



Senate

General Assembly

File No. 490

January Session, 2007

Substitute Senate Bill No. 1020

Senate, April 16, 2007

The Committee on Government Administration and Elections reported through SEN. SLOSSBERG of the 14th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING A STATE SET-ASIDE PROGRAM FOR CERTAIN DISABLED VETERANS.

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 Section 4a-60g of the general statutes is repealed and the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 July 1, 2007*):

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

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

13 which is held by a person or persons who exercise operational
14 authority over the daily affairs of the business and have the power to
15 direct the management and policies and receive the beneficial interests
16 of the business, except that a nonprofit corporation shall be construed
17 to be a small contractor if such nonprofit corporation meets the
18 requirements of subparagraphs (A) and (B) of this subdivision. "Small
19 contractor" does not include a certified or precertified disabled veteran
20 contractor.

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

24 (3) "Minority business enterprise" means any small contractor (A)
25 fifty-one per cent or more of the capital stock, if any, or assets of which
26 are owned by a person or persons (i) who exercise operational
27 authority over the daily affairs of the enterprise, (ii) who have the
28 power to direct the management and policies and receive the beneficial
29 interest of the enterprise, and (iii) who are members of a minority, as
30 [such term is] defined in subsection (a) of section 32-9n, (B) who is an
31 individual with a disability, or (C) which is a nonprofit corporation in
32 which fifty-one per cent or more of the persons who (i) exercise
33 operational authority over the enterprise, and (ii) have the power to
34 direct the management and policies of the enterprise are members of a
35 minority, as defined in [this] subsection (a) of section 32-9n, or are
36 individuals with a disability. "Minority business enterprise" does not
37 include a certified or precertified disabled veteran contractor.

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

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

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

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

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

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

58 (9) "Veteran with a disability" means any person who (A) served in
59 the armed forces, as defined in section 27-103, and has a service-
60 connected disability rated as ten per cent or more by the Veterans'
61 Administration which disability was incurred or aggravated in the line
62 of duty while on active duty with one of the armed forces, and (B) was
63 discharged or released from such service under conditions other than
64 dishonorable.

65 (10) "Disabled veteran contractor" means any contractor,
66 subcontractor, manufacturer or service company (A) which has been
67 doing business under the same ownership and management and has
68 maintained its principal place of business in the state for a period of at
69 least one year immediately prior to the date of application for
70 certification under this section, and (B) at least fifty-one per cent of the
71 ownership of which is held by a veteran with a disability or veterans
72 with a disability who exercise operational authority over the daily
73 affairs of the business and have the power to direct the management
74 and policies and receive the beneficial interests of the business.

75 (b) (1) It is found and determined that there is a serious need to help
76 small contractors, minority business enterprises, nonprofit

77 organizations, [and] individuals with disabilities and disabled veteran
78 contractors to be considered for and awarded state contracts for the
79 construction, reconstruction or rehabilitation of public buildings, the
80 construction and maintenance of highways and the purchase of goods
81 and services. Accordingly, the necessity, in the public interest and for
82 the public benefit and good, of the provisions of this section, sections
83 4a-60h to 4a-60j, inclusive, as amended by this act, and sections 32-9i to
84 32-9p, inclusive, is declared as a matter of legislative determination.

85 (2) Notwithstanding any provisions of the general statutes, [to the
86 contrary,] and except as set forth [herein] in this section, the head of
87 each state agency and each political subdivision of the state other than
88 a municipality shall set aside in each fiscal year, for award to small
89 contractors, on the basis of competitive bidding procedures, contracts
90 or portions of contracts for the construction, reconstruction or
91 rehabilitation of public buildings, the construction and maintenance of
92 highways and the purchase of goods and services. Eligibility of
93 nonprofit corporations under the provisions of this section shall be
94 limited to predevelopment contracts awarded by the Commissioner of
95 Economic and Community Development for housing projects. The
96 total value of such contracts or portions thereof to be set aside by each
97 such agency shall be at least twenty-five per cent of the total value of
98 all contracts let by the head of such agency in each fiscal year,
99 provided [that] neither: [(1)] (A) A contract that may not be set aside
100 due to a conflict with a federal law or regulation; or [(2)] (B) a contract
101 for any goods or services which have been determined by the
102 Commissioner of Administrative Services to be not customarily
103 available from or supplied by small contractors shall be included in
104 such calculation, except that the head of any such agency may set aside
105 an amount based on the amount of all contracts not excluded from the
106 calculation which are anticipated to be let in any fiscal year if the
107 method of calculation for such year would result in a maximum value
108 of contracts to be set aside of less than twenty-five per cent of the
109 contracts anticipated to be let in such year or in a minimum value of
110 contracts to be set aside of greater than twenty-five per cent of the
111 contracts anticipated to be let in such year. Contracts or portions

