



House of Representatives

General Assembly

File No. 275

February Session, 2006

Substitute House Bill No. 5050

House of Representatives, March 31, 2006

The Committee on Government Administration and Elections reported through REP. CARUSO of the 126th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE STATE SET-ASIDE PROGRAM.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 4a-60g of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective January 1, 2007*):

3 (a) As used in this section and sections 4a-60h to 4a-60j, inclusive,
4 the following terms have the following meanings:

5 (1) "Small contractor" means any contractor, subcontractor,
6 manufacturer or service company (A) [which] that has been doing
7 business under the same ownership [and] or management and has
8 maintained its principal place of business in the state, for a period of at
9 least one year immediately prior to the date of application for
10 certification under this section, (B) [which had gross revenues not
11 exceeding ten million dollars in the most recently completed fiscal year
12 prior to such application] that meets the size standard established by
13 the Department of Administrative Services pursuant to section 2 of this

14 act, for the business sector in which such contractor, subcontractor,
15 manufacturer or service company primarily operates, and (C) at least
16 fifty-one per cent of the ownership of which is held by a person or
17 persons who exercise operational authority over the daily affairs of the
18 business and have the power to direct the management and policies
19 and receive the beneficial interests of the business, except that a
20 nonprofit corporation shall be construed to be a small contractor if
21 such nonprofit corporation meets the requirements of subparagraphs
22 (A) and (B) of this subdivision.

23 (2) "State agency" means each state board, commission, department,
24 office, institution, council or other agency with the power to contract
25 for goods or services itself or through its head.

26 (3) "Minority business enterprise" means any small contractor (A)
27 fifty-one per cent or more of the capital stock, if any, or assets of which
28 are owned by a person or persons (i) who exercise operational
29 authority over the daily affairs of the enterprise, (ii) who have the
30 power to direct the management and policies and receive the beneficial
31 interest of the enterprise, and (iii) who are members of a minority, as
32 such term is defined in subsection (a) of section 32-9n, (B) who is an
33 individual with a disability, or (C) which is a nonprofit corporation in
34 which fifty-one per cent or more of the persons who (i) exercise
35 operational authority over the enterprise, and (ii) have the power to
36 direct the management and policies of the enterprise are members of a
37 minority, as defined in this subsection, or are individuals with a
38 disability.

39 (4) "Affiliated" means the relationship in which a person directly, or
40 indirectly through one or more intermediaries, controls, is controlled
41 by or is under common control with another person.

42 (5) "Control" means the power to direct or cause the direction of the
43 management and policies of any person, whether through the
44 ownership of voting securities, by contract or through any other direct
45 or indirect means. Control shall be presumed to exist if any person,
46 directly or indirectly, owns, controls, holds with the power to vote, or

47 holds proxies representing, twenty per cent or more of any voting
48 securities of another person.

49 (6) "Person" means any individual, corporation, limited liability
50 company, partnership, association, joint stock company, business trust,
51 unincorporated organization or other entity.

52 (7) "Individual with a disability" means an individual (A) having a
53 physical impairment that substantially limits one or more of the major
54 life activities of the individual, or (B) having a record of such an
55 impairment.

56 (8) "Nonprofit corporation" means a nonprofit corporation
57 incorporated pursuant to chapter 602 or any predecessor statutes
58 thereto.

59 (b) It is found and determined that there is a serious need to help
60 small contractors, minority business enterprises, nonprofit
61 organizations and individuals with disabilities to be considered for
62 and awarded state contracts for the construction, reconstruction or
63 rehabilitation of public buildings, the construction and maintenance of
64 highways and the purchase of goods and services. Accordingly, the
65 necessity, in the public interest and for the public benefit and good, of
66 the provisions of this section, sections 4a-60h to 4a-60j, inclusive, and
67 sections 32-9i to 32-9p, inclusive, is declared as a matter of legislative
68 determination. Notwithstanding any provisions of the general statutes
69 to the contrary, and except as set forth herein, the head of each state
70 agency and each political subdivision of the state other than a
71 municipality shall set aside in each fiscal year, for award to small
72 contractors, on the basis of competitive bidding procedures, contracts
73 or portions of contracts for the construction, reconstruction or
74 rehabilitation of public buildings, the construction and maintenance of
75 highways and the purchase of goods and services. Eligibility of
76 nonprofit corporations under the provisions of this section shall be
77 limited to predevelopment contracts awarded by the Commissioner of
78 Economic and Community Development for housing projects. The
79 total value of such contracts or portions thereof to be set aside by each

80 such agency shall be at least twenty-five per cent of the total value of
81 all contracts let by the head of such agency in each fiscal year,
82 provided that neither: (1) A contract that may not be set aside due to a
83 conflict with a federal law or regulation; or (2) a contract for any goods
84 or services which have been determined by the Commissioner of
85 Administrative Services to be not customarily available from or
86 supplied by small contractors shall be included. [except that the head
87 of any such agency may set aside an amount based on the amount of
88 all contracts not excluded from the calculation which are anticipated to
89 be let in any fiscal year if the method of calculation for such year
90 would result in a maximum value of contracts to be set aside of less
91 than twenty-five per cent of the contracts anticipated to be let in such
92 year or in a minimum value of contracts to be set aside of greater than
93 twenty-five per cent of the contracts anticipated to be let in such year.]
94 Contracts or portions thereof having a value of not less than
95 twenty-five per cent of the total value of all contracts or portions
96 thereof to be set aside shall be reserved for awards to minority
97 business enterprises.

98 (c) The head of any state agency or political subdivision of the state
99 other than a municipality may, in lieu of setting aside any contract or
100 portions thereof, require any general or trade contractor or any other
101 entity authorized by such agency to award contracts, to set aside a
102 portion of any contract for subcontractors who are eligible for set-aside
103 contracts under this section. Nothing in this subsection shall be
104 construed to diminish the total value of contracts which are required to
105 be set aside by any state agency or political subdivision of the state
106 other than a municipality pursuant to this section.

