

SENATE BILL 721

P2

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CF HB 797

By: **Senator Hester**

Introduced and read first time: February 5, 2021

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Small Business Reserve Program – Administration and**
3 **Application**

4 FOR the purpose of providing that the Small Business Reserve Program applies to certain
5 universities in the State; specifying certain guidelines that the Governor’s Office of
6 Small, Minority, and Women Business Affairs is required to establish for the
7 administration of the Program; requiring that certain guidelines for the Program be
8 developed in partnership with certain persons; requiring that a unit assess certain
9 procurements up to and including a certain dollar value under the guidelines for the
10 Program and either designate the procurement for the Program or request a certain
11 waiver certified by the Governor’s Office of Small, Minority, and Women Business
12 Affairs; making the provisions of this Act severable; and generally relating to the
13 Small Business Reserve Program.

14 BY repealing and reenacting, without amendments,
15 Article – State Finance and Procurement
16 Section 11–203(e)(1) and (2), 14–501, and 14–502
17 Annotated Code of Maryland
18 (2015 Replacement Volume and 2020 Supplement)

19 BY repealing and reenacting, with amendments,
20 Article – State Finance and Procurement
21 Section 11–203(e)(5), 14–503, and 14–504
22 Annotated Code of Maryland
23 (2015 Replacement Volume and 2020 Supplement)

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

26 **Article – State Finance and Procurement**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 11–203.

2 (e) (1) In this subsection, “University” means the University System of
3 Maryland, Morgan State University, or St. Mary’s College of Maryland.

4 (2) Except as otherwise provided in this subsection, this Division II does
5 not apply to the University System of Maryland, Morgan State University, or St. Mary’s
6 College of Maryland.

7 (5) (i) Except as provided in paragraph (7) of this subsection, the
8 following provisions of Division II of this article apply to a University:

9 1. § 11–205 of this subtitle (“Collusion”);

10 2. § 11–205.1 of this subtitle (“Falsification, concealment,
11 etc., of material facts”);

12 3. § 13–219 of this article (“Required clauses –
13 Nondiscrimination clause”);

14 4. § 13–225 of this article (“Retainage”);

15 5. Title 14, Subtitle 3 of this article (“Minority Business
16 Participation”);

17 **6. TITLE 14, SUBTITLE 5 OF THIS ARTICLE (“SMALL
18 BUSINESS RESERVE PROGRAM”);**

19 **[6.] 7.** Title 15, Subtitle 1 of this article (“Procurement Contract
20 Administration”);

21 **[7.] 8.** § 15–226 of this article (“Policy established; timing of
22 payments; notice upon nonpayment; disputes; appeals”); and

23 **[8.] 9.** Title 16 of this article (“Suspension and Debarment of
24 Contractors”).

25 (ii) If a procurement violates the provisions of this subsection or
26 policies adopted in accordance with this subsection, the procurement contract is void or
27 voidable in accordance with the provisions of § 11–204 of this subtitle.

28 14–501.

29 (a) In this subtitle the following words have the meanings indicated.

30 (b) “Small business” means:

1 (1) a certified minority business enterprise, as defined in § 14–301 of this
2 title, that meets the criteria specified under item (2) of this subsection; or

3 (2) a business, other than a broker, that meets the following criteria:

4 (i) the business is independently owned and operated;

5 (ii) the business is not a subsidiary of another business;

6 (iii) the business is not dominant in its field of operation; and

7 (iv) 1. A. the wholesale operations of the business did not
8 employ more than 50 persons in its most recently completed 3 fiscal years;

9 B. the retail operations of the business did not employ more
10 than 25 persons in its most recently completed 3 fiscal years;

11 C. the manufacturing operations of the business did not
12 employ more than 100 persons in its most recently completed 3 fiscal years;

13 D. the service operations of the business did not employ more
14 than 100 persons in its most recently completed 3 fiscal years;

15 E. the construction operations of the business did not employ
16 more than 50 persons in its most recently completed 3 fiscal years; and

17 F. the architectural and engineering services of the business
18 did not employ more than 100 persons in its most recently completed 3 fiscal years; or

19 2. A. the gross sales of the wholesale operations of the
20 business did not exceed an average of \$4,000,000 in its most recently completed 3 fiscal
21 years;

22 B. the gross sales of the retail operations of the business did
23 not exceed an average of \$3,000,000 in its most recently completed 3 fiscal years;

24 C. the gross sales of the manufacturing operations of the
25 business did not exceed an average of \$2,000,000 in its most recently completed 3 fiscal
26 years;

27 D. the gross sales of the service operations of the business did
28 not exceed an average of \$10,000,000 in its most recently completed 3 fiscal years;

29 E. the gross sales of the construction operations of the
30 business did not exceed an average of \$7,000,000 in its most recently completed 3 fiscal
31 years; and

1 F. the gross sales of the architectural and engineering
2 services of the business did not exceed an average of \$4,500,000 in its most recently
3 completed 3 fiscal years.

