

HOUSE BILL 14

E3

4lr0087

(PRE-FILED)

By: **Chair, Health and Government Operations Committee (By Request –
Departmental – General Services) (By Request – Departmental –
Minority Affairs, Office of)**

Requested: November 8, 2013

Introduced and read first time: January 8, 2014

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 12, 2014

CHAPTER _____

1 AN ACT concerning

2 **Small Business Reserve Program – Procurements by Designated**
3 **Procurement Units**

4 FOR the purpose of requiring that ~~all~~ certain procurements by a designated
5 procurement unit that fall within a certain dollar value range be designated for
6 the Small Business Reserve program subject to a certain condition; altering a
7 certain definition; declaring the intent of the General Assembly; requiring the
8 Council for the Procurement of Health, Educational, and Social Services and the
9 Secretary of General Services or the Secretary's designee to conduct a certain
10 study and report to the Board of Public Works and the General Assembly on or
11 before a certain date; and generally relating to the designation of certain
12 procurements for the Small Business Reserve program.

13 BY repealing and reenacting, with amendments,
14 Article – State Finance and Procurement
15 Section 14-501 and 14-504
16 Annotated Code of Maryland
17 (2009 Replacement Volume and 2013 Supplement)

18 BY repealing and reenacting, without amendments,
19 Article – State Finance and Procurement
20 Section 14-502

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Annotated Code of Maryland
2 (2009 Replacement Volume and 2013 Supplement)

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

5 **Article – State Finance and Procurement**

6 14-501.

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

8 (b) “Designated procurement unit” means:

- 9 (1) the State Treasurer;
10 (2) the Department of Information Technology;
11 (3) the Department of Business and Economic Development;
12 (4) the Department of the Environment;
13 (5) the Department of General Services;
14 (6) the Department of Health and Mental Hygiene;
15 (7) the Department of Housing and Community Development;
16 (8) the Department of Human Resources;
17 (9) the Department of Juvenile Services;
18 (10) the Department of Labor, Licensing, and Regulation;
19 (11) the Department of Natural Resources;
20 (12) the State Department of Education;
21 (13) the Department of State Police;
22 (14) the Department of Public Safety and Correctional Services;
23 (15) the Department of Transportation;
24 (16) the University System of Maryland;
25 (17) the Maryland Port Commission;

1 (18) the State Retirement Agency;

2 (19) the Maryland Insurance Administration;

3 (20) the Maryland Stadium Authority;

4 (21) the State Lottery and Gaming Control Agency;

5 (22) the Morgan State University; and

6 (23) the Maryland Transportation Authority.

7 (c) “Small business” means:

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

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

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

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

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

14 (iv) 1. A. the wholesale operations of the business did not
15 employ more than AN AVERAGE OF 50 persons PER YEAR in its most recently
16 completed 3 fiscal years;

17 B. the retail operations of the business did not employ
18 more than AN AVERAGE OF 25 persons PER YEAR in its most recently completed 3
19 fiscal years;

20 C. the manufacturing operations of the business did not
21 employ more than AN AVERAGE OF 100 persons PER YEAR in its most recently
22 completed 3 fiscal years;

23 D. the service operations of the business did not employ
24 more than AN AVERAGE OF 100 persons PER YEAR in its most recently completed 3
25 fiscal years;

26 E. the construction operations of the business did not
27 employ more than AN AVERAGE OF 50 persons PER YEAR in its most recently
28 completed 3 fiscal years; and

1 F. the architectural and engineering services of the
2 business did not employ more than AN AVERAGE OF 100 persons PER YEAR in its
3 most recently completed 3 fiscal years; or

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

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

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

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

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

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

21 (d) “Small business reserve” means those procurements that are limited to
22 responses from small businesses under [§ 14–502 (b)] § 14–502(C) of this subtitle.

23 14–502.

24 (a) Except as provided in subsection (d) of this section, this subtitle applies to
25 all procurements by a designated procurement unit.

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

28 (c) A designated procurement unit shall structure its procurement
29 procedures to achieve a minimum of 10% of the unit’s total dollar value of goods,
30 supplies, services, maintenance, construction, construction–related services, and
31 architectural and engineering service contracts to be made directly to small
32 businesses.