107 (d) The heads of all state agencies and of each political subdivision
108 of the state other than a municipality shall notify the Commissioner of
109 Administrative Services of all contracts to be set aside pursuant to
110 subsection (b) or (c) of this section at the time that bid documents for
111 such contracts are made available to potential contractors.

112 [(e) In no case shall the Commissioner of Administrative Services

113 recommend, nor shall any small contractor be awarded, any such
114 contract or contracts, the total amount of which exceeds ten million
115 dollars in any one fiscal year.]

116 [(f)] (e) The awarding authority shall require that a contractor or
117 subcontractor awarded a contract or a portion of a contract under this
118 section perform not less than fifteen per cent of the work with the
119 workforces of such contractor or subcontractor and shall require that
120 not less than twenty-five per cent of the work be performed by
121 contractors or subcontractors eligible for awards under this section. A
122 contractor awarded a contract or a portion of a contract under this
123 section shall not subcontract with any person with whom the
124 contractor is affiliated. No person who is affiliated with another person
125 shall be eligible for awards under this section if both affiliated persons
126 considered together would not qualify as a small contractor or a
127 minority business enterprise under subsection (a) of this section. The
128 awarding authority shall require that a contractor awarded a contract
129 under this section submit, in writing, an explanation of any
130 subcontract entered into with any person that is not eligible for awards
131 under this section prior to the performance of any work pursuant to
132 such subcontract. The awarding authority may impose a civil penalty
133 on such contractor in accordance with the provisions of subsection (j)
134 of this section.

135 [(g)] (f) The awarding authority may require that a contractor or
136 subcontractor awarded a contract or a portion of a contract under this
137 section furnish the following documentation: (1) A copy of the
138 certificate of incorporation, certificate of limited partnership,
139 partnership agreement or other organizational documents of the
140 contractor or subcontractor; (2) a copy of federal income tax returns
141 filed by the contractor or subcontractor for the previous year; and (3)
142 evidence of payment of fair market value for the purchase or lease by
143 the contractor or subcontractor of property or equipment from another
144 contractor who is not eligible for set-aside contracts under this section.

145 [(h)] (g) The awarding authority or the Commissioner of

146 Administrative Services or the Commission on Human Rights and
147 Opportunities may conduct an audit of the financial, corporate and
148 business records and conduct an investigation of any small contractor
149 or minority business enterprise which applies for or is awarded a
150 set-aside contract for the purpose of determining eligibility for awards
151 or compliance with the requirements established under this section.

152 [(i)] (h) The provisions of this section shall not apply to any state
153 agency or political subdivision of the state other than a municipality
154 for which the total value of all contracts or portions of contracts of the
155 types enumerated in subsection (b) of this section is anticipated to be
156 equal to ten thousand dollars or less.

157 [(j)] (i) In lieu of a performance, bid, labor and materials or other
158 required bond, a contractor or subcontractor awarded a contract under
159 this section may provide to the awarding authority, and the awarding
160 authority shall accept a letter of credit. Any such letter of credit shall
161 be in an amount equal to ten per cent of the contract for any contract
162 that is less than one hundred thousand dollars and in an amount equal
163 to twenty-five per cent of the contract for any contract that exceeds one
164 hundred thousand dollars.

165 [(k)] (j) (1) Whenever the awarding agency has reason to believe that
166 any contractor or subcontractor awarded a set-aside contract has
167 wilfully violated any provision of this section, the awarding agency
168 [may] shall send a notice to such contractor or subcontractor by
169 certified mail, return receipt requested. Such notice shall include: (A) A
170 reference to the provision alleged to be violated; (B) a short and plain
171 statement of the matter asserted; (C) the maximum civil penalty that
172 may be imposed for such violation; and (D) the time and place for the
173 hearing. Such hearing shall be fixed for a date not earlier than fourteen
174 days after the notice is mailed. The awarding authority shall send a
175 copy of such notice to the Commission on Human Rights and
176 Opportunities.

177 (2) The awarding agency shall hold a hearing on the violation
178 asserted unless such contractor or subcontractor fails to appear. The

179 hearing shall be held in accordance with the provisions of chapter 54.
180 If, after the hearing, the awarding agency finds that the contractor or
181 subcontractor has wilfully violated any provision of this section, the
182 awarding agency shall suspend all set-aside contract payments to the
183 contractor or subcontractor and may, in its discretion, order that a civil
184 penalty not exceeding ten thousand dollars per violation be imposed
185 on the contractor or subcontractor. If such contractor or subcontractor
186 fails to appear for the hearing, the awarding agency may, as the facts
187 require, order that a civil penalty not exceeding ten thousand dollars
188 per violation be imposed on the contractor or subcontractor. The
189 awarding agency shall send a copy of any order issued pursuant to
190 this subsection by certified mail, return receipt requested, to the
191 contractor or subcontractor named in such order. The awarding agency
192 may cause proceedings to be instituted by the Attorney General for the
193 enforcement of any order imposing a civil penalty issued under this
194 subsection.

195 [(l)] (k) On or before January 1, 2000, the Commissioner of
196 Administrative Services shall establish a process for certification of
197 small contractors and minority business enterprises as eligible for
198 set-aside contracts. Each certification shall be valid for a period not to
199 exceed two years. [The] Any paper application for certification shall be
200 no longer than six pages. [Annually, the commissioner shall print a]
201 The Department of Administrative Services shall maintain on its web
202 site an updated directory of small contractors and minority business
203 enterprises certified under this section. [State agencies shall be
204 provided with updated directory information quarterly.]

205 [(m)] (l) On or before September 30, 1995, and annually thereafter,
206 each state agency and each political subdivision of the state other than
207 a municipality setting aside contracts or portions of contracts shall
208 prepare a report establishing small and minority business set-aside
209 program goals for the twelve-month period beginning July first in the
210 same year. Each such report shall be submitted to the Commissioner of
211 Administrative Services, the Commission on Human Rights and
212 Opportunities and the cochairpersons and ranking members of the

213 joint standing committees of the General Assembly having cognizance
214 of matters relating to planning and development and government
215 administration and elections.