112 thereof having a value of not less than twenty-five per cent of the total
113 value of all contracts or portions thereof to be set aside shall be
114 reserved for awards to minority business enterprises.

115 (3) Notwithstanding any provisions of the general statutes, and
116 except as set forth in this section, the head of each state agency and
117 each political subdivision of the state other than a municipality shall
118 set aside in each fiscal year, for award to disabled veteran contractors,
119 on the basis of competitive bidding procedures, contracts or portions
120 of contracts for the construction, reconstruction or rehabilitation of
121 public buildings, the construction and maintenance of highways and
122 the purchase of goods and services. The total value of such contracts or
123 portions thereof to be set aside by each such agency shall be at least
124 three per cent of the total value of all contracts let by the head of such
125 agency in each fiscal year, provided a contract that may not be set
126 aside due to a conflict with a federal law or regulation shall not be
127 included in such calculation, except that the head of any such agency
128 may set aside an amount based on the amount of all contracts not
129 excluded from the calculation which are anticipated to be let in any
130 fiscal year if the method of calculation for such year would result in a
131 maximum value of contracts to be set aside of less than three per cent
132 of the contracts anticipated to be let in such year or in a minimum
133 value of contracts to be set aside of greater than three per cent of the
134 contracts anticipated to be let in such year.

135 (c) The head of any state agency or political subdivision of the state
136 other than a municipality may, in lieu of setting aside any contract or
137 portions thereof, require any general or trade contractor or any other
138 entity authorized by such agency to award contracts [,] to set aside a
139 portion of any contract for subcontractors who are eligible for set-aside
140 contracts under this section. Nothing in this subsection shall be
141 construed to diminish the total value of contracts which are required to
142 be set aside by any state agency or political subdivision of the state
143 other than a municipality pursuant to this section.

144 (d) The [heads of all state agencies] head of each state agency and of

145 each political subdivision of the state other than a municipality shall
146 notify the Commissioner of Administrative Services of all contracts to
147 be set aside pursuant to subsection (b) or (c) of this section at the time
148 that bid documents for such contracts are made available to potential
149 contractors.

150 (e) In no case shall the Commissioner of Administrative Services
151 recommend, nor shall any small contractor be awarded, any such
152 contract or contracts, the total amount of which exceeds ten million
153 dollars in any one fiscal year.

154 (f) The awarding authority shall require that a contractor or
155 subcontractor awarded a contract or a portion of a contract under this
156 section perform not less than fifteen per cent of the work with the
157 workforces of such contractor or subcontractor and shall require that
158 not less than twenty-five per cent of the work be performed by
159 contractors or subcontractors eligible for awards under this section. A
160 contractor awarded a contract or a portion of a contract under this
161 section shall not subcontract with any person with whom the
162 contractor is affiliated. No person who is affiliated with another person
163 shall be eligible for awards under this section if both affiliated persons
164 considered together would not qualify as a small contractor, [or a]
165 minority business enterprise or disabled veteran contractor under
166 subsection (a) of this section.

167 (g) The awarding authority may require that a contractor or
168 subcontractor awarded a contract or a portion of a contract under this
169 section furnish the following documentation: (1) A copy of the
170 certificate of incorporation, certificate of limited partnership,
171 partnership agreement or other organizational documents of the
172 contractor or subcontractor; (2) a copy of federal income tax returns
173 filed by the contractor or subcontractor for the previous year; and (3)
174 evidence of payment of fair market value for the purchase or lease by
175 the contractor or subcontractor of property or equipment from another
176 contractor who is not eligible for set-aside contracts under this section.

