

Stricken language would be deleted from and underlined language would be added to present law.
Act 1080 of the Regular Session

State of Arkansas *As Engrossed: H3/14/17 H3/23/17 S3/29/17*
91st General Assembly **A Bill**
Regular Session, 2017

HOUSE BILL 2218

By: Representatives M. Gray, V. Flowers, M. Hodges, *Vaught, Davis*

By: Senators Irvin, D. Wallace, Elliott

For An Act To Be Entitled

AN ACT TO AMEND THE MINORITY BUSINESS ECONOMIC
DEVELOPMENT ACT; TO REPEAL CERTAIN CONTRACTING GOALS;
AND FOR OTHER PURPOSES.

Subtitle

*TO AMEND THE MINORITY BUSINESS ECONOMIC
DEVELOPMENT ACT; AND TO REPEAL CERTAIN
CONTRACTING GOALS.*

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

*SECTION 1. Arkansas Code Title 15, Chapter 4, Subchapter 3, is amended
to read as follows:*

Subchapter 3 – Minority and Women-Owned Business Economic Development Act

15-4-301. Title.

*This subchapter shall be known and may be cited as the “Minority and
Women-Owned Business Economic Development Act”.*

15-4-302. Purpose – Goals – Notice.

*(a) The General Assembly finds that it is the policy of the State of
Arkansas to support equal opportunity as well as economic development in
every sector.*

*(b) The General Assembly recognizes that it is the purpose of this
subchapter to support to the fullest all possible participation of firms
owned and controlled by minority persons and women in state-funded and state-*



directed public construction programs and in the purchase of goods and services for the state.

(c) All state agencies shall attempt to ensure that ~~ten percent (10%)~~ the following percentages of the total amount expended in state-funded and state-directed public construction programs and in the purchase of goods and services for the state each fiscal year ~~is~~ are paid to minority business enterprises and women-owned business enterprises:

(1)(A) For minority business enterprises, ten percent (10%).

(B) The ten-percent goal under subdivision (c)(1)(A) of this section shall be allocated as follows:

(i) Two percent (2%) for service-disabled veteran-owned minority business enterprises; and

(ii) Eight percent (8%) for all other minority business enterprises; and

(2) For women-owned business enterprises, five percent (5%).

(d) To facilitate notification of potential respondents to procurement solicitations, a state agency shall publish all state contract solicitations on the website for the Office of State Procurement of the Department of Finance and Administration.

15-4-303. Definitions.

As used in this subchapter:

(1)(A) "Exempt" means goods and services classified as exempt for the purpose of administering this subchapter.

(B) The classification shall be determined by the Office of State Procurement of the Department of Finance and Administration and the Division of Minority and Women-owned Business Enterprise of the Arkansas Economic Development Commission and submitted to the Arkansas Economic Development Council for its review and consideration for the purposes of this subchapter;

(2) "Minority" means a lawful permanent resident of this state who is:

- (A) African American;
- (B) Hispanic American;
- (C) American Indian;
- (D) Asian American; or

(E) Pacific Islander American; ~~or~~

(F) A service-disabled veteran as designated by the United States Department of Veterans Affairs;

(3) "Minority business enterprise" means a business that is at least fifty-one percent (51%) owned by one (1) or more minority persons as defined in this section;

(4) "Minority and women-owned business officer" means the individual within each state agency with the responsibility for carrying out the intended purposes of this subchapter;

(5)(A) "Nonexempt" means goods and services classified as nonexempt for the purpose of administering this subchapter.

(B) The classification shall be determined by the office and the division and submitted to the council for its review and consideration for the purposes of this subchapter;

(6) "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any goods or services;

(7) "State agency" means a department, an office, a board, a commission, or an institution of this state, including a state-supported institution of higher education; ~~and~~

(8) "State contract" means a state agreement, regardless of what it may be called, for the purchase of commodities and services and for the disposal of surplus commodities and services not otherwise exempt; and

(9) "Women-owned business enterprise" means a business that is at least fifty-one percent (51%) owned by one (1) or more women who are lawful permanent residents of this state.

15-4-304. Creation.

The Division of Minority and Women-owned Business Enterprise of the Arkansas Economic Development Commission:

(1) Is established and confirmed within the Arkansas Economic Development Commission ~~under the jurisdiction of the Arkansas Economic Development Council;~~

(2) Shall be operated as a division within the commission; and

(3) Shall perform the functions and duties as provided in this subchapter.