216 [(n)] (m) On or before November 1, 1995, and quarterly thereafter,
217 each state agency and each political subdivision of the state other than
218 a municipality setting aside contracts or portions of contracts shall
219 prepare a status report on the implementation and results of its small
220 business and minority business enterprise set-aside program goals
221 during the three-month period ending one month before the due date
222 for the report. Each report shall be submitted to the Commissioner of
223 Administrative Services and the Commission on Human Rights and
224 Opportunities. Any state agency or political subdivision of the state,
225 other than a municipality, that does not achieve at least seventy-five
226 per cent of its small contractor and minority business enterprise set-
227 aside program goals by the end of the third reporting period in any
228 twelve-month period beginning on July first shall provide a written
229 explanation to the Commissioner of Administrative Services and the
230 Commission on Human Rights and Opportunities detailing how the
231 agency or political subdivision will achieve its goals in the final
232 reporting period. The Commission on Human Rights and
233 Opportunities shall: (1) Monitor the achievement of the annual goals
234 established by each state agency and political subdivision of the state
235 other than a municipality; and (2) prepare a quarterly report
236 concerning such goal achievement. The report shall be submitted to
237 each state agency that submitted a report, the Commissioner of
238 Economic and Community Development, the Commissioner of
239 Administrative Services and the cochairpersons and ranking members
240 of the joint standing committees of the General Assembly having
241 cognizance of matters relating to planning and development and
242 government administration and elections. Failure by any state agency
243 or political subdivision of the state other than a municipality to submit
244 any reports required by this section shall be a violation of section 46a-
245 77.

246 [(o)] (n) On or before January 1, 2000, and annually thereafter, the

247 Department of Administrative Services shall establish a precertification
248 list of small contractors and minority business enterprises who have
249 established a principal place of business in the state but have not
250 maintained such place of business for one year and are not in the
251 directory prepared pursuant to subsection [(l)] (k) of this section. An
252 awarding agency may select a small contractor or minority business
253 enterprise from such precertification list only after such awarding
254 agency makes a good faith effort to find an eligible small contractor or
255 minority business enterprise in the directory and determines that no
256 small contractor or minority business enterprise is qualified to perform
257 the work required under the contract.

258 Sec. 2. (NEW) (*Effective from passage*) The Commissioner of
259 Administrative Services shall adopt regulations, in accordance with
260 chapter 54 of the general statutes, that establish size standards for
261 small contractors in each business sector in which such contractors,
262 subcontractors, manufactures or service companies primarily operate.
263 Such regulations shall also provide for the inclusion of businesses with
264 a maximum of twenty-five employees and gross sales of not more than
265 two million dollars per year within the size standards established for
266 small contractors in each such business sector.

267 Sec. 3. Subsection (b) of section 4a-60h of the general statutes is
268 repealed and the following is substituted in lieu thereof (*Effective*
269 *January 1, 2007*):

270 (b) The commissioner shall adopt regulations in accordance with the
271 provisions of chapter 54 to carry out the purposes of sections 4a-60g to
272 4a-60j, inclusive. Such regulations shall include (1) provisions
273 concerning the application of the program to individuals with a
274 disability; (2) guidelines for a legally acceptable format for, and content
275 of, letters of credit authorized under subsection [(j)] (i) of section 4a-
276 60g, as amended by this act; (3) procedures for random site visits to the
277 place of business of an applicant for certification at the time of
278 application and at subsequent times, as necessary, to ensure the
279 integrity of the application process; and (4) time limits for approval or

280 disapproval of applications.

281 Sec. 4. Section 4a-100 of the general statutes is repealed and the
282 following is substituted in lieu thereof (*Effective January 1, 2007*):

283 (a) As used in this section: (1) "Prequalification" means
284 prequalification issued by the Commissioner of Administrative
285 Services to bid on a contract for the construction, reconstruction,
286 alteration, remodeling, repair or demolition of any public building for
287 work by the state or a municipality or to perform work under such a
288 contract as a substantial subcontractor; (2) "subcontractor" means a
289 person who performs work with a value in excess of twenty-five
290 thousand dollars for a contractor pursuant to a contract for work for
291 the state or a municipality which is estimated to cost more than five
292 hundred thousand dollars; (3) "principals and key personnel" includes
293 officers, directors, shareholders, members, partners and managerial
294 employees; (4) "aggregate work capacity rating" means the maximum
295 amount of work an applicant is capable of undertaking for any and all
296 projects; [and] (5) "single project limit" means the highest estimated
297 cost of a single project that an applicant is capable of undertaking; and
298 (6) "substantial subcontractor" means a person who performs work
299 with a value in excess of five hundred thousand dollars for a
300 contractor pursuant to a contract for work for the state or a
301 municipality which is estimated to cost more than five hundred
302 thousand dollars.

303 (b) (1) Any person may apply for prequalification to the Department
304 of Administrative Services. Such application shall be made on such
305 form as the Commissioner of Administrative Services prescribes and
306 shall be accompanied by a nonrefundable application fee as set forth in
307 subdivision (2) of this subsection. The application shall be signed
308 under penalty of false statement.