177 (h) The awarding authority or the Commissioner of Administrative

178 Services or the Commission on Human Rights and Opportunities may
179 conduct an audit of the financial, corporate and business records and
180 conduct an investigation of any small contractor, [or] minority
181 business enterprise or disabled veteran contractor which applies for or
182 is awarded a set-aside contract for the purpose of determining
183 eligibility for awards or compliance with the requirements established
184 under this section.

185 (i) The provisions of this section shall not apply to any state agency
186 or political subdivision of the state other than a municipality for which
187 the total value of all contracts or portions of contracts of the types
188 enumerated in subsection (b) of this section is anticipated to be equal
189 to ten thousand dollars or less.

190 (j) In lieu of a performance, bid, labor and materials or other
191 required bond, a contractor or subcontractor awarded a contract under
192 this section may provide to the awarding authority, and the awarding
193 authority shall accept, a letter of credit. Any such letter of credit shall
194 be in an amount equal to ten per cent of the contract for any contract
195 that is less than one hundred thousand dollars and in an amount equal
196 to twenty-five per cent of the contract for any contract that exceeds one
197 hundred thousand dollars.

198 (k) (1) Whenever the awarding agency has reason to believe that any
199 contractor or subcontractor awarded a set-aside contract has wilfully
200 violated any provision of this section, the awarding agency may send a
201 notice to such contractor or subcontractor by certified mail, return
202 receipt requested. Such notice shall include: (A) A reference to the
203 provision alleged to be violated; (B) a short and plain statement of the
204 matter asserted; (C) the maximum civil penalty that may be imposed
205 for such violation; and (D) the time and place for [the] a hearing on the
206 violation asserted. Such hearing shall be fixed for a date not earlier
207 than fourteen days after the notice is mailed.

208 (2) The awarding agency shall hold a hearing on the violation
209 asserted unless such contractor or subcontractor fails to appear. The
210 hearing shall be held in accordance with the provisions of chapter 54.

211 If, after the hearing, the awarding agency finds that the contractor or
212 subcontractor has wilfully violated any provision of this section, the
213 awarding agency shall suspend all set-aside contract payments to the
214 contractor or subcontractor and may, in its discretion, order that a civil
215 penalty not exceeding ten thousand dollars per violation be imposed
216 on the contractor or subcontractor. If such contractor or subcontractor
217 fails to appear for the hearing, the awarding agency may, as the facts
218 require, order that a civil penalty not exceeding ten thousand dollars
219 per violation be imposed on the contractor or subcontractor. The
220 awarding agency shall send a copy of any order issued pursuant to
221 this subsection by certified mail, return receipt requested, to the
222 contractor or subcontractor named in such order. The awarding agency
223 may cause proceedings to be instituted by the Attorney General for the
224 enforcement of any order imposing a civil penalty issued under this
225 subsection.

226 (l) On or before January 1, 2000, the Commissioner of
227 Administrative Services shall establish a process for certification of
228 small contractors and minority business enterprises as eligible for
229 set-aside contracts, and on or before January 1, 2008, the commissioner
230 shall establish a process for certification of disabled veteran contractors
231 as eligible for set-aside contracts. Each certification shall be valid for a
232 period not to exceed two years. The application for certification shall
233 be no longer than six pages. Annually, the commissioner shall print a
234 directory of (1) small contractors and minority business enterprises
235 certified under this section, and (2) disabled veteran contractors
236 certified under this section. [State] The commissioner shall provide
237 state agencies [shall be provided] with updated directory information
238 quarterly.

239 (m) On or before September 30, 1995, and annually thereafter, each
240 state agency and each political subdivision of the state other than a
241 municipality setting aside contracts or portions of contracts shall
242 prepare a report establishing small and minority business set-aside
243 program goals for the twelve-month period beginning July first in the
244 same year, and on or before September 30, 2008, each such agency and

245 political subdivision shall prepare a report establishing disabled
246 veteran contractor set-aside program goals for the twelve-month
247 period beginning July first in the same year. Each such report shall be
248 submitted to the Commissioner of Administrative Services, the
249 Commission on Human Rights and Opportunities and the
250 cochairpersons and ranking members of the joint standing committees
251 of the General Assembly having cognizance of matters relating to
252 planning and development and government administration. [and
253 elections.]

