

HOUSE BILL 850

P2

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By: **Delegates Tomlinson, Edelson, Griffith, Hinebaugh, T. Morgan, Phillips, Roberson, and Rose**

Introduced and read first time: February 2, 2024

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **State Procurement – Small Business Preference Procurement**

3 FOR the purpose of requiring each procurement unit to establish a price preference for
4 small businesses; designating the Board of Public Works as the regulatory authority
5 for the Small Business Preference Program; specifying the manner in which a unit
6 may achieve targets for procurement awards to small businesses; and generally
7 relating to small business procurement.

8 BY repealing and reenacting, with amendments,
9 Article – State Finance and Procurement
10 Section 14–202 through 14–207 and 14–502(e)
11 Annotated Code of Maryland
12 (2021 Replacement Volume and 2023 Supplement)

13 BY repealing and reenacting, without amendments,
14 Article – State Finance and Procurement
15 Section 14–502(c)
16 Annotated Code of Maryland
17 (2021 Replacement Volume and 2023 Supplement)

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

20 **Article – State Finance and Procurement**

21 14–202.

22 (a) This subtitle applies to procurement of supplies, services, and construction
23 related services by[:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (1) the Department of General Services;

2 (2) the Department of Transportation;

3 (3) the University System of Maryland;

4 (4) Morgan State University; and

5 (5) as provided in subsection (b) of this section, the Department of Public
6 Safety and Correctional Services in connection with construction of a State correctional
7 facility under § 12–107 of this article] **ANY UNIT OR AGENCY OF THE EXECUTIVE**
8 **BRANCH OF STATE GOVERNMENT.**

9 (b) For procurements in connection with the construction of a State correctional
10 facility, the Department of Public Safety and Correctional Services shall:

11 (1) apply the percentage price preferences established by the Department
12 of General Services under this subtitle; and

13 (2) follow the same procedures established by the Department of General
14 Services to comply with this subtitle.

15 14–203.

16 (a) By regulation, the [Secretary of General Services, the Secretary of
17 Transportation, the Chancellor of the University System of Maryland, and the President of
18 Morgan State University each] **BOARD** shall specify the criteria that a business must meet
19 to qualify as a small business.

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

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

25 (c) The regulations adopted under subsection (a) of this section shall require the
26 qualification of a business as a small business for the exclusive purpose of pursuing
27 out-of-state contracts, if the business has:

28 (1) 250 or fewer employees; or

29 (2) average annual gross receipts of \$10,000,000 or less averaged over its
30 most recently completed 3 fiscal years.

31 14–204.

1 The [Secretary of General Services, the Secretary of Transportation, and the
2 Chancellor of the University System of Maryland each] **BOARD** shall adopt regulations to
3 establish procedures for:

4 (1) compiling and maintaining a comprehensive bidder's list of small
5 businesses;

6 (2) locating potential sources for various construction related services,
7 supplies, and services and affirmatively seeking to locate potential minority business
8 enterprise sources for those construction related services, supplies, and services;

9 (3) helping small businesses to comply with the procedures for bidding on
10 procurement contracts;

11 (4) examining requests for construction related services, supplies, and
12 services to determine when an invitation for bids may be designated for the Small Business
13 Preference Program;

14 (5) bidding for a procurement contract designated for a small business
15 preference;

16 (6) simplifying procurement specifications and terms, to increase the
17 opportunities for small business participation;

18 (7) investigating the responsibility of bidders on small business
19 preferences; and

20 (8) explaining to a small business the reason for which its bid for a small
21 business preference was rejected.

22 14-205.

23 The Department of Commerce shall help the [Secretaries of General Services and
24 Transportation and the Chancellor of the University System of Maryland] **BOARD** in
25 establishing procedures to carry out § 14-204(1) and (2) of this subtitle.

26 14-206.

27 (a) In this section, "percentage preference" means the percent of the lowest
28 responsive bid submitted by a responsible bidder who is not a small business by which a
29 responsive bid by a small business may:

30 (1) exceed the lowest bid; and

31 (2) be awarded a procurement contract under this subtitle.

1 (b) Subject to the approval of the Board, [the Secretary of General Services, the
2 Secretary of Transportation, and the Chancellor of the University System of Maryland]
3 each **UNIT**:

4 (1) shall establish a percentage preference, not to exceed 8%, for each
5 industry as follows:

6 (i) a base percentage preference not to exceed 5% for all small
7 businesses; and

8 (ii) two additional preferences to the percentage preference set forth
9 in item (i) of this paragraph as follows:

10 1. 2% for veteran–owned small businesses; and

11 2. 3% for disabled veteran–owned small businesses; and

12 (2) may vary the percentage preference determined in item (1)(i) of this
13 subsection among industries to account for their particular characteristics.

14 14–207.

15 (a) The [Secretary of General Services, the Secretary of Transportation, and the
16 Chancellor of the University System of Maryland each] **BOARD** may designate, for the
17 Small Business Preference Program, procurement of certain supplies, services, or
18 construction related services that have been requested through or with the approval of the
19 [Secretary or Chancellor] **UNIT**.

20 (b) The invitation for bids on a procurement that has been designated for a small
21 business preference shall be sent to small businesses and regular bidders to establish a
22 reasonable price range commensurate with current market conditions.

23 (c) [The Secretary of General Services, the Secretary of Transportation, or the
24 Chancellor of the University System of Maryland] **A UNIT** shall award a procurement
25 contract designated for a small business preference to the small business that:

26 (1) is a responsible bidder; and

27 (2) submits the lowest responsive bid from a small business if the
28 difference between that bid and the lowest responsive bid submitted by a responsible bidder
29 who is not a small business does not exceed the percentage preference established under §
30 14–206 of this subtitle.

31 14–502.

32 (c) To the extent practicable, a unit shall structure its procurement procedures to

1 achieve a minimum of 15% of the unit's total dollar value of goods, supplies, services,
2 maintenance, construction, construction-related services, and architectural and
3 engineering service contracts to be made directly to small businesses.

4 (e) A unit may [apply toward the unit's overall annual Small Business Reserve
5 payment achievement only those payments resulting from a procurement that is
6 designated a Small Business Reserve procurement] **ACHIEVE THE OBJECTIVES
7 ESTABLISHED UNDER SUBSECTION (C) OF THIS SECTION BY AWARDED CONTRACTS
8 TO SMALL BUSINESSES THROUGH BOTH THE SMALL BUSINESS PREFERENCE
9 PROGRAM AND THE SMALL BUSINESS RESERVE PROGRAM.**

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 2024.