

Chapter 508

(House Bill 359)

AN ACT concerning

Procurement – ~~Service-Disabled Veteran~~ Veteran-Owned Small Business Enterprise Participation

FOR the purpose of establishing a certain participation goal for certain ~~certified service-disabled veteran~~ veteran-owned small business enterprises for certain procurement contracts; requiring certain solicitation documents to establish the degree of participation based on certain information; providing that certain provisions of this Act do not apply in certain circumstances; requiring a unit to award certain procurement contracts to certain bidders or offerors under certain circumstances; requiring the Board of Public Works to adopt certain regulations to implement this Act; requiring the Board to establish certain tracking and reporting procedures; requiring the Board to report annually on a certain program to the Legislative Policy Committee; establishing certain prohibited acts and certain penalties for certain violations; providing that certain provisions of law relating to protests do not apply to certain acts or omissions by certain procurement agencies under certain circumstances; ~~requiring the Department of Business and Economic Development to use certain resources to implement a certain program;~~ and generally relating to procurement participation by ~~service-disabled veteran~~ veteran-owned small business enterprises.

BY adding to

Article – State Finance and Procurement

Section 14-601 through 14-605 to be under the new subtitle “Subtitle 6.

~~Service-Disabled Veteran~~ Veteran-Owned Small Business Enterprise
Participation”

Annotated Code of Maryland

(2009 Replacement Volume)

BY repealing and reenacting, with amendments,

Article – State Finance and Procurement

Section 15-202

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

**SUBTITLE 6. ~~SERVICE DISABLED VETERAN~~ VETERAN-OWNED SMALL
BUSINESS ENTERPRISE PARTICIPATION.**

14-601.

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

~~(B) "CERTIFICATION" MEANS THE DETERMINATION THAT A LEGAL ENTITY IS A SERVICE DISABLED VETERAN BUSINESS ENTERPRISE FOR THE PURPOSES OF THIS SUBTITLE.~~

~~(C) "CERTIFIED SERVICE DISABLED VETERAN BUSINESS ENTERPRISE" MEANS A BUSINESS THAT IS CERTIFIED BY THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS AS A SERVICE DISABLED VETERAN OWNED BUSINESS.~~

~~(D) "SERVICE DISABLED VETERAN" MEANS AN INDIVIDUAL WHO:~~

~~(1) IS A VETERAN, AS DEFINED UNDER 38 U.S.C. § 101(2); AND~~

~~(2) HAS A DISABILITY THAT IS SERVICE CONNECTED, AS DEFINED UNDER 38 U.S.C. § 101(16).~~

~~(E) (1) "SERVICE DISABLED VETERAN BUSINESS ENTERPRISE" HAS THE MEANING STATED IN EXECUTIVE ORDER NO. 13360 ISSUED ON OCTOBER 21, 2004, BY THE PRESIDENT OF THE UNITED STATES.~~

~~(2) TO THE EXTENT NOT INCONSISTENT WITH FEDERAL LAW, "SERVICE DISABLED VETERAN BUSINESS ENTERPRISE" INCLUDES:~~

~~(I) A SOLE PROPRIETORSHIP OWNED BY SERVICE DISABLED VETERANS;~~

~~(II) A SUBSIDIARY THAT IS WHOLLY OWNED BY A PARENT CORPORATION IN WHICH THE MAJORITY OF EACH CLASS OF ISSUED AND, "VETERAN-OWNED SMALL BUSINESS ENTERPRISE" MEANS A BUSINESS THAT IS VERIFIED BY THE CENTER FOR VETERANS ENTERPRISE OF THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS AS A VETERAN-OWNED SMALL BUSINESS. OUTSTANDING STOCK OF THE PARENT COMPANY IS OWNED BY ONE OR MORE SERVICE DISABLED VETERANS;~~

~~(III) A JOINT VENTURE IN WHICH THE MAJORITY OF THE JOINT VENTURE'S MANAGEMENT, CONTROL, AND PROFITS ARE OWNED BY ONE OR MORE SERVICE-DISABLED VETERANS;~~

~~(IV) A LIMITED LIABILITY COMPANY IN WHICH MAJORITY INTERESTS ARE OWNED BY ONE OR MORE SERVICE-DISABLED VETERANS; AND~~

~~(V) A CORPORATION IN WHICH THE MAJORITY OF EACH CLASS OF ISSUED AND OUTSTANDING STOCK IS OWNED BY ONE OR MORE SERVICE-DISABLED VETERANS.~~

14-602.