15-4-305. Administrator.

The head of the Division of Minority and Women-owned Business Enterprise of the Arkansas Economic Development Commission is the Administrator of the Division of Minority and Women-owned Business Enterprise of the Arkansas Economic Development Commission and shall be appointed by the Governor.

15-4-306. Duties.

The Division of Minority and Women-owned Business Enterprise of the Arkansas Economic Development Commission shall:

(1) Provide technical, managerial, and counseling services and assistance to minority business enterprises and women-owned business enterprises;

(2) With the participation of other state departments and state agencies as appropriate:

(A) Develop comprehensive plans and specific program goals for a minority business enterprise and women-owned business enterprise program;

(B) Establish regular performance monitoring and reporting systems to assure that goals are being achieved; and

(C) Evaluate the impact of federal and state support in achieving the objectives established by the Arkansas Economic Development Commission;

(3) Implement state policy in support of minority business enterprise and development and women-owned business enterprise and development and coordinate the plans, programs, and operations of state government that affect or may contribute to the establishment, preservation, and strengthening of minority business enterprises and women-owned business enterprises;

(4) Coordinate, make application for, and administer federal funding grants from the United States Minority Business Development Agency ~~of the United States Department of Commerce, the United States Small Business Administration, the United States Department of Veterans Affairs,~~ and other federal agencies ~~where~~ when applicable;

(5) Promote the mobilization of activities and resources of state agencies and local governments, business and trade associations,

universities, foundations, professional organizations, and volunteer and other groups toward the growth of minority business enterprises and women-owned business enterprises, and facilitate the coordination of the efforts of these groups with those of other state departments and state agencies;

(6) Establish a center for the development, collection, and dissemination of information that will be helpful to persons and organizations throughout the state in undertaking or promoting the establishment and successful operation of minority business enterprises and women-owned business enterprises;

(7) Conduct coordinated reviews of all proposed state training and technical assistance activities in direct support of the minority business enterprise and women-owned business enterprise program to ensure consistency with program goals and to preclude duplication of effort of other state agencies with overlapping jurisdictions;

(8) Recommend appropriate legislative or executive actions to enhance minority business enterprise and women-owned business enterprise opportunities in this state;

(9) Assist minority business enterprises and women-owned business enterprises in obtaining governmental or commercial financing for business expansion, establishment of new businesses, or industrial development projects;

(10) Provide services to promote the organization of local development corporations for rural development and assist minority business enterprise and women-owned business enterprise persons in agrarian endeavors;

(11) Assist minority business enterprises and women-owned business enterprises to promote reciprocal foreign trade and investment;

(12) Assist minority and women-owned business persons in business contract procurement from governmental and private commercial sources; and

(13) Provide a program effort to ensure participation of veterans and women in Arkansas minority business enterprise activities and women-owned business enterprise activities.

15-4-307. Minority and Women-owned Business Advisory Council.

(a) The Division of Minority and Women-owned Business Enterprise of the Arkansas Economic Development Commission shall be represented by a

statewide Minority and Women-owned Business Advisory Council and shall report to that council.

(b)(1) The council shall consist of ~~seven (7)~~ nine (9) members.

(2) The council shall:

(A) Monitor progress, make recommendations, and develop strategic plans for performance improvement; and

(B) Report to the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate.

(c)(1) The Governor shall appoint three (3) members of the council with the advice and consent of the Senate.

(2) The President Pro Tempore of the Senate shall appoint two (2) members of the council.

(3) The Speaker of the House of Representatives shall appoint two (2) members of the council.

(4) The Executive Director of the Arkansas Economic Development Commission shall appoint two (2) members of the council.

~~(4)(5)~~ (5) Appointments shall reflect and be representative of the minority and women-owned business ~~community~~ communities, resource organizations, entrepreneurs, corporations, and other minority and women-owned business advocates.

(d) Except as otherwise provided by law, members of the council shall serve without compensation.

(e) The term of office of the council shall ~~be:~~

(1) Be at the pleasure of the appointing officer; and

(2) Not exceed five (5) years.

(f) There is established a formal relationship between the council and the Administrator of the Division of Minority and Women-owned Business Enterprise of the Arkansas Economic Development Commission.

(g)(1) The administrator ~~and the small disadvantaged business officer~~ shall be the liaison to the council and shall be responsible for submitting to the council any reports and documents under the provisions of this section.

