

# HOUSE BILL 959

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By: **Delegates Carter, Anderson, Montgomery, Oaks, Pena–Melnyk, and Taylor**

Introduced and read first time: February 12, 2010

Assigned to: Health and Government Operations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Procurement – Single Minority Business Enterprise Certification Agency for**  
3 **Local Government Procurement**

4 FOR the purpose of requiring the Board of Public Works to adopt regulations to  
5 designate one State agency as the certification agency for business entities  
6 seeking minority business enterprise status to participate in certain local  
7 government procurement; and generally relating to the designation of a single  
8 State agency to serve as the certification agency for businesses seeking minority  
9 business enterprise status for purposes of local government procurement.

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

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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 designating one **STATE** agency **WITH SOLE**  
9 **AUTHORITY** to certify and decertify minority business enterprises [for all units],  
10 through a single process that meets applicable federal requirements, **FOR:**

11 (I) **ALL UNITS ENGAGED IN STATE PROCUREMENT; AND**

12 (II) **ALL COUNTY OR MUNICIPAL GOVERNMENT**  
13 **PROCUREMENT;**

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

17 (i) the potential subcontract opportunities available in the  
18 prime procurement contract; and

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

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

23 (4) provisions to ensure the uniformity of requests for bids on  
24 subcontracts;

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

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

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

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

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

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

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

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

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

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

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

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

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