

HOUSE BILL 284

P2
HB 224/18 – HGO

9lr0521

By: **Delegates J. Lewis, Carey, W. Fisher, Ivey, Luedtke, Washington, and Wilkins**
Introduced and read first time: January 25, 2019
Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Small Businesses and Minority Businesses – Qualification and**
3 **Certification**
4 **(Small and Minority Business Certification Streamlining Act of 2019)**

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

16 BY repealing and reenacting, with amendments,
17 Article – State Finance and Procurement
18 Section 14–203 and 14–303
19 Annotated Code of Maryland
20 (2015 Replacement Volume and 2018 Supplement)

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

23 **Article – State Finance and Procurement**

24 14–203.

25 (a) By regulation, the Secretary of General Services, the Secretary of
26 Transportation, the Chancellor of the University System of Maryland, and the President of

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



1 Morgan State University each shall specify the criteria that a business must meet to qualify
2 as a small business.

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

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

8 (C) **THE REGULATIONS ADOPTED UNDER SUBSECTION (A) OF THIS SECTION**
9 **SHALL REQUIRE THE QUALIFICATION OF A BUSINESS AS A SMALL BUSINESS:**

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

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

14 14-303.

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

18 (ii) The Board shall keep a record of information regarding any
19 waivers requested in accordance with § 14-302(a)(9)(i) of this subtitle and subsection
20 (b)(12) of this section and submit a copy of the record to the General Assembly on or before
21 October 1 of each year, in accordance with § 2-1246 of the State Government Article.

22 (iii) The Board shall keep a record of the aggregate number and the
23 identity of minority business enterprises that receive certification under the process
24 established by the Board under subsection (b)(1) of this section and submit a copy of the
25 record to the General Assembly on or before October 1 of each year, in accordance with §
26 2-1246 of the State Government Article.

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

31 (b) These regulations shall include:

32 (1) provisions:

33 (i) designating one State agency to certify and decertify minority

1 business enterprises for all units through a single process that meets applicable federal
2 requirements, including provisions that promote and facilitate the submission of some or
3 all of the certification application through an electronic process;

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

11 **1. HAS OBTAINED CERTIFICATION UNDER THE FEDERAL**
12 **DISADVANTAGED BUSINESS ENTERPRISE PROGRAM; AND**

13 **2. MEETS THE ELIGIBILITY REQUIREMENTS OF THE**
14 **MINORITY BUSINESS ENTERPRISE PROGRAM;**

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

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

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

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

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

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

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

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

8 1. a minority business enterprise subcontractor was named
9 on the participation schedule; or

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

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;

35 (15) a requirement that a unit verify that minority business enterprises

1 listed in a successful bid are actually participating to the extent listed in the project for
2 which the bid was submitted;

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

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

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

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

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

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

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

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 2019.