(2) Their duties in relation to this section shall be considered official duty in the conduct of state business.

(h) The council's duties and responsibilities shall be to:

(1) Review reports and interpret each state agency's achievement

of its goals under § 15-4-302(c);

(2) Advise the Governor when a state agency has not reached its goals under § 15-4-302(c);

(3) Make annual reports to the Governor, including without limitation:

(A) A summary of the state's performance in relation to the goals stated in § 15-4-302(c); and

(B) Any recommendations for modifications to the division's or other state agency's plans for improving statewide performance in relation to the goals stated in § 15-4-302(c);

(4) Recommend to the state agency, the division, and the Office of State Procurement of the Department of Finance and Administration corrective actions to strengthen minority and women-owned business opportunities in the state; and

(5) Conduct public hearings when necessary to obtain public input and support for the purpose of carrying out the provisions of this subchapter.

(i) Each state agency, through its minority and women-owned business officer, shall submit to the division, ~~the council~~, and the office the state agency's plan to reach its goals for the coming fiscal year and shall:

(1) Be submitted to the division by June 30 of each year;

(2) Contain the name of the state agency submitting the plan;

(3) Contain a policy statement signed by the state agency head expressing a commitment to ~~use~~ strengthen minority business enterprises and women-owned business enterprises in all aspects of contracting to the maximum extent feasible;

(4) Identify the name of the minority and women-owned business officer in the state agency who is responsible for developing and administering the compliance plan;

(5) Establish a timetable for the state agency to reach its goals under the plan and the manner in which the state agency intends to reach its goals; and

(6) Contain any other procedures the division deems necessary to comply with the goals and the compliance plan.

15-4-308. Administration.

(a) *The Division of Minority and Women-owned Business Enterprise of the Arkansas Economic Development Commission and the Office of State Procurement of the Department of Finance and Administration shall serve as the principal coordinators of the initiative to ensure the successful implementation of this subchapter.*

(b) *The division and the office shall provide assistance to minority business enterprises and women-owned business enterprises seeking state contract opportunities with various state agencies.*

(c) *The division and the office shall maintain a directory of all minority and women-owned business officers for each state agency.*

(d) *The division and the office shall provide management and technical assistance to any state agency that experiences difficulty in complying with the provisions of this subchapter.*

(e) *The division and the office shall maintain a current directory of minority business enterprises and women-owned business enterprises and shall make the directory available to each state agency and minority and women-owned business officer.*

(f) *The division shall serve as a central clearinghouse for information on state contracts, including a record of all pending state contracts upon which minority business enterprises and women-owned business enterprises may participate.*

15-4-309. Exempt contracts.

Upon the approval of the Minority and Women-owned Business Advisory Council, the Division of Minority and Women-owned Business Enterprise of the Arkansas Economic Development Commission and the Office of State Procurement of the Department of Finance and Administration shall determine the classifications of state contracts to be exempted from the goals established by this subchapter whenever there exists an insufficient number of minority business enterprises or women-owned business enterprises to ensure adequate competition.

15-4-310. Minority and women-owned business officer.

(a) *Each state agency shall designate an individual as its minority and women-owned business officer.*

(b) *The minority and women-owned business officer shall be the person*

within the state agency with whom the Division of Minority and Women-owned Business Enterprise of the Arkansas Economic Development Commission and the Minority and Women-owned Business Advisory Council shall work in their efforts to accomplish the goals of this subchapter.

(c) Upon the appointment of the minority and women-owned business officer in each state agency, the state agency shall notify the division and the Office of State Procurement of the Department of Finance and Administration.

15-4-311. Annual minority and women-owned purchasing plan.

(a) Prior to June 30 each year, each state agency shall submit to the Division of Minority and Women-owned Business Enterprise of the Arkansas Economic Development Commission and the Office of State Procurement of the Department of Finance and Administration a minority and women-owned purchasing plan that shall outline the state agency's plan to reach its goals for the coming fiscal year.