309 (2) The application fee shall be as follows:

T1	Aggregate Work Capacity Rating	Fee
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T2	\$5,000,000.00 or less	\$600.00
T3	\$5,000,000.01 - \$8,000,000.00	\$750.00
T4	\$8,000,000.01 - \$10,000,000.00	\$850.00
T5	\$10,000,000.01 - \$15,000,000.00	\$1,000.00
T6	\$15,000,000.01 - \$20,000,000.00	\$1,500.00
T7	\$20,000,000.01 - \$40,000,000.00	\$2,000.00
T8	\$40,000,000.01 or more	\$2,500.00

310 (c) The application form shall, at a minimum, require the applicant
311 to supply information concerning:

312 (1) The applicant's form of organization;

313 (2) The applicant's principals and key personnel and any names
314 under which the applicant, principals or key personnel conducted
315 business during the past five years;

316 [(3) The applicant's experience on public and private construction
317 projects over the past five years, or on the applicant's ten most
318 recently-completed projects and the names of any subcontractors used
319 on the projects;]

320 [(4)] (3) Any legal or administrative proceedings pending or
321 concluded adversely against the applicant or any of the applicant's
322 principals or key personnel within the past five years which relate to
323 the procurement or performance of any public or private construction
324 contract and whether the applicant is aware of any investigation
325 pending against the applicant or any principal or key personnel;

326 [(5)] (4) The nature of any financial, personal or familial relationship
327 between the applicant and any public or private construction project
328 owner listed on the application as constituting construction experience;

329 [(6)] (5) A statement of whether (A) the applicant has been
330 disqualified pursuant to section 4b-95, this section or section 31-57c or
331 31-57d, (B) the applicant is on the list distributed by the Labor
332 Commissioner pursuant to section 31-57a, (C) the applicant is

333 disqualified or prohibited from being awarded a contract pursuant to
334 section 31-57b, (D) the applicant has been disqualified by another state,
335 (E) the applicant has been disqualified by a federal agency or pursuant
336 to federal law, (F) the applicant's registration has been suspended or
337 revoked by the Department of Consumer Protection pursuant to
338 section 20-341gg, (G) the applicant has been disqualified by a
339 municipality, and (H) the matters that gave rise to any such
340 disqualification, suspension or revocation have been eliminated or
341 remedied; and

342 [(7)] (6) Other information as the commissioner deems relevant to
343 the determination of the applicant's qualifications and responsibilities.

344 (d) The applicant shall include a statement of financial condition
345 prepared by a certified public accountant which includes information
346 concerning the applicant's assets and liabilities, plant and equipment,
347 bank and credit references, bonding company and maximum bonding
348 capacity, and other information as the commissioner deems relevant to
349 an evaluation of the applicant's financial capacity and responsibility.

350 (e) Information contained in the application shall be current as of
351 the time of filing except that the statement of financial condition shall
352 pertain to the applicant's most recently-completed fiscal year.

353 (f) The commissioner shall determine whether to prequalify an
354 applicant on the basis of the application and on relevant past
355 performance according to procedures and criteria set forth in
356 regulations which the commissioner shall adopt on or before October
357 1, 2005, in accordance with chapter 54. Such criteria shall include, at a
358 minimum, the record of the applicant's performance, including, but
359 not limited to, written evaluations of the applicant's performance on
360 public or private projects, [within the past five years,] for a period of
361 not less than the past three years, the applicant's past experience on
362 projects of various size and type, the skill, ability and integrity of the
363 applicant and any subcontractors used by the applicant, the experience
364 and qualifications of supervisory personnel employed by the
365 applicant, the maximum amount of work the applicant is capable of

366 undertaking as demonstrated by the applicant's financial condition,
367 bonding capacity, size of past projects and present and anticipated
368 work commitments, and any other relevant criteria that the
369 commissioner prescribes. Such regulations shall also (1) provide that
370 the criteria considered shall be assigned separate designated numerical
371 values and weights and that the applicant shall be assigned an overall
372 numerical rating on the basis of all criteria, and (2) establish
373 prequalification classifications, aggregate work capacity ratings and
374 single project limits. Such prequalification classifications shall be used
375 to establish the types of work a contractor or substantial subcontractor
376 is qualified to perform and the aggregate work capacity ratings shall
377 be used to establish the maximum amount of work a contractor or
378 substantial subcontractor is capable of undertaking.

379 (g) (1) The applicant shall indicate the prequalification
380 classifications, aggregate work capacity ratings and single project
381 limits that are sought. The commissioner may issue a certificate of
382 prequalification to any applicant who meets the requirements of this
383 section. Such certificate shall be effective for one year from the date
384 issued and shall indicate the contractor's or substantial subcontractor's
385 prequalification classifications, aggregate work capacity ratings and
386 single project limits. The commissioner may cause the initial certificate
387 of prequalification to be effective for a period not to exceed two years
388 and may require the applicant to remit payment of the application fee,
389 as set forth in subsection (b) of this section, for the first twelve months
390 of certification as well as a prorated application fee, as described in
391 subdivision (3) of this subsection, for any additional period of
392 certification beyond the first twelve months.

393 (2) A prequalified contractor or substantial subcontractor may apply
394 at any time for additional prequalification classifications, aggregate
395 work capacity ratings or single project limits by submitting the
396 applicable increase in fee, a completed update statement, and other
397 information the commissioner requires.

398 (3) The commissioner may renew a prequalification certificate upon

399 receipt of a completed update statement, any other material the
400 commissioner requires and a nonrefundable fee in an amount [equal
401 to] not less than one-half of the application fee for the applicable
402 aggregate work capacity rating as set forth in subsection (b) of this
403 section. [, except that in no event shall such fee be less than six
404 hundred dollars.]

405 (h) Not later than sixty days after receiving a completed application,
406 the commissioner shall mail or send by electronic mail a notice to the
407 applicant concerning the commissioner's preliminary determination
408 regarding the conditions of the prequalification certification, a denial
409 of certification, a reduction in the level of certification sought or
410 nonrenewal of certification. Any applicant aggrieved by the
411 commissioner's preliminary determination may request copies of the
412 information upon which the commissioner relied in making the
413 preliminary determination, provided such request is made not later
414 than ten days after the date the notice was mailed or sent by electronic
415 mail to the applicant. Not later than twenty days after the date the
416 notice was mailed or sent by electronic mail, the applicant may submit
417 additional information to the commissioner with a request for
418 reconsideration. The commissioner shall issue a final determination
419 regarding the application not later than ninety days after the date the
420 commissioner mailed or sent by electronic mail the notice of the
421 preliminary determination, which ninety-day period may be extended
422 for an additional period not to exceed ninety days if (1) the
423 commissioner gives written notice to the applicant that the
424 commissioner requires additional time, and (2) such notice is mailed or
425 sent by electronic mail during the initial ninety-day period.