4 (c) "Small business reserve" means those procurements that are limited to
5 responses from small businesses under § 14-502(b) of this subtitle.

6 14-502.

7 (a) Except as provided in subsection (d) of this section, this subtitle applies to all
8 procurements by a unit.

9 (b) This subsection does not apply to procurements subject to Subtitle 1 of this
10 title.

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

15 (d) The total dollar value of procurements by a unit does not include the value of
16 contracts to which this section does not apply because of a conflict with federal law.

17 (e) A unit may apply toward the unit's overall annual Small Business Reserve
18 payment achievement only those payments resulting from a procurement that is
19 designated a Small Business Reserve procurement.

20 (f) The Special Secretary for the Office of Small, Minority, and Women Business
21 Affairs, in consultation with the Attorney General, shall establish standards and guidelines
22 for participation in the Small Business Reserve Program every 5 years.

23 14-503.

24 (a) The Governor's Office of Small, Minority, and Women Business Affairs shall
25 adopt regulations to establish procedures for compiling and maintaining a comprehensive
26 bidder's list of qualified small businesses that shall be posted on the Internet.

27 (b) The Governor's Office of Small, Minority, and Women Business Affairs shall:

28 (1) establish guidelines for **THE ADMINISTRATION OF THE** Small
29 Business Reserve Program [administration], **INCLUDING GUIDELINES THAT:**

30 **(I) IN CONSULTATION WITH THE OFFICE OF THE ATTORNEY**
31 **GENERAL, ENSURE OPERATION OF THE SMALL BUSINESS RESERVE PROGRAM IN**
32 **COMPLIANCE WITH FEDERAL LAW;**

1 **(II) IN CONSULTATION WITH THE DEPARTMENT OF GENERAL**
2 **SERVICES OFFICE OF STATE PROCUREMENT, PROVIDE FOR THE EFFICIENT**
3 **EXEMPTION OF PROCUREMENTS FROM THE SMALL BUSINESS RESERVE PROGRAM,**
4 **INCLUDING CERTAIN TERM AND MASTER CONTRACTS; AND**

5 **(III) PROMOTE THE POLICIES ESTABLISHED IN SUBTITLE 3 OF**
6 **THIS TITLE;**

7 (2) ensure agency compliance with the Small Business Reserve Program;

8 (3) provide training and technical assistance to agency personnel; and

9 (4) collect data regarding the State's utilization of small business reserve
10 vendors.

11 (c) Each unit shall ensure compliance with the regulations set forth in subsection
12 (a) of this section.

13 14-504.

14 (a) **(1)** Any procurement by a unit of goods, supplies, services, maintenance,
15 construction, construction-related services, architectural services, and engineering
16 services shall be eligible for designation for the small business reserve.

17 **(2) FOR ANY PROCUREMENT BY A UNIT ELIGIBLE FOR DESIGNATION**
18 **FOR THE SMALL BUSINESS RESERVE UNDER PARAGRAPH (1) OF THIS SUBSECTION**
19 **THAT HAS A TOTAL DOLLAR VALUE OF \$500,000 OR LESS, A UNIT SHALL:**

20 **(I) ASSESS THE PROCUREMENT UNDER THE GUIDELINES FOR**
21 **THE ADMINISTRATION OF THE SMALL BUSINESS RESERVE PROGRAM ESTABLISHED**
22 **UNDER § 14-503(B) OF THIS SUBTITLE; AND**

23 **(II) 1. DESIGNATE THE PROCUREMENT FOR THE SMALL**
24 **BUSINESS RESERVE; OR**

25 **2. REQUEST AND BE APPROVED FOR AN EXEMPTION,**
26 **CERTIFIED BY THE GOVERNOR'S OFFICE OF SMALL, MINORITY, AND WOMEN**
27 **BUSINESS AFFAIRS, THAT IT IS NOT PRACTICABLE TO DESIGNATE THE**
28 **PROCUREMENT FOR THE SMALL BUSINESS RESERVE.**

29 (b) A solicitation for procurement that has been designated for a small business
30 reserve shall be published in the same manner as required for an invitation for bids as set
31 forth in § 13-103(c) of this article.

32 (c) The procurement officer of a unit shall award a procurement contract

1 designated for a small business reserve to the small business that submits a responsive bid
2 that:

3 (1) is the lowest bid price;

4 (2) if the invitation for bids so provides, is the lowest evaluated bid price;
5 or

6 (3) is the bid or proposal most favorable to the State within the small
7 business reserve.

8 SECTION 2. AND BE IT FURTHER ENACTED, That, if any provision of this Act or
9 the application thereof to any person or circumstance is held invalid for any reason in a
10 court of competent jurisdiction, the invalidity does not affect other provisions or any other
11 application of this Act that can be given effect without the invalid provision or application,
12 and for this purpose the provisions of this Act are declared severable.

13 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 October 1, 2021.