

## Chapter 354

## (House Bill 1279)

AN ACT concerning

**Maryland–National Capital Park and Planning Commission – Procurement – Source Selection****MC/PG 112–19**

FOR the purpose of requiring the Maryland–National Capital Park and Planning Commission to adopt certain procurement regulations relating to source selection; authorizing the Commission to adopt certain regulations establishing a minority business enterprise program ~~under certain circumstances~~ if the Commission makes a certain determination; authorizing the Commission to adopt certain regulations establishing a local small business enterprise program; requiring the Commission to report each year to certain persons on the effectiveness of certain programs; repealing certain provisions relating to a minority business enterprise program in the Commission on a certain date; ~~requiring the Special Secretary for the Office of Small, Minority, and Women Business Affairs and the Secretary of Transportation to ensure that the Commission is provided with certain technical assistance to implement this Act~~ requiring the Commission, in consultation with a certain certification agency, to complete a study to evaluate whether there is a compelling interest to implement certain remedial measures to assist minorities and women in participating in Commission procurement contracts; requiring a certain certification agency to consult with the Commission to identify information necessary to make a certain determination; requiring the Commission to obtain and provide certain information to the certification agency; requiring the Commission to make certain evaluations; requiring the Commission to report the findings of a certain study to certain persons on or before a certain date; authorizing the governing bodies of Montgomery County and Prince George’s County to provide certain funding for the implementation of this Act in a certain manner; defining certain terms; providing for a delayed effective date for certain provisions of this Act; and generally relating to procurement activities of the Maryland–National Capital Park and Planning Commission.

BY adding to

Article – Land Use

Section 15–201 through 15–205 to be under the new subtitle “Subtitle 2. Procurement”

Annotated Code of Maryland

(2012 Volume and 2018 Supplement)

BY repealing and reenacting, with amendments,

Article – Land Use

Section 15–201 and 15–205

Annotated Code of Maryland  
 (2012 Volume and 2018 Supplement)  
 (As enacted by Section 1 of this Act)

BY repealing and reenacting, without amendments,  
 Article – Land Use  
 Section 15–202 and 15–204  
 Annotated Code of Maryland  
 (2012 Volume and 2018 Supplement)  
 (As enacted by Section 1 of this Act)

BY repealing  
 Article – Land Use  
 Section 15–203  
 Annotated Code of Maryland  
 (2012 Volume and 2018 Supplement)  
 (As enacted by Section 1 of this Act)

#### Preamble

WHEREAS, As provided by Chapter 340 of the Acts of the General Assembly of 2017, the General Assembly has received and reviewed the disparity study entitled “Business Disparities in the Maryland Market Area”, published February 8, 2017; and

WHEREAS, Based on a review of the disparity study, the General Assembly found that there are substantial adverse disparities that are consistent with discrimination against businesses owned by minorities and women; and

WHEREAS, The General Assembly finds that the elimination of discrimination against businesses owned by minorities and women is of paramount importance to the future welfare of the State; and

WHEREAS, The State of Maryland wishes to provide all of its citizens with equal access to business formation and growth opportunities; and

WHEREAS, The Maryland–National Capital Park and Planning Commission is an independent bicounty agency of the State that procures goods and services within a geographical marketplace of particular interest to the State; and

WHEREAS, The Commission has reported that utilization of businesses owned by minorities and women declined after it ceased operating a minority business enterprise program on the abrogation of the authority provided under Chapter 256 of the Acts of the General Assembly of 1995; and

~~WHEREAS, The General Assembly desires for the Commission to assess, based on the disparity study and other legally relevant data, whether the Commission has~~

~~underutilized minority business enterprises relative to their availability to perform work in the procurement categories in which the State does business; and~~

~~WHEREAS, Subject to the Commission’s determination that such a legally significant disparity or underutilization exists, the General Assembly desires to authorize~~

WHEREAS, The General Assembly desires for the Commission to assess whether there is a basis for the Commission to implement remedial measures for minority- and women-owned businesses; and

WHEREAS, Subject to the Commission’s determination that there is a basis for the Commission to implement remedial measures for minority- and women-owned firms that seek to do business with the Commission, the General Assembly desires to authorize the Commission to adopt and implement a minority business enterprise procurement program to augment the efforts of the State under Chapter 340 of the Acts of the General Assembly of 2017; and