426 (i) The commissioner may not issue a prequalification certificate to
427 any contractor or substantial subcontractor (1) who is disqualified
428 pursuant to section 31-57c or 31-57d, (2) who has a principal or key
429 personnel who, within the past five years, has a conviction or has
430 entered a plea of guilty or nolo contendere for or has admitted to
431 commission of an act or omission that reasonably could have resulted
432 in disqualification pursuant to any provision of subdivisions (1) to (3),

433 inclusive, of subsection (d) of section 31-57c or subdivisions (1) to (3),
434 inclusive, of subsection (d) of section 31-57d, as determined by the
435 commissioner.

436 (j) The commissioner may revoke a contractor's or substantial
437 subcontractor's prequalification or reduce the contractor's or
438 substantial subcontractor's prequalification classification or aggregate
439 work capacity ratings, after an opportunity for a hearing, if the
440 commissioner receives additional information that supports such
441 revocation or reduction.

442 (k) (1) Any materially false statement in the application or any
443 update statement may, in the discretion of the awarding authority,
444 result in termination of any contract awarded the applicant by the
445 awarding authority. The awarding authority shall provide written
446 notice to the commissioner of such false statement not later than thirty
447 days after discovering such false statement. The commissioner shall
448 provide written notice of such false statement to the Commissioner of
449 Public Works and the Commissioner of Consumer Protection not later
450 than thirty days after discovering such false statement or receiving
451 such notice.

452 (2) The commissioner shall revoke the prequalification of any
453 person, after an opportunity for hearing, if the commissioner finds that
454 the person has included any materially false statement in such
455 application or update statement, has been convicted of a crime related
456 to the procurement or performance of any public or private
457 construction contract or, within the past five years or has otherwise
458 engaged in fraud in obtaining or maintaining prequalification. Any
459 person whose prequalification has been revoked pursuant to this
460 subsection shall be disqualified for a period of two years after which
461 the person may reapply for prequalification, except that a person
462 whose prequalification has been revoked on the basis of conviction of a
463 crime or engaging in fraud shall be disqualified for a period of five
464 years after which the person may reapply for prequalification. The
465 commissioner shall not prequalify a person whose prequalification has

466 been revoked pursuant to this subdivision until the expiration of said
467 [two or] two-year, five-year, or other applicable disqualification period
468 and the commissioner is satisfied that the matters that gave rise to the
469 revocation have been eliminated or remedied.

470 (l) The commissioner shall provide written notice of any revocation,
471 disqualification, reduction in classification or capacity rating or
472 reinstated prequalification to the Commissioner of Public Works and
473 the Commissioner of Consumer Protection not later than thirty days
474 after any final determination.

475 (m) The provisions of this section and section 4a-101, as amended by
476 this act, shall not apply to subcontractors who are not substantial
477 subcontractors.

478 (n) The commissioner shall establish an update statement for use by
479 bidders and substantial subcontractors for purposes of renewing or
480 upgrading a prequalification certificate and for purposes of submitting
481 a bid pursuant to section 4b-91, as amended by this act.

482 (o) Any applicant aggrieved by the commissioner's final
483 determination concerning a preliminary determination, a denial of
484 certification, a reduction in prequalification classification or aggregate
485 work capacity rating or a revocation or nonrenewal of certification
486 may appeal to the Superior Court in accordance with section 4-183.

487 (p) The commissioner shall adopt regulations, in accordance with
488 chapter 54, to establish a schedule of application fees for substantial
489 subcontractors.

490 Sec. 5. Section 4a-101 of the general statutes is repealed and the
491 following is substituted in lieu thereof (*Effective January 1, 2007*):

492 (a) On or before October 1, 2005, the Commissioner of
493 Administrative Services shall adopt regulations, in accordance with
494 chapter 54, to establish a standard contractor evaluation form. Such
495 form shall include, at a minimum, the following evaluation criteria: (1)
496 Timeliness of performance; (2) quality of performance; (3) cost

497 containment, including, but not limited to, the contractor's ability to
498 work within the contract's allotted cost, the accuracy of the contractor's
499 billing, and the number and cause of change orders and the manner in
500 which the contractor determined the price on the change orders; (4)
501 safety; (5) the quality of the contractor's working relationship with the
502 agency and the quality of the contractor's supervision of the work area;
503 (6) communication with the agency; (7) the quality of the contractor's
504 required documentation; (8) the performance of the contractor's
505 subcontractors and substantial subcontractors, to the extent known by
506 the official who completes the evaluation; and (9) the contractor's and
507 any subcontractor's compliance with part III of chapter 557, or chapter
508 558, or the provisions of the federal Davis-Bacon Act, 40 USC, Sections
509 276a to 276a-5, inclusive, as from time to time amended, to the extent
510 known by the official who completes the evaluation.

511 (b) Each public agency shall compile evaluation information during
512 the performance of the contract and complete and submit the
513 evaluation form to the commissioner after completion of a building
514 project under the agency's control if the building project is funded, in
515 whole or in part, by state funds. Such evaluation information shall be
516 available to any public agency for purposes of assessing the
517 responsibility of the contractor during a bid selection and evaluation
518 process. The designated official from such agency shall certify that the
519 information contained in the evaluation form represents, to the best of
520 the certifying official's knowledge, a true and accurate analysis of the
521 contractor's performance record on the contract. The commissioner
522 shall include the evaluation in the contractor's prequalification file. The
523 official shall mail a copy of the completed evaluation form to the
524 contractor. Any contractor who wishes to contest any information
525 contained in the evaluation form may submit a written response to the
526 commissioner not later than thirty days after the date the form was
527 mailed as indicated by the postmark on the envelope. Such response
528 shall set forth any additional information concerning the building
529 project or the oversight of the contract by the public agency that may
530 be relevant in the evaluation of the contractor's performance on the
531 project. The commissioner shall include any such response in the

532 contractor's prequalification file.