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

1 14-504.

2 (a) Any procurement by a designated procurement unit of goods, supplies,
3 services, maintenance, construction, construction-related services, architectural
4 services, and engineering services shall be eligible for designation for the small
5 business reserve.

6 (B) (1) **THIS SUBSECTION DOES NOT APPLY TO:**

7 (I) **A PROCUREMENT OF HUMAN, SOCIAL, CULTURAL, OR**
8 **EDUCATION SERVICES;**

9 (II) **A SOLE SOURCE PROCUREMENT AUTHORIZED UNDER §**
10 **13-107 OF THIS ARTICLE;**

11 (III) **AN EMERGENCY PROCUREMENT AUTHORIZED UNDER §**
12 **13-108 OF THIS ARTICLE;**

13 (IV) **AN INTERGOVERNMENTAL COOPERATIVE PURCHASING**
14 **AGREEMENT AUTHORIZED UNDER § 13-110 OF THIS ARTICLE;**

15 (V) **A PROCUREMENT OF THE SAME TYPE AND NATURE AS**
16 **THOSE IDENTIFIED IN ITEMS (II) THROUGH (IV) AS PERFORMED BY A**
17 **DESIGNATED PROCUREMENT UNIT THAT IS EXEMPT FROM DIVISION II OF THIS**
18 **ARTICLE IN ACCORDANCE WITH § 11-203 OF THIS ARTICLE; OR**

19 (VI) **A PROCUREMENT OF LEGAL SERVICES PROVIDED FOR**
20 **CHILDREN AND INDIGENT ADULTS IN NEED OF ASSISTANCE, ADULT**
21 **GUARDIANSHIPS, CHILD ADOPTIONS, AND GUARDIANSHIPS.**

22 (2) ANY PROCUREMENT BY A DESIGNATED PROCUREMENT UNIT
23 WITH AN EXPECTED VALUE OF \$15,000 TO \$100,000 SHALL BE DESIGNATED FOR
24 THE SMALL BUSINESS RESERVE UNLESS THE PROCUREMENT OFFICER, WITH
25 THE APPROVAL OF THE AGENCY HEAD OR DESIGNEE, MAKES A DETERMINATION
26 THAT THE PROCUREMENT SHOULD NOT BE DESIGNATED FOR THE SMALL
27 BUSINESS RESERVE.

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

31 [(c)] (D) The procurement officer of a designated procurement unit shall
32 award a procurement contract designated for a small business reserve to the small
33 business that submits a responsive bid that:

- 1 (1) is the lowest bid price;
- 2 (2) if the invitation for bids so provides, is the lowest evaluated bid
3 price; or
- 4 (3) is the bid or proposal most favorable to the State within the small
5 business reserve.

6 SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the
7 General Assembly to:

- 8 (1) promote participation by small businesses in State contracting
9 opportunities as part of the effort to increase the valuable contribution of small
10 businesses to the State's economy and growth; and
- 11 (2) ensure that the Small Business Reserve Program as established
12 under Title 14, Subtitle 5 of the State Finance and Procurement Article and amended
13 by this Act does not displace or disrupt the important service relationships between
14 nonprofit organizations and State agencies.

15 SECTION 3. AND BE IT FURTHER ENACTED, That on or before July 1, 2015,
16 the Council for the Procurement of Health, Educational, and Social Services as
17 established by § 12-110 of the State Finance and Procurement Article and the
18 Secretary of General Services or the Secretary's designee shall:

- 19 (1) study the current and potential impact of the designation of
20 contracts for the Small Business Reserve Program on nonprofit organizations
21 contracting with State agencies, including consideration of the State's policy interest
22 in promoting participation by small businesses in State contracting opportunities and
23 the State's policy interest in providing nonprofit corporations access to contracting
24 opportunities that permit the furtherance of the nonprofit corporations' tax exempt
25 missions; and
- 26 (2) report the findings and recommendations of the study to the Board
27 of Public Works and the General Assembly, in accordance with § 2-1246 of the State
28 Government Article.

29 SECTION ~~2~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take
30 effect July 1, 2014.