WHEREAS, The General Assembly further desires to authorize the Commission to implement a local small business enterprise program as a method of enhancing the participation of employers that are based locally within Montgomery County and Prince George’s County; now, therefore,

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

**Article – Land Use**

**SUBTITLE 2. PROCUREMENT.**

**15-201.**

**(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

**(B) “CERTIFICATION” MEANS THE DETERMINATION THAT A LEGAL ENTITY IS A MINORITY BUSINESS ENTERPRISE UNDER TITLE 14, SUBTITLE 3 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.**

**(C) “CERTIFICATION AGENCY” MEANS THE AGENCY DESIGNATED BY THE BOARD OF PUBLIC WORKS UNDER § 14-303(B) OF THE STATE FINANCE AND PROCUREMENT ARTICLE TO CERTIFY AND DECERTIFY MINORITY BUSINESS ENTERPRISES.**

(D) “CERTIFIED MINORITY BUSINESS ENTERPRISE” MEANS A MINORITY BUSINESS ENTERPRISE THAT HOLDS A VALID CERTIFICATION ISSUED BY THE CERTIFICATION AGENCY.

(E) “LOCAL SMALL BUSINESS ENTERPRISE” MEANS A BUSINESS ENTERPRISE THAT:

(1) HAS ITS PRINCIPAL PLACE OF OPERATION IN MONTGOMERY COUNTY OR PRINCE GEORGE’S COUNTY; AND

(2) HAS BEEN CERTIFIED AS A SMALL BUSINESS ENTERPRISE BY A UNIT OF COUNTY GOVERNMENT THAT HAS JURISDICTION OVER PROCUREMENT IN MONTGOMERY COUNTY OR PRINCE GEORGE’S COUNTY.

(F) “MINORITY BUSINESS ENTERPRISE” HAS THE SAME MEANING AS PROVIDED IN § 14-301 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

~~(G) “STUDY” MEANS THE DISPARITY STUDY COMMISSIONED BY THE GENERAL ASSEMBLY OF MARYLAND ENTITLED “BUSINESS DISPARITIES IN THE MARYLAND MARKET AREA” PUBLISHED ON FEBRUARY 8, 2017.~~

15-202.

THE COMMISSION SHALL ADOPT PROCUREMENT REGULATIONS CONSISTENT WITH THE STANDARDS AND METHODS FOR SOURCE SELECTION PROVIDED IN TITLE 13, SUBTITLE 1 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

15-203.

(A) ~~THE PROCUREMENT REGULATIONS ADOPTED IN ACCORDANCE WITH § 15-202 OF THIS SUBTITLE MAY INCLUDE A MINORITY BUSINESS ENTERPRISE PROGRAM IF THE COMMISSION DETERMINES, BASED ON THE STUDY AND OTHER LEGALLY RELEVANT DATA, THAT THE COMMISSION HAS UNDERUTILIZED MINORITY BUSINESS ENTERPRISES RELATIVE TO THEIR AVAILABILITY TO PERFORM WORK IN THE PROCUREMENT CATEGORIES IN WHICH THE STATE DOES BUSINESS, INCLUDING GOODS, SERVICES, AND CONSTRUCTION.~~ PROGRAM IF THE COMMISSION DETERMINES THAT THERE IS A COMPELLING INTEREST TO IMPLEMENT REMEDIAL MEASURES TO ASSIST MINORITY- AND WOMEN-OWNED BUSINESSES WHO WISH TO PARTICIPATE IN COMMISSION PROCUREMENT CONTRACTS.

(B) THE REGULATIONS TO ESTABLISH A MINORITY BUSINESS ENTERPRISE PROGRAM MAY INCLUDE:

(1) PROCEDURES TO BE FOLLOWED BY STAFF, 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;

~~(2) PROVISIONS TO EXTEND REASONABLE COMPETITIVE PREFERENCES FOR CERTIFIED MINORITY BUSINESS ENTERPRISES OR GOALS FOR UTILIZATION OF CERTIFIED MINORITY BUSINESS ENTERPRISES IN PARTICULAR PROCUREMENT ACTIVITIES UNDER APPROPRIATE CIRCUMSTANCES; AND~~