254 (n) On or before November 1, 1995, and quarterly thereafter, each
255 state agency and each political subdivision of the state, other than a
256 municipality, setting aside contracts or portions of contracts shall
257 prepare a status report on the implementation and results of its small
258 business and minority business enterprise set-aside program goals
259 during the three-month period ending one month before the due date
260 for the report. On or before November 1, 2008, and quarterly
261 thereafter, each state agency and each political subdivision of the state,
262 other than a municipality, setting aside contracts or portions of
263 contracts shall prepare a status report on the implementation and
264 results of its disabled veteran contractor set-aside program goals
265 during the three-month period ending one month before the due date
266 for the report. Each report shall be submitted to the Commissioner of
267 Administrative Services and the Commission on Human Rights and
268 Opportunities. The Commission on Human Rights and Opportunities
269 shall: (1) Monitor the achievement of the annual goals established by
270 each state agency and political subdivision of the state other than a
271 municipality; and (2) prepare a quarterly report concerning such goal
272 achievement. The report shall be submitted to each state agency that
273 submitted a report, the Commissioner of Economic and Community
274 Development, the Commissioner of Administrative Services and the
275 cochairpersons and ranking members of the joint standing committees
276 of the General Assembly having cognizance of matters relating to
277 planning and development and government administration. [and
278 elections.] Failure by any state agency or political subdivision of the
279 state other than a municipality to submit any reports required by this

280 section shall be a violation of section 46a-77.

281 (o) (1) On or before January 1, 2000, and annually thereafter, the
282 Department of Administrative Services shall establish a precertification
283 list of small contractors and minority business enterprises who have
284 established a principal place of business in the state but have not
285 maintained such place of business for one year and are not in the
286 directory prepared pursuant to subsection (l) of this section.

287 (2) On or before January 1, 2008, and annually thereafter, the
288 Department of Administrative Services shall establish a precertification
289 list of disabled veteran contractors who have established a principal
290 place of business in the state but have not maintained such place of
291 business for one year and are not in the directory prepared pursuant to
292 subsection (l) of this section.

293 (3) An awarding agency may select a small contractor, [or] minority
294 business enterprise or disabled veteran contractor from [such] a
295 precertification list only after such awarding agency makes a good
296 faith effort to find an eligible small contractor, [or] minority business
297 enterprise or disabled veteran contractor in the applicable directory
298 and determines that no small contractor, [or] minority business
299 enterprise or disabled veteran contractor in the applicable directory is
300 qualified to perform the work required under the contract.

301 (p) Nothing in this section shall be construed to apply to the four
302 janitorial contracts awarded pursuant to subsections (b) to (e),
303 inclusive, of section 4a-82.

304 Sec. 2. Subsection (a) of section 4a-57 of the general statutes is
305 repealed and the following is substituted in lieu thereof (*Effective July*
306 *1, 2007*):

307 (a) All purchases of, and contracts for, supplies, materials,
308 equipment and contractual services, except purchases and contracts
309 made pursuant to the provisions of subsection (b) of this section and
310 public utility services as provided in subsection (e) of this section shall

311 be based, when possible, on competitive bids or competitive
312 negotiation. The commissioner shall solicit competitive bids or
313 proposals by providing notice of the planned purchase in a form and
314 manner that the commissioner determines will maximize public
315 participation in the competitive bidding or competitive negotiation
316 process, including participation by small contractors and disabled
317 veteran contractors, as defined in section 4a-60g, as amended by this
318 act, and promote competition. In the case of an expenditure which is
319 estimated to exceed fifty thousand dollars, such notice shall be
320 inserted, at least five calendar days before the final date of submitting
321 bids or proposals, in two or more publications, at least one of which
322 shall be a major daily newspaper published in the state and shall be
323 posted on the Internet. Each notice of a planned purchase under this
324 subsection shall indicate the type of goods and services to be
325 purchased and the estimated value of the contract award. The notice
326 shall also contain a notice of state contract requirements concerning
327 nondiscrimination and affirmative action pursuant to section 4a-60
328 and, when applicable, requirements concerning the awarding of
329 contracts to small contractors, minority business enterprises,
330 individuals with a disability, disabled veteran contractors and
331 nonprofit corporations pursuant to section 4a-60g, as amended by this
332 act. Each bid and proposal shall be kept sealed or secured until opened
333 publicly at the time stated in the notice soliciting such bid or proposal.

