

SENATE BILL 903

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P1

2004 Regular Session
4r1016
CF 4r1017

By: **The President (By Request - Administration)**

Introduced and read first time: March 1, 2004

Assigned to: Rules

A BILL ENTITLED

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)

17 BY repealing and reenacting, with amendments,
18 Article - State Finance and Procurement
19 Section 13-103(a), 13-104(b), and 14-303(b)
20 Annotated Code of Maryland
21 (2001 Replacement Volume and 2003 Supplement)

22 BY adding to
23 Article - State Finance and Procurement
24 Section 13-103(e)(4)
25 Annotated Code of Maryland
26 (2001 Replacement Volume and 2003 Supplement)

27 BY repealing and reenacting, without amendments,
28 Article - State Finance and Procurement
29 Section 13-103(e)(1) and 14-303(a)

1 Annotated Code of Maryland
2 (2001 Replacement Volume and 2003 Supplement)

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

5 **Article - State Government**

6 9-301.

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

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

9 (c) "Interdepartmental Committee" means the Interdepartmental Advisory
10 Committee on Minority Affairs.

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

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

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

16 (2) "Minority person" includes:

17 (i) an Aleut;

18 (ii) an American Indian;

19 (iii) a Black;

20 (iv) an Eskimo;

21 (v) a Hispanic;

22 (vi) an Oriental;

23 (vii) a Puerto Rican; or

24 (viii) a woman.

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

26 (E) "SPECIAL SECRETARY" MEANS THE SPECIAL SECRETARY FOR THE OFFICE
27 OF MINORITY AFFAIRS.

1 9-303.

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

5 (B) THE SPECIAL SECRETARY SHALL RECEIVE THE SALARY PROVIDED IN THE
6 STATE BUDGET.

7 9-303.1.

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

9 (b) The Interdepartmental Committee is composed of:

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

12 (2) the State Superintendent of Schools, or the Superintendent's
13 designee;

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

15 (4) the [Director] SPECIAL SECRETARY.

16 (c) The Interdepartmental Committee shall:

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

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

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

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

26 9-303.2.

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

30 9-304.

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

1 (1) advise the Governor on:

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

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

6 (2) as authorized by the Governor:

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

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

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

12 9-305.

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

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

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

21 (3) promote activities and the use of the resources of the State
22 government, local governments, and private entities for the growth of minority
23 business enterprises;

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

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

28 (i) establish a minority business enterprise;

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

30 (iii) promote the establishment and successful operation of minority
31 business enterprises; and

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

1 (i) provide technical and managerial assistance to minority
2 business enterprises;

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

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

9 9-306.

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

13 (1) to the Governor; and

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

15 **Article - State Finance and Procurement**

16 13-103.

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

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

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

24 (ii) whether the procurement contract will be awarded based on the
25 lowest bid price, the lowest evaluated bid price or, if the procurement is subject to §
26 11-202(3) of this article, the bid most favorable to the State;

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

30 (iv) if the Secretary of General Services, the Secretary of
31 Transportation, or the Chancellor of the University System of Maryland has so
32 designated, the small business preference.

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

- 1 (i) is the lowest bid price;
- 2 (ii) if the invitation for bids so provides, is the lowest evaluated bid
3 price; or
- 4 (iii) for procurement subject to § 11-202(3) of this article, is the bid
5 most favorable to the State.

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

8 13-104.

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

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

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

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

17 (iii) the relative importance of each factor.

18 14-303.

19 (a) (1) (i) In accordance with Title 10, Subtitle 1 of the State Government
20 Article, the Board shall adopt regulations consistent with the purposes of this
21 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
24 section and submit a copy of the record to the General Assembly on or before October
25 1 of each year, in accordance with § 2-1246 of the State Government Article.

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

30 (b) These regulations shall include:

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

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

4 (i) the potential subcontract opportunities available in the prime
5 procurement contract; and

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

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

10 (4) provisions to ensure the uniformity of requests for bids on
11 subcontracts;

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

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

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

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

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

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

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

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

1 (13) A REQUIREMENT THAT A BID OR PROPOSAL BASED ON A
2 SOLICITATION WITH AN EXPECTED DEGREE OF MINORITY BUSINESS ENTERPRISE
3 PARTICIPATION INCLUDE PROOF OF A CERTIFIED MINORITY BUSINESS ENTERPRISE
4 COMMITMENT AT THE TIME OF SUBMISSION; AND

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

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

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