

By Ms. Graham of Cambridge, petition of Sandra Graham and other members of the House for legislation to provide for subcontracts to minority-owned and women-owned businesses in the Commonwealth. State Administration.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Five.

AN ACT TO PROVIDE AN EFFECTIVE MINORITY AND WOMEN OWNED BUSINESS ENTERPRISE SET ASIDE FOR CERTAIN STATE BUILDING PROJECTS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 40C of Chapter 7 of the Massachusetts
2 General Laws, as most recently amended by Section 7 of Chapter
3 579 of the Acts of 1980, is hereby further amended by deleting
4 Section 40C(2) in its entirety and substituting the following
5 section:

6 The terms used in this section shall have the meanings set forth
7 below whenever they appear in this section.

8 "Minority" means a person with permanent residence in the
9 United States who is American Indian, Black, Cape Verdean, West-
10 ern Hemisphere Hispanic, Aleut, Eskimo, or Asian.

11 "Minority business" means any contracting or subcontracting
12 business which is beneficially owned by one or more minority
13 persons as follows:

14 (1) the business must be at least fifty-one percent owned by
15 minority persons; in the case of a corporation having more than
16 one class of stockholders, the ownership requirement must be met
17 as to each class of stock;

18 (2) The minority owners must demonstrate that they have domi-
19 nant control over management;

20 (3) The business has not been established solely for the purpose
21 of taking advantage of a special program which has been developed
22 to assist minority businesses;

23 (4) In the case of a joint venture between a minority business
24 meeting the requirements of (1) through (3) above, and a non-
25 minority business, the joint venture shall be found to be a minority
26 business if the minority business meeting the requirements of (1)
27 through (3) above shall have more than one-half control over
28 management of the project bid upon and shall have the right to
29 receive more than one half of the profits deriving from that project.

30 "Women-owned business" means any contracting or subcon-
31 tracting business which is beneficially owned by one or more
32 women meeting the requirements set forth in parts (1) through (4)
33 of the definition of minority owned business above, except that the
34 terms "women", "women owners", and "women-owned business"
35 shall be substituted for the terms "minority" and "minority per-
36 sons", "minority owners", and "minority business" appearing in
37 that definition.

38 The Deputy Commissioner, with the cooperation and approval
39 of the State Office of Minority Business Administration (SOMBA),
40 established by Section 38 of Chapter 23A shall, at the beginning of
41 each fiscal year, establish a specific annual dollar value of contract-
42 ing and subcontracting work on capital facility projects subject to
43 the supervision and control of the Division of Capital Planning
44 and Operations which shall be reserved for minority-owned busi-
45 nesses and women-owned businesses. The total specific annual
46 dollar value reserved for minority-owned businesses under this
47 section shall not constitute less than five percent of the value of the
48 contracts awarded on capital facility projects during the preced-
49 ing fiscal year.

50 The total specific annual dollar value when established shall be
51 binding on both the Division and SOMBA; both agencies are
52 required to cooperate and to take whatever steps they jointly deem
53 necessary to implement the requirements of this section. The dep-
54 uty commissioner of the division and the director of SOMBA shall
55 meet on a quarterly basis to determine what portion of the total
56 specific dollar value reserved for minority-owned and women-
57 owned businesses the division has already awarded to such busi-

58 nesses and what further steps both agencies deem necessary to
59 achieve the purpose of this section.

60 If the division fails at the end of the fiscal year to meet the total
61 specific dollar value reserved for minority-owned businesses, it
62 may with the cooperation and approval of SOMBA increase the
63 total specific annual dollar value reserved for minority-owned
64 business in the following fiscal year, by the difference between the
65 total specific annual dollar value projected for the last fiscal year
66 and the amount awarded to minority-owned businesses.

67 The Deputy Commissioner will reserve five percent of the esti-
68 mated construction cost of each capital facility project for
69 minority-owned businesses, and five percent for women-owned
70 businesses, except as follows:

71 (1) A greater percentage may be reserved to reflect the per-
72 centage of the minority population within the standard metropolitan
73 statistical or labor market area in which the capital facility is
74 located, as well as the numbers of minority-owned and women-
75 owned businesses available to perform work on a project, or to
76 achieve the specific annual dollar value reserved for minority-
77 owned businesses.

78 (2) If because of the size, nature, or location of a particular
79 capital facility project, it is not feasible to reserve a minimum of
80 five percent for a minority-owned or women-owned business, the
81 Division may either reserve a lesser portion of work for minority-
82 owned or women-owned businesses or waive the participation
83 requirements on that particular project. SOMBA may hold any
84 project for review, before the bid specifications are made public, if
85 it believes that the size, nature, or location of the project does not
86 justify a reduction in the women and/or minority business set-
87 aside below five percent.

88 No portion of contracting or subcontracting work reserved for
89 minority-owned businesses under the provisions of this section
90 shall be awarded to any minority-owned business not meeting the
91 requirements of a minority-owned business under this section; nor
92 shall any portion of contracting and subcontracting work reserved
93 for women-owned businesses under the provisions of this section
94 be awarded to any minority-owned business not meeting the
95 requirements of a women-owned business under this section.

96 The Deputy Commissioner with the cooperation and approval
97 of SOMBA shall develop the contract specifications, terms, condi-
98 tions, and language and shall take the administrative steps neces-
99 sary to carry out the purpose of this section. SOMBA shall be
100 responsible for establishing and updating, by periodic additions
101 and deletions, a list of minority-owned and women-owned busi-
102 nesses under this section, and shall cause the list to be published in
103 the central register established by Section 20 of Chapter 9 and in
104 other such publications as the Deputy Commissioner shall designate.
105

106 The Deputy Commissioner shall by March fifteenth of each year
107 submit to SOMBA, the Commissioner of Administration, the
108 State Commission Against Discrimination, and the General
109 Court, a report describing the number of contracts and subcon-
110 tracts awarded by the Division of Capital Planning and Operations
111 to minority-owned and women-owned businesses within the pre-
112 ceding calendar year. The report shall, at a minimum, show the
113 name and address of each such business, its designation as a
114 minority-owned business, the contract or subcontract price, a de-
115 scription of the work performed on such contract by class of work
116 and project type, and shall show separately the total number of
117 contracts awarded to minority-owned and women-owned busi-
118 nesses as a percentage of the total number of contracts awarded
119 and as a percentage of the total contract price.