334 Sec. 3. Subsections (b) and (c) of section 4a-60h of the general
335 statutes are repealed and the following is substituted in lieu thereof
336 (*Effective July 1, 2007*):

337 (b) The commissioner shall adopt regulations, in accordance with
338 [the provisions of] chapter 54, to carry out the purposes of sections 4a-
339 60g to 4a-60j, inclusive, as amended by this act. Such regulations shall
340 include (1) provisions concerning the application of the program to
341 individuals with a disability and veterans with a disability; (2)
342 guidelines for a legally acceptable format for, and content of, letters of
343 credit authorized under subsection (j) of section 4a-60g, as amended by
344 this act; (3) procedures for random site visits to the place of business of

345 an applicant for certification at the time of application and at
346 subsequent times, as necessary, to ensure the integrity of the
347 application process; and (4) time limits for approval or disapproval of
348 applications.

349 (c) On or before January 1, 1994, the Commissioner of
350 Administrative Services shall, by regulations adopted in accordance
351 with chapter 54, establish a process to ensure that small contractors,
352 small businesses and minority business enterprises have fair access to
353 all competitive contracts outside of the set-aside program. On or before
354 January 1, 2008, the commissioner shall, by regulations adopted in
355 accordance with chapter 54, establish a process to ensure that disabled
356 veteran contractors have fair access to all competitive contracts outside
357 of the set-aside program.

358 Sec. 4. Section 4a-60j of the general statutes is repealed and the
359 following is substituted in lieu thereof (*Effective July 1, 2007*):

360 A small contractor or disabled veteran contractor shall receive
361 payment on a contract awarded to him or her under the provisions of
362 sections 4a-60g to 4a-60i, inclusive, as amended by this act, no later
363 than thirty days from the due date of any such payment on such
364 contract.

365 Sec. 5. Section 4a-61 of the general statutes is repealed and the
366 following is substituted in lieu thereof (*Effective July 1, 2007*):

367 (a) The Commissioner of Administrative Services, with the advice of
368 the Commissioner of Economic and Community Development, shall
369 adopt regulations, in accordance with chapter 54, establishing
370 procedures for the award of contracts concerning minority business
371 enterprises by the state or any political subdivision of the state other
372 than a municipality.

373 (b) The Commissioner of Administrative Services, with the advice of
374 the Commissioner of Economic and Community Development, shall
375 adopt regulations, in accordance with chapter 54, establishing

376 procedures for the award of contracts concerning disabled veteran
377 contractors by the state or any political subdivision of the state other
378 than a municipality.

379 Sec. 6. Section 4a-62 of the general statutes is repealed and the
380 following is substituted in lieu thereof (*Effective July 1, 2007*):

381 (a) (1) There is established a Minority Business Enterprise Review
382 Committee. The committee shall consist of two members of the House
383 of Representatives appointed by the speaker of the House, two
384 members of the House appointed by the minority leader of the House,
385 two members of the Senate appointed by the president pro tempore of
386 the Senate, and two members of the Senate appointed by the minority
387 leader of the Senate. The committee shall conduct an ongoing study of
388 contract awards, loans and bonds made or guaranteed by the state or
389 any political subdivision of the state other than a municipality for the
390 purpose of determining the extent of compliance with the provisions
391 of the general statutes concerning contract awards, loans and bonds for
392 minority business enterprises, including the set-aside program for such
393 business enterprises.

394 [(b)] (2) The committee may request any agency of the state
395 authorized to award public works contracts or to enter into purchase
396 of goods or services contracts to submit such information on
397 compliance with sections 4a-60 and 4a-60g, as amended by this act,
398 and at such times as the committee may require. The committee shall
399 consult with the Departments of Public Works, Transportation and
400 Economic Development and the Commission on Human Rights and
401 Opportunities concerning compliance with the state programs for
402 minority business enterprises. The committee shall report annually on
403 or before February first to the Joint Standing Committee on Legislative
404 Management on the results of its ongoing study and include its
405 recommendations, if any, for legislation.