(2) TO THE EXTENT AUTHORIZED BY STATE AND FEDERAL LAW BASED ON THE FINDINGS OF AN APPROPRIATE STUDY OR ANALYSIS, PROVISIONS TO EXTEND REASONABLE COMPETITIVE PREFERENCES FOR CERTIFIED MINORITY BUSINESS ENTERPRISES OR GOALS FOR UTILIZATION OF CERTIFIED MINORITY BUSINESS ENTERPRISES IN PARTICULAR PROCUREMENT ACTIVITIES UNDER APPROPRIATE CIRCUMSTANCES; AND

(3) TO THE EXTENT APPLICABLE TO COMMISSION PROCUREMENT ACTIVITIES, PROVISIONS COMPARABLE IN PURPOSE AND EFFECT TO ANY REGULATIONS ADOPTED BY THE STATE IN ACCORDANCE WITH § 14-303 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

15-204.

(A) THE COMMISSION’S PROCUREMENT REGULATIONS MAY ESTABLISH A LOCAL SMALL BUSINESS ENTERPRISE PROGRAM TO ENCOURAGE LOCAL SMALL BUSINESS ENTERPRISE PARTICIPATION IN APPROPRIATE PROCUREMENT ACTIVITIES.

(B) THE REGULATIONS ADOPTED IN ACCORDANCE WITH THIS SECTION MAY INCLUDE:

(1) PROCEDURES FOR RELIABLE DOCUMENTATION OF A BUSINESS ENTITY’S OFFICIAL DESIGNATION BY MONTGOMERY COUNTY OR PRINCE GEORGE’S COUNTY AS A LOCAL SMALL BUSINESS ENTERPRISE;

(2) PROCEDURES TO BE FOLLOWED BY STAFF, 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 LOCAL SMALL BUSINESS ENTERPRISES; AND

(3) PROVISIONS TO:

**(I) EXTEND REASONABLE COMPETITIVE PREFERENCES FOR LOCAL SMALL BUSINESS ENTERPRISES;**

**(II) ESTABLISH PROCUREMENT GOALS OF UTILIZATION OF LOCAL SMALL BUSINESS ENTERPRISES; AND**

**(III) RESERVE PARTICULAR PROCUREMENT ACTIVITIES FOR LOCAL SMALL BUSINESS ENTERPRISES UNDER APPROPRIATE CIRCUMSTANCES.**

**15-205.**

**ON OR BEFORE OCTOBER 31 EACH YEAR, THE COMMISSION SHALL REPORT TO THE MONTGOMERY COUNTY AND PRINCE GEORGE’S COUNTY DELEGATIONS TO THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, ON THE EFFECTIVENESS OF ANY MINORITY BUSINESS ENTERPRISE PROGRAM OR LOCAL SMALL BUSINESS ENTERPRISE PROGRAM ESTABLISHED UNDER THIS SUBTITLE.**

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

**Article – Land Use**

15-201.

**[(a)]** In this [subtitle the following words have the meanings indicated.

(b) “Certification” means the determination that a legal entity is a minority business enterprise under Title 14, Subtitle 3 of the State Finance and Procurement Article.

(c) “Certification agency” means the agency designated by the Board of Public Works under § 14-303(b) of the State Finance and Procurement Article to certify and decertify minority business enterprises.

(d) “Certified minority business enterprise” means a minority business enterprise that holds a valid certification issued by the certification agency.

(e) “[Local] SUBTITLE, “LOCAL small business enterprise” means a business enterprise that:

(1) has its principal place of operation in Montgomery County or Prince George’s County; and

(2) has been certified as a small business enterprise by a unit of county government that has jurisdiction over procurement in Montgomery County or Prince George's County.

~~[(f) "Minority business enterprise" has the same meaning as provided in § 14-301 of the State Finance and Procurement Article.]~~

~~[(g) "Study" means the disparity study commissioned by the General Assembly of Maryland entitled "Business Disparities in the Maryland Market Area" published on February 8, 2017.]~~

15-202.

The Commission shall adopt procurement regulations consistent with the standards and methods for source selection provided in Title 13, Subtitle 1 of the State Finance and Procurement Article.

[15-203.