(A) BEGINNING ~~JANUARY 1, 2011,~~ JULY 1, 2012, A UNIT SHALL STRUCTURE PROCUREMENT PROCEDURES, CONSISTENT WITH THE PURPOSES OF THIS SUBTITLE, TO TRY TO ACHIEVE AN OVERALL MINIMUM OF 0.5% OF THE UNIT'S TOTAL DOLLAR VALUE OF PROCUREMENT CONTRACTS TO BE MADE DIRECTLY OR INDIRECTLY WITH ~~CERTIFIED SERVICE-DISABLED VETERAN~~ VETERAN-OWNED SMALL BUSINESS ENTERPRISES.

(B) SOLICITATION DOCUMENTS SHALL ESTABLISH THE EXPECTED DEGREE OF ~~SERVICE-DISABLED VETERAN~~ VETERAN-OWNED SMALL BUSINESS ENTERPRISE PARTICIPATION BASED, IN PART, ON:

(1) THE POTENTIAL SUBCONTRACT OPPORTUNITIES AVAILABLE IN THE PROCUREMENT CONTRACT; AND

(2) THE AVAILABILITY OF ~~CERTIFIED SERVICE-DISABLED VETERAN~~ VETERAN-OWNED SMALL BUSINESS ENTERPRISES TO RESPOND COMPETITIVELY TO THE POTENTIAL SUBCONTRACT OPPORTUNITIES.

(C) THE PROVISIONS OF THIS SUBTITLE DO NOT APPLY TO A UNIT'S PROCUREMENT PROCEDURES TO THE EXTENT THAT ANY UNIT DETERMINES THAT THOSE PROVISIONS ARE IN CONFLICT WITH AN APPLICABLE FEDERAL PROGRAM.

14-603.

A UNIT SHALL AWARD THE CONTRACT TO THE RESPONSIBLE BIDDER THAT SUBMITS THE LOWEST RESPONSIVE BID, OR RESPONSIBLE OFFEROR PROPOSING THE MOST ADVANTAGEOUS OFFER, THAT MEETS OR MAKES A GOOD FAITH EFFORT TO MEET ANY APPLICABLE GOAL ESTABLISHED UNDER THIS SUBTITLE.

14-604.

(A) THE BOARD SHALL:

(1) ADOPT REGULATIONS TO IMPLEMENT THIS SUBTITLE;

(2) ESTABLISH PROCEDURES FOR TRACKING AND REPORTING PARTICIPATION OF ~~SERVICE-DISABLED-VETERAN~~ VETERAN-OWNED SMALL BUSINESS ENTERPRISES UNDER THIS SUBTITLE; AND

(3) ON OR BEFORE DECEMBER 1 OF EACH YEAR, REPORT TO THE LEGISLATIVE POLICY COMMITTEE ON:

(I) THE NUMBER AND AMOUNT OF CONTRACTS AWARDED TO ~~SERVICE-DISABLED-VETERAN~~ VETERAN-OWNED SMALL BUSINESS ENTERPRISES UNDER THIS SUBTITLE; AND

(II) THE EFFECTIVENESS OF THE PROGRAM UNDER THIS SUBTITLE.

14-605.

(A) A PERSON MAY NOT:

(1) KNOWINGLY AND WITH INTENT TO DEFRAUD, FRAUDULENTLY OBTAIN, ATTEMPT TO OBTAIN, OR AID ANOTHER PERSON IN FRAUDULENTLY OBTAINING OR ATTEMPTING TO OBTAIN, PUBLIC MONEY, PROCUREMENT CONTRACTS, OR FUNDS EXPENDED UNDER A PROCUREMENT CONTRACT TO WHICH THE PERSON IS NOT ENTITLED UNDER THIS ARTICLE;

(2) KNOWINGLY AND WITH INTENT TO DEFRAUD, FRAUDULENTLY REPRESENT PARTICIPATION OF A ~~SERVICE-DISABLED-VETERAN~~ VETERAN-OWNED SMALL BUSINESS ENTERPRISE IN ORDER TO OBTAIN OR RETAIN A BID PREFERENCE OR A PROCUREMENT CONTRACT;