406 (b) (1) There is established a Disabled Veteran Contractor Review
407 Committee. The committee shall consist of two members of the House
408 of Representatives appointed by the speaker of the House, two

GAE *Joint Favorable Subst.-LCO*

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 chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 08 \$	FY 09 \$
Department of Administrative Services	GF - Cost	50,000	50,000
Comptroller Misc. Accounts (Fringe Benefits)	GF - Cost	12,900	30,100
Various State Agencies	All Funds - Cost	Potential	Potential
Legislative Management	GF - Cost	Minimal	Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

This bill establishes a separate set-aside program for certain disabled veteran contractors. The bill requires state agencies and quasi-public agencies that contract for more than \$10,000 in goods and services annually to set aside at least 3% of their contracts for bidding exclusively by qualified disabled veteran contractors.

The Department of Administrative Services (DAS) will need to hire one Accounts Examiner position, with a salary of approximately \$50,000,¹ to handle the workload increase associated with establishing, and managing, a separate set-aside program for disabled veteran contractors.

Creating a separate set-aside program for disabled veterans may

¹ 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 for a new employee as a percentage of average salary is 25.8%, effective July 1, 2006. 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 2006-07 fringe benefit rate is 34.4%, which when combined with the non pension fringe benefit rate totals 60.2%.

increase the cost of certain contracts if contracts that would otherwise be awarded to the lowest qualified bidder are awarded to disabled veterans contractors instead.

The bill establishes a Disabled Veteran Contractor Review Committee to study contract awards to determine compliance. The Office of Legislative Management would incur minimal costs associated with mileage reimbursement of 48.5 cents per mile for legislators participating on the committee.

The Out Years

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

OLR Bill Analysis**sSB 1020*****AN ACT CONCERNING A STATE SET-ASIDE PROGRAM FOR CERTAIN DISABLED VETERANS.*****SUMMARY:**

This bill establishes a separate set-aside program for contractors who are disabled veterans that mirrors the existing small contractor-minority set-aside program in most ways. The bill requires state agencies and quasi-public agencies that contract for more than \$10,000 in goods and services annually to set aside at least 3% of their contracts for bidding exclusively by qualified disabled veteran contractors. It precludes such contractors from participating in the existing small contractor-minority set-aside program, which requires at least a 25% set-aside for small contractors, including at least 6.25% for minority businesses, which include a business owned or run by an individual with a disability. Unlike the small contractor-minority program, which limits eligibility to businesses with no more than \$10 million in gross revenue, the disabled veteran contractor program is open to qualified businesses regardless of their size.

The bill requires the Department of Administrative Services (DAS) commissioner to adopt implementing regulations, including regulations establishing a process, by January 1, 2008, to ensure that disabled veteran contractors have fair access to all competitive contracts outside the set-aside program.

The bill establishes a Disabled Veteran Contractor Review Committee to study contract awards to determine compliance. But it sets no deadline for appointing committee members.

EFFECTIVE DATE: July 1, 2007

SET-ASIDE PROGRAMS***Small Contractor-Minority Set Aside***

State law requires state agencies and state political subdivisions other than municipalities (quasi-public agencies) to set aside, each fiscal year, at least 25% of the construction, public building rehabilitation, and supply and service contracts put to bid for certified small businesses, with at least 25% of this amount (6.25% of the total) going to certified minority businesses. The law applies to state and quasi-public agencies that put to bid contracts having a total value of more than \$10,000 in any year. To participate in the program, a contractor's gross revenue cannot exceed \$10 million in the 12-month period before applying.

Disabled Veteran Contractor Set-Aside Program

The bill creates a parallel set-aside program for disabled veteran contractors. It requires state agencies and quasi-public agencies that put to bid more than \$10,000 of contracts in any year set aside in each fiscal year at least 3% for disabled veteran contractors on the basis of competitive bidding. As under the law for the existing small contractor-minority set-aside program, agencies may exclude contracts that cannot be set aside because of a conflict with federal law. They may also set aside an amount based on the amount of all contracts not excluded from the calculation if the method of calculation would result in more or less than a 3% set-aside.

Awarding agencies, instead of setting aside any contract, may require a contractor or other entity authorized by the agency to award contracts to set aside a portion of the contract for subcontractors eligible for set-aside contracts. But this cannot be construed to reduce the total set-aside from 3%.

