

HOUSE BILL 923

P2

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CF SB 546

By: **Delegates Levi, Benson, Haynes, Howard, Nathan–Pulliam, Oaks, Pena–Melnik, Ramirez, Rice, Robinson, Stukes, Tarrant, Taylor, Valderrama, and Vaughn**

Introduced and read first time: February 12, 2010

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Minority Business Enterprises – Review of Application for**
3 **Certification and Notice to Applicant**

4 FOR the purpose of requiring the Board of Public Works to adopt regulations that
5 require the agency designated to certify minority business enterprises to
6 complete its review and provide notice of its decision to the applicant, absent
7 extenuating circumstances, within a certain period of time; and generally
8 relating to review and notice concerning an application for certification as a
9 minority business enterprise.

10 BY repealing and reenacting, with amendments,
11 Article – State Finance and Procurement
12 Section 14–303
13 Annotated Code of Maryland
14 (2009 Replacement Volume)

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

17 **Article – State Finance and Procurement**

18 14–303.

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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 section and submit a copy of the record to the General Assembly on or before October 1
2 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:

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

12 (II) **REQUIRING THE AGENCY DESIGNATED TO CERTIFY**
13 **MINORITY BUSINESS ENTERPRISES, ABSENT EXTENUATING CIRCUMSTANCES,**
14 **TO COMPLETE THE AGENCY'S REVIEW OF AN APPLICATION FOR CERTIFICATION**
15 **AND NOTIFY THE APPLICANT OF THE AGENCY'S DECISION WITHIN 120 DAYS OF**
16 **RECEIPT OF THE APPLICATION;**

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

20 (i) the potential subcontract opportunities available in the
21 prime procurement contract; and

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

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

26 (4) provisions to ensure the uniformity of requests for bids on
27 subcontracts;

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

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

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

4 (8) consistent with § 14-302(a)(6) of this subtitle, provisions relating
5 to any circumstances under which a unit may waive obligations of the contractor
6 relating to minority business enterprise participation;

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

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

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

18 (12) provisions establishing a graduation program based on the
19 financial viability of the minority business enterprise, using annual gross receipts or
20 other economic indicators as may be determined by the Board;

21 (13) a requirement that a bid or proposal based on a solicitation with an
22 expected degree of minority business enterprise participation identify the specific
23 commitment of certified minority business enterprises at the time of submission;

24 (14) provisions promoting and providing for the counting and reporting
25 of certified minority business enterprises as prime contractors; and

26 (15) other provisions that the Board considers necessary or appropriate
27 to encourage participation by minority business enterprises and to protect the
28 integrity of the procurement process.

29 (c) The regulations adopted under this section shall specify that a unit may
30 not allow a business to participate as if it were a certified minority business enterprise
31 if the business's certification is pending.

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