(b) The minority and women-owned purchasing plan shall include without limitation:

(1) The name of the state agency;

(2) A policy statement signed by the state agency head expressing a commitment to use minority business enterprises and women-owned business enterprises in all aspects of contracting to the maximum extent feasible;

(3) The name of the minority and women-owned business officer in the state agency who is responsible for developing and administering the ~~compliance~~ purchasing plan;

(4) The time table for the state agency to reach its goals under the purchasing plan and the manner in which the state agency intends to reach its goals, including without limitation the manner in which the state agency intends to include minority business enterprises and women-owned business enterprises in reaching its goals; and

(5) Any other procedures the state agency deems necessary to comply with the goals and the ~~compliance~~ purchasing plan.

(c) The minority and women-owned business officer shall determine the category to which a purchase shall be assigned for purposes of the minority and women-owned purchasing plan required under this section.

15-4-312. State agencies to submit reports.

~~The Minority Business Advisory Council shall require each state agency to produce within~~ Within fifteen (15) days of the close of each ~~three-month six-month~~ period, each state agency shall submit a report to the Minority and Women-owned Business Advisory Council summing up total procurement for all state contracts, except exempt state contracts of the state agency, and the dollar value and the percentage of the state contracts of the state agency awarded to minority business enterprises and women-owned business enterprises.

15-4-313. Accelerated payments.

To ensure that minority business enterprises and women-owned business enterprises are not financially hindered due to delays in payment by state agencies entering into state contracts with minority business enterprises and women-owned business enterprises under this subchapter, state agencies shall accelerate payment to minority vendors and women-owned vendors to preclude accounts receivable problems of minority business enterprises and women-owned business enterprises caused by the State of Arkansas.

15-4-314. Minority business enterprises and women-owned business enterprises certification process.

(a) The Division of Minority and Women-owned Business Enterprise of the Arkansas Economic Development Commission shall promulgate rules to create a certification process for minority business enterprises and women-owned business enterprises.

(b) The certification process shall include without limitation:

(1) Criteria for certification that shall include without limitation:

(A) A determination that the business is structured as a minority business enterprise or a women-owned business enterprise;

(B) Verification of minority or woman ownership and control of the business; and

(C) Annual updates indicating continuing minority or woman ownership and control;

(2) A formal application process;

(3) An education program to assist minority business enterprises and women-owned business enterprises in achieving certification; and

(4) An outreach to ensure the broadest possible participation of minority business enterprises and women-owned business enterprises and persons proposing new minority business enterprises or women-owned business enterprises.

(c) The Office of State Procurement of the Department of Finance and Administration shall cooperate with the division to the fullest extent possible in sharing information concerning certification and registration of minority business enterprises and women-owned business enterprises carrying out the purposes of this section.

SECTION 2. Arkansas Code Title 15, Chapter 4, Subchapter 3, is amended to add an additional section to read as follows:

15-4-315. Small procurements.

To assist the state in ensuring that the percentages of the total amount expended in state-funded and state-directed public construction programs and procurement of commodities and services for the state each fiscal year under § 15-4-302 are paid to minority business enterprises and women-owned business enterprises under this subchapter, a procurement that does not exceed two (2) times the amount stated in § 19-11-204(13) may be procured without seeking competitive bids or competitive sealed bids if the procurement is with a certified minority business enterprise or certified women-owned business enterprise

SECTION 3. Arkansas Code § 19-11-106 is repealed.

~~19-11-106. Contracting goals for service-disabled veterans—
Definitions.~~

~~(a) As used in this section:~~

~~(1) “Service-disabled veteran” means any individual who:~~

~~(A) Is at least thirty percent (30%) disabled as a result of military service and is designated as such by the United States Department of Veterans Affairs; and~~

~~(B) Has been a resident of the State of Arkansas for at least two (2) years; and~~

~~(2) “Business of a service-disabled veteran” means a business~~

~~that:~~

~~(A) Not less than fifty-one percent (51%) of which is owned by one (1) or more service-disabled veterans;~~

~~(B) The management and daily business operations of which are controlled by one (1) or more service-disabled veterans; and~~

~~(C) Has been certified as a business of a service-disabled veteran by the Division of Minority Business Enterprise of the Arkansas Economic Development Commission under the Minority Business Economic Development Act, § 15-4-301 et seq.~~

~~(b)(1) All state agencies shall attempt to ensure that five percent (5%) of the total amount expended in state-funded and state-directed public construction programs and in the purchase of goods and services for the state each fiscal year is paid to businesses of service-disabled veterans.~~

~~(2) This subsection shall not be construed as establishing a preference in contracting with businesses of service-disabled veterans.~~

/s/M. Gray

APPROVED: 04/07/2017