The bill defines a "veteran with a disability" as any veteran (1) who has at least a 10% Veterans' Administration-rated service disability incurred or aggravated in the line of duty while serving on active duty and (2) who was discharged under other than dishonorable conditions. It defines a "disabled veteran contractor" as a contractor,

subcontractor, manufacturer, or service company that has been doing business under the same ownership and management and has maintained its principal business place in Connecticut for at least one year before applying for certification. Also, at least 51% of the business must be held by a veteran or veterans with a disability exercising operational authority over its daily affairs and having the power to direct its management and policies.

The bill excludes disabled veteran contractors from the definition of small contractor and minority business, thereby precluding them from participating in the small contractor-minority set-aside program. It also precludes them from some Title 32 programs available to small contractors and minority businesses (e.g., Comprehensive Business Assistance Fund (CGS § 32-23x) and Business Outreach Center Challenge grants (CGS § 32-9qq)).

BID SOLICITATION

With some exceptions, state agency purchases and contracts are subject to competitive bidding. The law requires that the bid process maximize participation by small contractors. The bill requires that the process maximize participation by disabled veteran contractors as well.

Also under current law, bid notices must contain information about nondiscrimination and affirmative action and, when applicable, requirements about contract awards to small contractors, minority businesses, people with disabilities, and nonprofit corporations. The bill adds disabled veteran contractors to this list.

CERTIFICATION PROCESS

Every year, starting by January 1, 2008, the bill requires the DAS commissioner to establish a certification process allowing qualified veteran contractors to participate in the disabled veteran contractor set-aside program. The certification form must be less than six pages. Certification is valid for up to two years.

Every year, the commissioner must print a directory of disabled

veteran contractors and provide state agencies with updated directory information quarterly.

By January 1, 2008, and annually thereafter, DAS must establish a precertification list of disabled veteran contractors who have established a principal business place in Connecticut, but for less than the one year required for certification and are therefore not in the directory. Awarding agencies may select contractors from the list only after making a good faith effort to find an eligible disabled veteran contractor in the directory and determining that there is none.

PERFORMANCE STANDARDS

Awarding agencies must require that (1) contractors or subcontractors awarded contracts or portions of a contract perform at least 15% of the work with their workforce and (2) contractors or subcontractors eligible for awards perform at least 25% of the work. A contractor awarded a contract cannot subcontract with anyone with whom he is affiliated, and anyone affiliated with another person is not eligible for awards if both affiliated persons considered together would not qualify as a disabled veteran contractor.

Awarding agencies may require that a contractor or subcontractor awarded a contract furnish the following: (1) a copy of the certificate of incorporation, certificate of limited partnership, partnership agreement, or other organizational document; (2) a copy of federal income tax returns the contractor or subcontractor filed for the previous year; and (3) evidence that the contractor or subcontractor paid fair market value for the purchase or lease of property or equipment from another contractor who is not eligible for the set-aside program.

The bill requires awarding agencies to accept letters of credit from contractors and subcontractors instead of performance bonds. Contracts under \$100,000 require a letter of credit equal to 10% of the contract amount; contracts above \$100,000 require 25%.

The bill requires that, like small contractors, disabled veteran

contractors awarded set-aside contracts be paid within 30 days of the due date of any payment on the contract.

AUDITS AND INVESTIGATIONS

To determine program eligibility or compliance, the awarding agency, the DAS commissioner, or the Commission on Human Rights and Opportunities (CHRO) may investigate and audit the financial, corporate, and business records of any disabled veteran contractor that applies for, or gets, a set-aside contract.

GOALS AND REPORTS

By September 30, 2008, the bill requires each state agency and quasi-public agency participating in the set-aside program to establish disabled veteran contractor set-aside goals for the 12-month period beginning July 1. (Unlike the small contractor-minority set-aside program, this goal-setting does not appear to be an annual requirement.) The agencies must submit their goals to CHRO, the DAS commissioner, and the chairpersons and ranking members of the Planning and Development (P&D) and Government Administration and Elections (GAE) committees. Beginning November 1, 2008, the agencies must submit quarterly status reports on their success in meeting their goals to CHRO and the DAS commissioner.