(3) WILLFULLY AND KNOWINGLY MAKE OR SUBSCRIBE TO ANY STATEMENT, DECLARATION, OR OTHER DOCUMENT THAT IS FRAUDULENT OR FALSE AS TO ANY MATERIAL MATTER, WHETHER OR NOT THAT FALSITY OR FRAUD IS COMMITTED WITH THE KNOWLEDGE OR CONSENT OF THE PERSON AUTHORIZED OR REQUIRED TO PRESENT THE DECLARATION, STATEMENT, OR DOCUMENT;

(4) WILLFULLY AND KNOWINGLY AID, ASSIST IN, PROCURE, COUNSEL, OR ADVISE THE PREPARATION OR PRESENTATION OF A DECLARATION, STATEMENT, OR OTHER DOCUMENT THAT IS FRAUDULENT OR FALSE AS TO ANY MATERIAL MATTER, REGARDLESS OF WHETHER THAT FALSITY OR FRAUD IS COMMITTED WITH THE KNOWLEDGE OR CONSENT OF THE PERSON AUTHORIZED OR REQUIRED TO PRESENT THE DECLARATION, STATEMENT, OR DOCUMENT;

(5) WILLFULLY AND KNOWINGLY FAIL TO FILE ANY DECLARATION OR NOTICE WITH THE UNIT THAT IS REQUIRED BY THIS SUBTITLE; OR

(6) ESTABLISH, KNOWINGLY AID IN THE ESTABLISHMENT OF, OR EXERCISE CONTROL OVER A BUSINESS FOUND TO HAVE VIOLATED A PROVISION OF ITEMS (1) THROUGH (5) OF THIS SUBSECTION.

(B) (1) A PERSON WHO VIOLATES ANY OF THE PROVISIONS OF SUBSECTION (A) OF THIS SECTION SHALL BE GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$1,000 OR IMPRISONMENT NOT EXCEEDING 6 MONTHS OR BOTH.

(2) IN ADDITION TO THE PENALTIES UNDER PARAGRAPH (1) OF THIS SUBSECTION, A PERSON WHO VIOLATES ANY OF THE PROVISIONS OF SUBSECTION (A) OF THIS SECTION SHALL BE:

(I) FOR THE FIRST OFFENSE, LIABLE FOR A CIVIL PENALTY OF NOT LESS THAN \$10,000 AND NOT EXCEEDING \$30,000; AND

(II) FOR A SUBSEQUENT OFFENSE, LIABLE FOR A CIVIL PENALTY OF NOT LESS THAN \$30,000 AND NOT EXCEEDING \$50,000.

(3) A PERSON WHO VIOLATES ANY OF THE PROVISIONS OF SUBSECTION (A) OF THIS SECTION SHALL PAY ALL COSTS AND ATTORNEY'S FEES INCURRED BY THE PLAINTIFF IN A CIVIL ACTION BROUGHT UNDER THIS SUBTITLE.

(C) THE BOARD SHALL PROHIBIT A BUSINESS OR PERSON WHO FAILS TO SATISFY THE PENALTIES, COSTS, AND ATTORNEY'S FEES IMPOSED UNDER SUBSECTION (B) OF THIS SECTION FROM FURTHER CONTRACTING WITH THE STATE UNTIL THE PENALTIES ARE SATISFIED.

(D) (1) A UNIT SHALL REPORT ALL ALLEGED VIOLATIONS OF THIS SECTION TO THE BOARD.

(2) THE BOARD SUBSEQUENTLY SHALL REPORT ALL ALLEGED VIOLATIONS OF THIS SECTION TO THE OFFICE OF THE ATTORNEY GENERAL, WHICH SHALL DETERMINE WHETHER TO BRING A CIVIL ACTION AGAINST A PERSON OR BUSINESS FOR A VIOLATION OF THIS SECTION.

15-202.

This subtitle does not apply to a protest concerning:

(1) the formation of a procurement contract for architectural services or engineering services; OR

(2) EXCEPT TO THE EXTENT AUTHORIZED BY REGULATION BY THE BOARD, ANY ACT OR OMISSION BY A PROCUREMENT AGENCY UNDER TITLE 14, SUBTITLE 6 OF THIS ARTICLE.

~~SECTION 2. AND BE IT FURTHER ENACTED, That the Department of Business and Economic Development shall use existing resources to implement the Service Disabled Veteran Business Enterprise Participation program goals established under Title 14, Subtitle 6 of the State Finance and Procurement Article, as enacted by Section 1 of this Act.~~

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

Approved by the Governor, May 20, 2010.