume and 2020 Supplement)

12 BY repealing and reenacting, without amendments,
13 Article – State Finance and Procurement
14 Section 14–309
15 Annotated Code of Maryland
16 (2015 Replacement Volume and 2020 Supplement)

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

19 **Article – State Finance and Procurement**

20 14–303.

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

9 (b) These regulations shall include:

10 (1) provisions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 14–309.

2 The provisions of §§ 14–301 through 14–305 of this subtitle, and any regulations
3 adopted under those sections, shall be of no effect and may not be enforced after July 1,
4 2022.

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 October 1, 2021.