(a) The procurement regulations adopted in accordance with § 15-202 of this subtitle may include a minority business enterprise program if the Commission determines, ~~based on the study and other legally relevant data, that the Commission has underutilized minority business enterprises relative to their availability to perform work in the procurement categories in which the State does business, including goods, services, and construction~~ that there is a compelling interest to implement remedial measures to assist minority- and women-owned businesses who wish to participate in Commission procurement contracts.

(b) The regulations to establish a minority business enterprise program may include:

(1) procedures to be followed by staff, 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;

~~(2) provisions to extend reasonable competitive preferences for certified minority business enterprises or goals for utilization of certified minority business enterprises in particular procurement activities under appropriate circumstances; and~~

(2) to the extent permitted by State and federal law based on the findings of an appropriate study or analysis, provisions to extend reasonable competitive preferences for certified minority business enterprises or goals for utilization of certified minority business enterprises in particular procurement activities under appropriate circumstances; and

(3) to the extent applicable to Commission procurement activities, provisions comparable in purpose and effect to any regulations adopted by the State in accordance with § 14–303 of the State Finance and Procurement Article.]

15–204.

(a) The Commission’s procurement regulations may establish a local small business enterprise program to encourage local small business enterprise participation in appropriate procurement activities.

(b) The regulations adopted in accordance with this section may include:

(1) procedures for reliable documentation of a business entity’s official designation by Montgomery County or Prince George’s County as a local small business enterprise;

(2) procedures to be followed by staff, 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 local small business enterprises; and

(3) provisions to:

(i) extend reasonable competitive preferences for local small business enterprises;

(ii) establish procurement goals of utilization of local small business enterprises; and

(iii) reserve particular procurement activities for local small business enterprises under appropriate circumstances.

15–205.

On or before October 31 each year, the Commission shall report to the Montgomery County and Prince George’s County Delegations to the General Assembly, in accordance with § 2–1246 of the State Government Article, on the effectiveness of any [minority business enterprise program or] local small business enterprise program established under this subtitle.

~~SECTION 3. AND BE IT FURTHER ENACTED, That the Special Secretary for the Office of Small, Minority, and Women Business Affairs and the Secretary of Transportation shall ensure that the Commission is provided with appropriate technical assistance to implement this Act, including providing any information relating to the disparity study entitled “Business Disparities in the Maryland Market Area” published on February 8, 2017, that may be necessary or appropriate for the Commission to evaluate whether or the extent to which minority business enterprises may have been underutilized.~~

SECTION 3. AND BE IT FURTHER ENACTED, That:

(a) The Commission, in consultation with the certification agency designated by the Board of Public Works under § 14-303(b) of the State Finance and Procurement Article and the Office of the Attorney General, shall complete a study, which may include an analysis of the disparity study as set forth in subsection (b) of this section, to evaluate whether there is a compelling interest to implement remedial measures, including a program comparable to the State Minority Business Enterprise Program under Title 14, Subtitle 3 of the State Finance and Procurement Article, to assist minorities and women in participating in Commission procurement contracts.

(b) (1) The certification agency shall consult with the Commission to identify the information necessary to determine whether the disparity study entitled “Business Disparities in the Maryland Market Area”, published on February 8, 2017, applies to the types of goods and services procured by the Commission.

(2) The Commission shall obtain and provide information to the certification agency that the certification agency requires to make the determination under paragraph (1) of this subsection.

(c) In performing the study required under subsection (a) of this section, the Commission shall evaluate race-neutral programs or other methods that may be used to address the needs of minority- and women-owned businesses seeking to participate in Commission procurement contracts.

(d) On or before January 1, 2020, the Commission shall report to the Montgomery County and Prince George’s County delegations to the General Assembly and the Legislative Policy Committee, in accordance with § 2-1246 of the State Government Article, on the findings of the study required under subsection (a) of this section.

SECTION 4. AND BE IT FURTHER ENACTED, That the governing bodies of Montgomery County and Prince George’s County may provide for the funding necessary to implement this Act, including funding required for the Commission to conduct any study or analysis required to determine whether there is discrimination against minority business enterprises or whether local small business enterprises have been underutilized, through the operating budget of the Commission.

SECTION 5. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take effect October 1, 2022.

SECTION 6. AND BE IT FURTHER ENACTED, That, except as provided in Section 5 of this Act, this Act shall take effect June 1, 2019.

**Approved by the Governor, April 30, 2019.**