533 (c) As used in this section, "public agency" means a public agency,
534 as defined in section 1-200, but does not include The University of
535 Connecticut with respect to any project, as defined in subdivision (16)
536 of section 10a-109c, that is undertaken and controlled by the
537 university, [and] "subcontractor" means a person who performs work
538 with a value in excess of twenty-five thousand dollars for a contractor
539 pursuant to a contract for work for the state or a municipality which is
540 estimated to cost more than five hundred thousand dollars and
541 "substantial subcontractor" means a substantial subcontractor, as
542 defined in section 4a-100, as amended by this act.

543 (d) Upon fifty per cent completion of any building project under a
544 public agency's control, the agency shall advise the contractor in
545 writing of the agency's preliminary evaluation of the contractor's
546 performance on the project.

547 (e) No public agency, employee of a public agency or certifying
548 official of a public agency shall be held liable to any contractor for any
549 loss or injury sustained by such contractor as the result of the
550 completion of an evaluation form, as required by this section, unless
551 such agency, employee or official is found by a court of competent
552 jurisdiction to have acted in a wilful, wanton or reckless manner.

553 (f) Any public agency that fails to submit a completed evaluation
554 form, as required by this section, not later than seventy days after the
555 completion of a project, shall be ineligible for the receipt of any public
556 funds disbursed by the state for the purposes of the construction,
557 reconstruction, alteration, remodeling, repair or demolition of any
558 public building or any public works project until such completed
559 evaluation form is submitted.

560 (g) Notwithstanding the provisions of subsection (a) of this section,
561 any political subdivision of the state, when evaluating the performance
562 of a contractor's subcontractors or substantial subcontractors, to the
563 extent known, may rely on an evaluation of such subcontractors or

564 substantial subcontractors that is conducted by the contractor.

565 Sec. 6. Section 4b-91 of the 2006 supplement to the general statutes is
566 amended by adding subsection (j) as follows (*Effective January 1, 2007*):

567 (NEW) (j) On and after January 1, 2007, no person whose
568 subcontract exceeds five hundred thousand dollars in value may
569 perform work as a subcontractor on a project for the construction,
570 reconstruction, alteration, remodeling, repair or demolition of any
571 public building for work by the state or a municipality, which project
572 is estimated to cost more than five hundred thousand dollars and is
573 paid for, in whole or in part, with state funds, unless the person is
574 prequalified in accordance with section 4a-100, as amended by this act.
575 The provisions of this subsection shall not apply to a project described
576 in subdivision (2) of subsection (a) of this section.

577 Sec. 7. (NEW) (*Effective January 1, 2007*) (a) This section shall be
578 known as the "Anthony J. Tercyak Act".

579 (b) The Department of Administrative Services shall require any
580 publicly traded corporation that seeks to do business with the state to
581 certify in an affidavit that such company is not a company that: (1)
582 Conducted business in the United States, (2) was previously
583 incorporated within the United States' territorial limits, (3)
584 reincorporated outside the United States' territorial limits on or after
585 July 1, 2005, and (4) as a result of such reincorporation outside the
586 United States' territorial limits, has received a reduction in federal or
587 Connecticut tax liability.

588 (c) The state may not enter into any contract with any publicly
589 traded company that does not deny such reincorporation in a sworn
590 affidavit, except that the Attorney General may waive such prohibition
591 if the services sought by the state are not available from a company
592 that is incorporated in the United States or if waiver of such
593 prohibition is in the best interest of the state.

594 Sec. 8. Subsection (d) of section 4b-91 of the 2006 supplement to the

595 general statutes is repealed and the following is substituted in lieu
596 thereof (*Effective from passage*):

597 (d) On and after October 1, 2004, each bid submitted for a contract
598 described in subsection (c) of this section shall include a copy of a
599 prequalification certificate issued by the Commissioner of
600 Administrative Services. The bid shall also be accompanied by an
601 update statement in such form as the Commissioner of Administrative
602 Services prescribes. The form for such update statement shall provide
603 space for information regarding all bonded projects completed by the
604 bidder since the date the bidder's prequalification certificate was
605 issued or renewed, all bonded projects the bidder currently has under
606 contract, including the percentage of work on such projects not
607 completed, the names and qualifications of the personnel who will
608 have supervisory responsibility for the performance of the contract,
609 any significant changes in the bidder's financial position or corporate
610 structure since the date the certificate was issued or renewed, any
611 change in the contractor's qualification status as determined by the
612 provisions of subdivision (6) of subsection (c) of section 4a-100 and
613 such other relevant information as the Commissioner of
614 Administrative Services prescribes. Any bid submitted without a copy
615 of the prequalification certificate and an update statement shall be
616 invalid. Any public agency that accepts a bid submitted without a
617 copy of such prequalification certificate and an update statement, as
618 required by this section, shall be ineligible for the receipt of any state
619 funds disbursed for the purpose of the construction, reconstruction,
620 alteration, remodeling, repair or demolition of any public building or
621 any public works project.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>January 1, 2007</i>	4a-60g
Sec. 2	<i>from passage</i>	New section
Sec. 3	<i>January 1, 2007</i>	4a-60h(b)
Sec. 4	<i>January 1, 2007</i>	4a-100
Sec. 5	<i>January 1, 2007</i>	4a-101

Sec. 6	<i>January 1, 2007</i>	4b-91
Sec. 7	<i>January 1, 2007</i>	New section
Sec. 8	<i>from passage</i>	4b-91(d)

Statement of Legislative Commissioners:

Section 6 was rephrased for clarity.

