

SENATE BILL 903

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P1

2004 Regular Session  
(4r1016)

**ENROLLED BILL**

-- Education, Health, and Environmental Affairs/Health and Government Operations --

Introduced by **The President (By Request - Administration)**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

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Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this  
\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_ M.

\_\_\_\_\_  
President.

CHAPTER 74

1 AN ACT concerning

2 **Office of Minority Affairs - Special Secretary - Minority Business**  
3 **Participation in Procurement Contracts**

4 FOR the purpose of designating the Special Secretary for the Office of Minority  
5 Affairs as head of the Office; providing for the duties and responsibilities of the  
6 Special Secretary; altering the criteria for a responsive procurement solicitation;  
7 requiring certain methods of source selection to include an expected degree of  
8 minority business enterprise participation; authorizing the Board of Public  
9 Works to adopt certain regulations regarding the timing of certain minority  
10 business enterprise commitments for certain procurement contracts; defining  
11 certain terms; and generally relating to minority business affairs.

12 BY repealing and reenacting, with amendments,  
13 Article - State Government  
14 Section 9-301, 9-303, 9-303.1, 9-303.2(b), 9-304, 9-305(b), and 9-306(a)  
15 Annotated Code of Maryland  
16 (1999 Replacement Volume and 2003 Supplement)

1 BY repealing and reenacting, with amendments,  
2 Article - State Finance and Procurement  
3 Section 13-103(a), 13-104(b), and 14-303(b)  
4 Annotated Code of Maryland  
5 (2001 Replacement Volume and 2003 Supplement)

6 BY adding to  
7 Article - State Finance and Procurement  
8 Section 13-103(e)(4)  
9 Annotated Code of Maryland  
10 (2001 Replacement Volume and 2003 Supplement)

11 BY repealing and reenacting, without amendments,  
12 Article - State Finance and Procurement  
13 Section 13-103(e)(1) and 14-303(a)  
14 Annotated Code of Maryland  
15 (2001 Replacement Volume and 2003 Supplement)

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

18 **Article - State Government**

19 9-301.

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

21 (b) ["Director" means the Director of the Office of Minority Affairs.

22 (c) "Interdepartmental Committee" means the Interdepartmental Advisory  
23 Committee on Minority Affairs.

24 [(d)] (C) (1) "Minority person" means:

25 (i) an individual who has been deprived of the opportunity to  
26 develop and keep a competitive position in the economy because of a social or  
27 economic disadvantage that arises from cultural, racial, or other similar causes; or

28 (ii) a sheltered workshop for individuals with disabilities.

29 (2) "Minority person" includes:

30 (i) an Aleut;

31 (ii) an American Indian;

32 (iii) a Black;

- 1 (iv) an Eskimo;
- 2 (v) a Hispanic;
- 3 (vi) an Oriental;
- 4 (vii) a Puerto Rican; or
- 5 (viii) a woman.

6 (D) "OFFICE" MEANS THE OFFICE OF MINORITY AFFAIRS.

7 (E) "SPECIAL SECRETARY" MEANS THE SPECIAL SECRETARY FOR THE OFFICE  
8 OF MINORITY AFFAIRS.

9 9-303.

10 (A) The head of the Office of Minority Affairs is the [Director] SPECIAL  
11 SECRETARY, who shall be appointed by AND SERVES AT THE PLEASURE OF the  
12 Governor.

13 (B) THE SPECIAL SECRETARY SHALL RECEIVE THE SALARY PROVIDED IN THE  
14 STATE BUDGET.

15 9-303.1.

16 (a) There is an Interdepartmental Advisory Committee for Minority Affairs.

17 (b) The Interdepartmental Committee is composed of:

18 (1) the secretary of each principal department of the Executive Branch of  
19 government, or the secretary's designee;

20 (2) the State Superintendent of Schools, or the Superintendent's  
21 designee;

22 (3) the Secretary of Higher Education, or the Secretary's designee; and

23 (4) the [Director] SPECIAL SECRETARY.

24 (c) The Interdepartmental Committee shall:

25 (1) advise the [Director] SPECIAL SECRETARY on proposals to  
26 implement and enhance the duties of the Office, including the promotion of  
27 employment of minority persons in the State, and the promotion of the growth and  
28 participation of minority business enterprises in the State;

29 (2) gather such information the Committee deems necessary to promote  
30 the goals of the Office;

1 (3) provide such other assistance as may be required to further the  
2 purposes of §§ 9-304 and 9-305 of this subtitle; and

3 (4) meet at the call of the [Director] SPECIAL SECRETARY.