CHRO must monitor the achievement of the goals and prepare quarterly reports on them. It must submit the reports to each state agency that submitted a report, the Department of Economic and Community Development (DECD) and DAS commissioners, and the chairpersons and ranking members of the P&D and GAE committees. Failure to submit the required report is a violation.

REGULATIONS

The DAS commissioner must adopt implementing regulations. The regulations must address (1) the program's applicability to veterans with disabilities; (2) guidelines for a legally acceptable format for, and content of, letters of credit; (3) procedures for random site visits to ensure the integrity of the application process; and (4) deadlines for

approving and disapproving applications.

The DAS commissioner, with the advice of the DECD commissioner, must adopt regulations for establishing procedures for awarding contracts.

By January 1, 2008, the DAS commissioner must adopt regulations establishing a process to ensure that disabled veteran contractors have fair access to all competitive contracts outside of the set-aside program.

VIOLATIONS

If an awarding agency has reason to believe that a contractor or subcontractor awarded a set-aside contract has willfully violated the bill, it may notify him or her by certified mail, return receipt requested. The notice must include (1) a reference to the alleged violation; (2) a short and plain statement of the matter asserted; (3) the maximum civil penalty for the violation; and (4) the time and place for the hearing, which cannot be earlier than 14 days after the notice is mailed.

The agency must hold a hearing unless the contractor fails to appear. If it finds a violation, it must suspend all set-aside contract payments and may impose a civil penalty up to \$10,000 per violation. If the contractor or subcontractor does not appear, the agency may impose a civil penalty of up to \$10,000 per violation. It must send a copy of any order by certified mail, return receipt requested, to the contractor or subcontractor. It may ask the attorney general to enforce any order imposing a civil penalty.

DISABLED VETERAN CONTRACTOR REVIEW COMMITTEE

The eight-member committee consists of two House members appointed by the House speaker, two House members appointed by the House minority leader, two senators appointed by the Senate president pro tempore, and two senators appointed by the Senate minority leader.

The committee must study compliance with the disabled veteran contractor set-aside program on an ongoing basis. It must consult with

DAS about program compliance. It may ask any agency authorized to award public works contracts or enter into purchase or service contracts to submit compliance information at such times as it may require. It must report annually by February 1 to the Legislative Management Committee with its study results and recommendations, if any.

BACKGROUND

Small Contractors

To qualify as a “small contractor” under existing law, a business must be a contractor, subcontractor, manufacturer, or service company that (1) has done business and maintained its principal business place in Connecticut for at least a year before it applies for certification; (2) grossed no more than \$10 million in its most recent fiscal year; and (3) is at least 51% owned by one or more people who actively manage its daily affairs and have the power to direct its policies and management. The law includes nonprofit corporations that meet the first two criteria with respect to predevelopment contracts for housing projects.

Minority Business Enterprises

Minority business enterprises are small contractors of which members of ethnic minorities, people with disabilities, nonprofit corporations, and women (1) own at least 51% of the assets, (2) are active in its daily affairs, and (3) have the power to direct its management and policies. Minority means: Black Americans; Hispanic Americans; people from the Iberian Peninsula, including Portugal; women; Asian Pacific Americans and Pacific islanders; and American Indians.

Related Bills

The GAE Committee has reported three bills affecting the minority set-aside program. SB 530 ([File No. 302](#)) exempts certain regional planning organizations from the definition of state agency with respect to the program, thereby exempting them from its requirements. sHB 5993 among other things, expands the number of firms that may be eligible to participate in the program. sHB 5975 requires awarding

agencies, among other things, to (1) explain how they will meet their program goals when they fail to do so, (2) allocate 15% of their set-aside contracts to firms grossing \$5 million or less in the most recently completed fiscal year, and (3) obtain a written explanation from contractors that enter into contracts with subcontractors that are ineligible for the program.

COMMITTEE ACTION

Select Committee on Veterans' Affairs

Joint Favorable Substitute Change of Reference

Yea 10 Nay 0 (03/06/2007)

Commerce Committee

Joint Favorable Change of Reference

Yea 19 Nay 1 (03/13/2007)

Government Administration and Elections Committee

Joint Favorable

Yea 13 Nay 0 (03/28/2007)