GAE *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 07 \$	FY 08 \$
Dept. of Administrative Services	GF - Cost	176,750	245,000
Dept. of Administrative Services	GF - Revenue Gain	347,500 - 635,000	863,750 - 1,565,000
Comptroller Misc. Accounts (Fringe Benefits)	GF - Cost	37,465	143,000

Note: GF=General Fund

Municipal Impact: None

Explanation

This bill requires substantial subcontractors to prequalify with the Department of Administrative Services (DAS) before they perform work on a state or municipal construction contract. The bill also makes several changes to the state small and minority business set-aside program, and prohibits the state from contracting with corporations that receive a tax benefit as a result of reincorporating outside the United States.

Subcontractor Prequalification

Beginning on January 1, 2007, the bill requires substantial subcontractors to prequalify with DAS to bid on public building construction contracts valued at more than \$500,000. The bill also requires DAS to adopt regulations establishing a subcontractor prequalification application fee schedule. Under current law, the contractor prequalification application fee schedule ranges from \$600 to \$2,500, based on the aggregate work capacity rating sought.

According to the Department of Consumer Protection, there are approximately 18,000 contractors licensed in various classifications

(electrical, plumbing, HVAC, etc.) in the state¹. There are about 800 contractors licensed through the Department of Public Safety and the Department of Public Health. There are also several thousand more contractors who perform work that does not require a license (e.g. carpentry, painting, masonry, roofing), or are out-of-state contractors.

It is not known how many contractors will apply for subcontractor prequalification. However, there are three factors that will limit the pool of prequalification applicants: 1) prequalification is only for contractors who perform, or are interested in bidding on, state or municipal construction work; 2) for contractors that have state or municipal contracts, only those contracts valued at over \$500,000 need to be prequalified; 3) many subcontractors cannot meet the bonding requirements to even apply to the prequalification program. It is estimated that these factors, among others, will limit the pool of subcontractor prequalification applicants to 1,500 - 2,500 contractors.

Based on that assumption, the subcontractor prequalification application fee may generate FY 07 revenues in the range of \$347,500 - \$635,000. In FY 07, revenues are impacted by the program operating for only six months. In FY 08, revenues may range from \$863,750 - \$1,565,000 (this includes initial application fees and renewal fee revenues) based on a full year of operation. It is anticipated that in FY 09 there will be revenues of at least \$683,000, for there will still be first-time applicant revenues generated as it may take some time for the subcontractor prequalification program to become widely known in the construction industry. Subsequent years will see declining, but still significant revenue, as the renewal fee is not less than one-half of the application fee. It is estimated that there will be annualized initial application and renewal fee revenues of at least \$582,000 in both FY 10 and FY 11.

The bill will significantly expand the responsibilities of the current DAS prequalification program and will result in a workload increase.

¹ This figure does not include the approximately 1,100 major contractors registered with the state.

DAS must examine each subcontractor's past performance record on public and private projects for the past five years or the 10 most recently completed projects; any legal or administrative proceedings pending against the subcontractor's principals or key personnel within the past five years; and whether the subcontractor has been disqualified from bidding on other public contracts. DAS must also analyze each subcontractor's statement of financial condition. It is expected that contractor outreach, and the education and training of contractors on the subcontractor prequalification program will create a considerable workload increase. Currently, DAS has five full time employees dedicated to contractor prequalification. Based on the estimate of 1,500 - 2,500 subcontractors seeking prequalification, DAS will need three new positions. It is estimated that these positions will be filled for seven months in FY 07, at a cost of approximately \$87,500, plus fringe benefits². In FY 08, the salary costs will be approximately \$150,000, plus fringe benefits. DAS will also incur one-time costs of \$18,000 in FY 07 for equipment and supplies for the new employees.

Set-Aside Program

The bill changes the definition of small contractor from one having grossed no more than \$10 million per year to a size standard based on the business sector in which the contractor, subcontractor, manufacturer or service company operates. The bill requires DAS to adopt regulations establishing these size standards. The bill allows DAS to award a small contractor a contract or contracts in excess of \$10 million in any one fiscal year. The bill makes several other changes to the set-aside program.

² The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller. The estimated first year fringe benefit rate as a percentage of payroll is 23.6%, effective July 1, 2005. The first year fringe benefit costs for new positions do not include pension costs. The state's pension contribution is based upon the prior year's certification by the actuary for the State Employees Retirement System (SERS). The SERS 2005-06 fringe benefit rate is 34.7%, which when combined with the non pension fringe benefit rate would total 58.3%.

Currently, over 2,200 companies are certified as small businesses in the DAS program. Each of these companies will have to be re-evaluated under the bill's new industry-based size standards. It is expected that the new industry-based size standards will significantly increase the number of small contractor applications. As a result of the workload increase associated with the various changes to the set-aside program, DAS will need two new positions: a processing technician, with a salary of \$45,000, and an assistant accountant position, with a salary of \$50,000. It is estimated that these two positions will be filled for 9 months in FY 07 at a cost of \$71,250, plus fringe benefits. FY 08 costs for these two positions will be \$95,000, plus fringe benefits.

State Contracts with Reincorporated Companies

Under the bill, DAS must require publicly traded corporations seeking to do business with the state to certify in an affidavit that the company did not reincorporate outside the United States after July 1, 2005 to reduce their federal or state tax liability. The bill prohibits the state from contracting with corporations that fail to make such certification, except that the Attorney General may waive the prohibition if the services sought are not available from a company incorporated in the U.S. or if the waiver of the prohibition is in the best interest of the state. This provision of the bill is not expected to have a fiscal impact.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

**OLR Bill Analysis
sHB 5050*****AN ACT CONCERNING THE STATE SET-ASIDE PROGRAM.*****SUMMARY:**

This bill makes several changes to the state small and minority business set-aside program, including requiring certain agencies to explain how they will meet their set-aside program goals, changing the definition of small contractor, requiring an explanation when a set-aside contractor employs a subcontractor who is ineligible for the program, and requiring awarding authorities to send notices of alleged set-aside violations to the Commission on Human Rights and Opportunities (CHRO). It eliminates obsolete language that created an alternative method for calculating the number of set-aside contracts at a time when the value of contracts to be set aside was a minimum of 15% and a maximum of 25% of the average of contracts awarded over three fiscal years.

