

Chapter 578

(Senate Bill 546)

AN ACT concerning

Procurement – Minority Business Enterprises – Review of Application for Certification and Notice to Applicant

FOR the purpose of requiring the Board of Public Works to adopt regulations that require the agency designated to certify minority business enterprises to complete its review and provide notice of its decision to the applicant, ~~absent extenuating circumstances, within a certain period of time and that authorize the agency, after giving certain notice and explanation to a certain applicant, to extend the time period once for completion of the agency's review of, and decision on, a certain application for a certain time period;~~ *authorizing the agency to extend a certain notification requirement for a certain period of time if the agency provides the applicant with a certain notice and explanation;* and generally relating to review and notice concerning an application for certification as a minority business enterprise.

BY repealing and reenacting, with amendments,
 Article – State Finance and Procurement
 Section 14–303
 Annotated Code of Maryland
 (2009 Replacement Volume)

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

Article – State Finance and Procurement

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 the number of waivers requested and the number of waivers granted each year under subsection (b)(8) 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.

(b) These regulations shall include:

(1) provisions:

(I) designating one agency to certify and decertify minority business enterprises for all units through a single process that meets applicable federal requirements; ~~AND~~

(II) **REQUIRING THE AGENCY DESIGNATED TO CERTIFY MINORITY BUSINESS ENTERPRISES, ~~ABSENT EXTENUATING CIRCUMSTANCES,~~ TO COMPLETE THE AGENCY'S REVIEW OF AN APPLICATION FOR CERTIFICATION AND NOTIFY THE APPLICANT OF THE AGENCY'S DECISION WITHIN ~~120~~ 90 DAYS OF RECEIPT OF ~~THE~~ A COMPLETE APPLICATION THAT INCLUDES ALL OF THE INFORMATION NECESSARY FOR THE AGENCY TO MAKE A DECISION; AND**

(III) **AUTHORIZING THE AGENCY, ~~AFTER GIVING WRITTEN NOTICE AND EXPLANATION TO THE APPLICANT,~~ DESIGNATED TO CERTIFY MINORITY BUSINESS ENTERPRISES TO EXTEND THE ~~TIME PERIOD ONCE FOR COMPLETION OF THE AGENCY'S REVIEW OF, AND DECISION ON AN APPLICATION FOR CERTIFICATION FOR A PERIOD OF NOT MORE THAN~~ NOTIFICATION REQUIREMENT ESTABLISHED UNDER ITEM (II) OF THIS ITEM ONCE, FOR NO MORE THAN AN ADDITIONAL 60 DAYS, IF THE AGENCY PROVIDES THE APPLICANT WITH A WRITTEN NOTICE AND EXPLANATION;**

(2) a requirement that the solicitation document accompanying each solicitation set forth the expected degree of minority business enterprise participation based, in part, on:

(i) the potential subcontract opportunities available in the prime procurement contract; and

(ii) the availability of certified minority business enterprises to respond competitively to the potential subcontract opportunities;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2010.

Approved by the Governor, May 20, 2010.