4 9-303.2.

5 (b) As authorized by the Governor, the [Director] SPECIAL SECRETARY may  
6 create an Advisory Committee on Black Males to assist and advise the Office in  
7 developing recommendations in accordance with subsection (a) of this section.

8 9-304.

9 Subject to the limitations of any law that governs the activities of other units of  
10 the Executive Branch of the State government, the [Director] SPECIAL SECRETARY  
11 shall:

12 (1) advise the Governor on:

13 (i) the activities of the State government that are intended to  
14 promote the employment of minority persons in the State; and

15 (ii) each other matter that affects the rights and interests of  
16 minority persons and the communities in which they live; and

17 (2) as authorized by the Governor:

18 (i) provide help to minority persons and the communities in which  
19 they live;

20 (ii) represent the Governor in any matter that relates to minority  
21 persons or generally to the promotion of equality among the people of the State; and

22 (iii) perform any other responsibility that the Governor assigns.

23 9-305.

24 (b) Subject to the limitations of any law that governs the activities of other  
25 units of the Executive Branch of the State government, the [Director] SPECIAL  
26 SECRETARY shall:

27 (1) carry out each State or federal program that is created to promote the  
28 growth of or participation in minority business enterprises;

29 (2) promote and coordinate the plans, programs, and operations of the  
30 State government that promote or otherwise affect the establishment, preservation,  
31 and strengthening of minority business enterprises;

32 (3) promote activities and the use of the resources of the State  
33 government, local governments, and private entities for the growth of minority  
34 business enterprises;

1 (4) coordinate the effort of private entities and public agencies to develop  
2 minority business enterprises;

3 (5) establish a system to develop, collect, summarize, and give out  
4 information that would help a person to:

5 (i) establish a minority business enterprise;

6 (ii) operate a minority business enterprise successfully; or

7 (iii) promote the establishment and successful operation of minority  
8 business enterprises; and

9 (6) subject to the limitations of law and the availability of funds:

10 (i) provide technical and managerial assistance to minority  
11 business enterprises;

12 (ii) provide the managerial and organizational framework for  
13 private entities and units of the State government to plan and carry out joint  
14 undertakings that relate to minority business enterprises; and

15 (iii) pay, wholly or partly, the costs of a pilot or demonstration  
16 project that is intended to overcome the special problems of minority business  
17 enterprises.

18 9-306.

19 (a) On or before the 15th day of each regular session of the General Assembly,  
20 the [Director] SPECIAL SECRETARY shall send an annual report on the Office of  
21 Minority Affairs:

22 (1) to the Governor; and

23 (2) subject to § 2-1246 of this article, to the General Assembly.

24 **Article - State Finance and Procurement**

25 13-103.

26 (a) (1) Whenever procurement is based on competitive sealed bids, a  
27 procurement officer shall seek bids by issuing an invitation for bids.

28 (2) Subject to subsection (b) of this section, an invitation for bids shall  
29 include:

30 (i) the specifications of the procurement contract, INCLUDING THE  
31 EXPECTED DEGREE OF MINORITY BUSINESS ENTERPRISE PARTICIPATION, AS  
32 PROVIDED IN § 14-303(B) OF THIS ARTICLE;

1 (ii) whether the procurement contract will be awarded based on the  
2 lowest bid price, the lowest evaluated bid price or, if the procurement is subject to §  
3 11-202(3) of this article, the bid most favorable to the State;

4 (iii) if the procurement contract will be based on evaluated bid price,  
5 the objective measurable criteria by which the lowest evaluated bid price will be  
6 determined; and

7 (iv) if the Secretary of General Services, the Secretary of  
8 Transportation, or the Chancellor of the University System of Maryland has so  
9 designated, the small business preference.

10 (e) (1) After obtaining any approval required by law, the procurement  
11 officer shall award the procurement contract to the responsible bidder who submits  
12 the responsive bid that:

13 (i) is the lowest bid price;

14 (ii) if the invitation for bids so provides, is the lowest evaluated bid  
15 price; or

16 (iii) for procurement subject to § 11-202(3) of this article, is the bid  
17 most favorable to the State.

18 (4) A RESPONSIBLE BID OR PROPOSAL SHALL INCLUDE THE CRITERIA  
19 SPECIFIED IN SUBSECTION (A) OF THIS SECTION.

20 13-104.

21 (b) (1) Whenever procurement is based on competitive sealed proposals, a  
22 procurement officer shall seek proposals by issuing a request for proposals.