The bill requires substantial subcontractors to prequalify with the Department of Administrative Services (DAS) before they perform work on a state or municipal construction contract. It also makes minor changes to the contractor prequalification laws.

Lastly, the bill prohibits the state from contracting with corporations that receive a tax benefit as a result of reincorporating outside of the United States.

EFFECTIVE DATE: January 1, 2007, except that the provisions regarding DAS regulations and bonded construction projects are effective upon passage.

SET-ASIDE PROGRAM***Set-Aside Goals***

By law, state and quasi-public agencies and political subdivisions, other than municipalities, must set aside a percentage of the contracts they award for construction, goods, and services each year for small contractors and minority business enterprises. Excluded from the requirement are contracts (1) that may not be set aside under federal law or regulations or (2) for goods and services that are not customarily provided by small contractors.

Each agency or political subdivision must set set-aside goals and send CHRO and DAS quarterly status reports. The bill requires any agency that does not achieve at least 75% of its goal by the end of the third reporting period in any 12 months beginning on July 1 to give CHRO a detailed written explanation of how it will achieve its goal in the final reporting period.

Definition of Small Contractor

To qualify as a small contractor under current law, a business must, among other things, have grossed no more than \$10 million in its most recently completed fiscal year. The bill replaces this condition with a size standard that DAS establishes for the business sector in which a contractor, subcontractor, manufacturer, or service company operates. It removes a prohibition against the DAS commissioner awarding a small contractor a contract or contracts totaling in excess of \$10 million in a fiscal year.

The bill requires the commissioner to adopt regulations that establish the size standards. She must include in each size standard businesses with a maximum of 25 employees and annual gross sales of up to \$10 million.

Set-Aside Contractors Contracts With Ineligible Subcontractors and Notice Requirements

The bill requires an agency that awards a set-aside contract to obtain from that contractor, before any work begins, a written explanation detailing any subcontract it has with a business that is not eligible under the set-aside program. By law, a contractor that is awarded a

set-aside contract, together with set-aside-eligible subcontractors, must perform at least 25% of the work done under such a contract.

Just as they can with other set-aside program violations, the bill permits awarding agencies, after notice and a hearing, to impose a civil penalty of up to \$10,000 on contractors who willfully violate its explanation requirement. It requires, rather than allows, them to send the notice by certified mail, return receipt requested. It also requires the authorities to send a copy of the notice to CHRO.

Directory of Certified Set-Aside Program Participants

The bill eliminates a requirement for the DAS to print and provide an updated directory of small contractors and minority business enterprises certified to participate in the set-aside program. Instead, it requires the department maintain an updated directory on its website.

SUBCONTRACTOR PREQUALIFICATION

Beginning January 1, 2007, the bill requires substantial subcontractors to prequalify with DAS before they perform work estimated to cost more than \$500,000 on a state or municipal construction contract. Like contractors, the prequalification requirement does not apply to substantial subcontractors who work on UConn projects. The prequalification procedures, range of application fees, and possible penalties for violations are generally the same as those under existing law for prequalified contractors.

The bill eliminates a requirement for applicants to include in their application their experience on private and public construction projects over the immediately preceding five years or their 10 most recently completed projects and the names of any subcontractors they used on them. This effectively gives the DAS commissioner a broader review of applicants' experiences. However, the bill requires her at least to look at experiences during the immediately preceding three years.

Application Fee

The bill requires the commissioner to adopt regulations establishing a schedule of applicable fees for subcontractors required to prequalify. The existing application fees for contractors are based on aggregate work capacity ratings and range from \$600 for a rating of \$5 million or less to \$2,500 for a rating over \$40 million. The bill eliminates the \$600 floor on the prequalification renewal fee and prohibits the fee from being less than, rather than equal to, one-half of the initial application fee.

CONTRACTOR PREQUALIFICATION

Application and Bid Information

The bill eliminates a requirement for contractors to include a list of their non-bonded projects in the update statements that they must submit with (1) each bid on a state construction contract and (2) applications to renew or upgrade their prequalification certificate. It leaves unchanged a requirement that they include in these statements (1) a list of bonded projects, (2) the names and qualifications of personnel who will supervise any new contract they are bidding on, (3) any significant change in their financial position or corporate structure since the certificate was issued or renewed, and (4) any other relevant information the DAS commissioner prescribes. By law, the commissioner must establish the form.

The bill prohibits a public agency from receiving any state funds for construction if it accepts a bid without the bidder's prequalification certificate or update statement.

Performance Evaluation

By law, public agencies must evaluate the performance of contractors and subcontractors working on public projects. The bill allows municipalities to meet this requirement by relying on a contractor's evaluation of his subcontractors.

STATE CONTRACTS WITH REINCORPORATED COMPANIES

The bill requires DAS to require each publicly traded corporation seeking to do business with the state to certify in an affidavit that it is

not a company that (1) was previously incorporated, and conducted business, in the U. S.; (2) reincorporated outside of the U. S. on or after July 1, 2005; and (3) owed less federal or state taxes because of the reincorporation. The bill prohibits the state from contracting with corporations that fail to make the certification, except the attorney general may waive the prohibition if (1) the services the state is seeking are not available from a company incorporated in the U. S. or (2) the waiver is in the state's best interest.

BACKGROUND

Related Bill

SB 224, favorably reported by the Planning and Development Committee, requires municipalities to comply with the state set-aside law if they enter into public works contracts that are at least partially state-funded.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 18 Nay 1 (03/14/2006)