23 (2) A request for proposals shall include a statement of:

24 (i) the scope of the procurement contract, INCLUDING THE  
25 EXPECTED DEGREE OF MINORITY BUSINESS ENTERPRISE PARTICIPATION, AS  
26 PROVIDED IN § 14-303(B) OF THIS ARTICLE;

27 (ii) the factors, including price, that will be used in evaluating  
28 proposals; and

29 (iii) the relative importance of each factor.

30 14-303.

31 (a) (1) (i) In accordance with Title 10, Subtitle 1 of the State Government  
32 Article, the Board shall adopt regulations consistent with the purposes of this  
33 Division II to carry out the requirements of this subtitle.

34 (ii) The Board shall keep a record of the number of waivers  
35 requested and the number of waivers granted each year under subsection (b)(8) of this

1 section and submit a copy of the record to the General Assembly on or before October  
2 1 of each year, in accordance with § 2-1246 of the State Government Article.

3 (2) The regulations shall establish procedures to be followed by units,  
4 prospective contractors, and successful bidders or offerors to maximize notice to, and  
5 the opportunity to participate in the procurement process by, a broad range of  
6 minority business enterprises.

7 (b) These regulations shall include:

8 (1) provisions designating one agency to certify and decertify minority  
9 business enterprises for all units through a single process that meets applicable  
10 federal requirements;

11 (2) a requirement that the solicitation document accompanying each  
12 solicitation set forth the expected degree of minority business enterprise participation  
13 based, in part, on:

14 (i) the potential subcontract opportunities available in the prime  
15 procurement contract; and

16 (ii) the availability of certified minority business enterprises to  
17 respond competitively to the potential subcontract opportunities;

18 (3) a requirement that the unit provide a current list of certified  
19 minority business enterprises to each prospective contractor;

20 (4) provisions to ensure the uniformity of requests for bids on  
21 subcontracts;

22 (5) provisions relating to the timing of requests for bids on subcontracts  
23 and of submission of bids on subcontracts;

24 (6) provisions designed to ensure that a fiscal disadvantage to the State  
25 does not result from an inadequate response by minority business enterprises to a  
26 request for bids;

27 (7) provisions relating to joint ventures, under which a bidder may count  
28 toward meeting its minority business enterprise participation goal, the minority  
29 business enterprise portion of the joint venture;

30 (8) consistent with § 14-302(a)(5) of this subtitle, provisions relating to  
31 any circumstances under which a unit may waive obligations of the contractor  
32 relating to minority business enterprise participation;

33 (9) provisions requiring a monthly submission to the unit by minority  
34 business enterprises acknowledging all payments received in the preceding 30 days  
35 under a contract governed by this subtitle;

1 (10) a requirement that a unit shall verify and maintain data concerning  
2 payments received by minority business enterprises, including a requirement that,  
3 upon completion of a project, the unit shall compare the total dollar value actually  
4 received by minority business enterprises with the amount of contract dollars initially  
5 awarded, and an explanation of any discrepancies therein;

6 (11) a requirement that a unit verify that minority business enterprises  
7 listed in a successful bid are actually participating to the extent listed in the project  
8 for which the bid was submitted;

9 (12) provisions establishing a graduation program based on the financial  
10 viability of the minority business enterprise, using annual gross receipts or other  
11 economic indicators as may be determined by the Board; [and]

12 (13) A REQUIREMENT THAT A BID OR PROPOSAL BASED ON A  
13 SOLICITATION WITH AN EXPECTED DEGREE OF MINORITY BUSINESS ENTERPRISE  
14 PARTICIPATION ~~INCLUDE PROOF OF A CERTIFIED MINORITY BUSINESS ENTERPRISE~~  
15 ~~COMMITMENT~~ IDENTIFY THE SPECIFIC COMMITMENT OF CERTIFIED MINORITY  
16 BUSINESS ENTERPRISES AT THE TIME OF SUBMISSION; AND

17 (14) other provisions that the Board considers necessary or appropriate to  
18 encourage participation by minority business enterprises and to protect the integrity  
19 of the procurement process.

20 SECTION 2. AND BE IT FURTHER ENACTED, That the publisher of the  
21 Annotated Code of Maryland, in consultation with and subject to the approval of the  
22 Department of Legislative Services, shall correct, with no further action required by  
23 the General Assembly, cross-references and terminology rendered incorrect by this  
24 Act or by any other Act of the General Assembly of 2004 that affects provisions  
25 enacted by this Act. The publisher shall adequately describe any such correction in an  
26 editor's note following the section affected.

27 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take  
28 effect October 1, 2004.