



# OLR RESEARCH REPORT

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## **SUPPLIER DIVERSITY PROGRAM ENFORCEMENT PROVISIONS**

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You asked how violations by public agencies, political subdivisions, and contractors of the state's supplier diversity program (referred to in statute as the set-aside program) are enforced.

### **SUMMARY**

The law does not provide for any penalties against public agencies or political subdivisions for noncompliance with the supplier diversity requirements (e.g., establishing and meeting set-aside goals). Contractors may be subject to civil penalties for violations, such as fraudulently qualifying as a set-aside contractor, that are found through an administrative hearing process. However, administrative hearings are seldom if ever used. Instead, informal meetings with contractors are the most typical intervention. Additionally, the law prohibits state contracting agencies from entering into contracts with firms that do not comply with the program's requirements (CGS § [46a-68g](#)).

Supplier diversity compliance is also indirectly enforced through affirmative action plan requirements. Certain public works contractors must file affirmative action plans with the Commission on Human Rights and Opportunities (CHRO) before being awarded a contract. The plans must, among other things, establish goals for hiring minority business enterprises (MBE). The state must withhold 2% of the contract price per month until CHRO approves the contractor's affirmative action plan.

## **SUPPLIER DIVERSITY PROGRAM**

Under the supplier diversity program (CGS § [4a-60g](#)), state agencies and political subdivisions, other than municipalities, must set aside 25% of the total value of all contracts they let for construction, goods, and services each year for exclusive bidding by certified small contractors. A small contractor is a contractor, subcontractor, manufacturer, service company, or nonprofit corporation that (1) maintains its principal place of business in Connecticut and (2) grossed revenues of \$15 million or less during its most recent fiscal year.

The agencies must further reserve 25% of the set-aside value (6.25% of the total) for exclusive bidding by certified MBEs, which are small contractors owned by women, minorities, or people with disabilities. The law allows agencies and subdivisions to delegate the set-aside task to a general contractor or other entity authorized by the agency to award contracts.

## **AGENCY AND POLITICAL SUBDIVISION NONCOMPLIANCE**

The law does not establish any penalties against state agencies or political subdivisions for noncompliance with the supplier diversity requirements.

Agencies and subdivisions must establish set-aside goals for each fiscal year and submit them to the Department of Administrative Services (DAS), CHRO, and the co-chairpersons and ranking members of the Government Administration and Elections and Planning and Development committees by August 30 annually (CGS § [4a-60g\(l\)](#)). One month after the end of each quarter, agencies and subdivisions must submit a status report to DAS and CHRO describing their goal implementation and results for that quarter. If they have not achieved at least 50% of the annual goal by the end of the second reporting period, they must submit a written explanation to DAS and CHRO describing how they will correct this. CHRO must monitor and report quarterly on agencies' and subdivisions' goal achievement (CGS § [4a-60g\(m\)](#)).

In a 2008 report to the legislature, CHRO recommended legislation that would penalize agencies and subdivisions for noncompliance with the above filing requirements. However, no such legislation has been enacted. Additionally, there are no penalties in statute for agencies and subdivisions that do not meet their set-aside goals.

## **CONTRACTOR NONCOMPLIANCE**

The law allows an awarding authority, DAS, or CHRO to audit the financial, corporate, and business records and investigate any firm that applies for or is awarded a set-aside contract (CGS § [4a-60g\(g\)](#)). The awarding authority may hold a hearing and issue a civil penalty against contractors or subcontractors that it reasonably believes have violated the set-aside law. If, after a hearing, the awarding authority finds a willful violation, it (1) must suspend all set-aside payments to the contractor or subcontractor and (2) may order a civil penalty of up to \$10,000 per violation (CGS § [4a-60g\(j\)](#)).

The law also allows CHRO to issue a complaint against a contractor or subcontractor for set-aside violations. It requires CHRO to assess a civil penalty of up to \$10,000 if, following a hearing, it determines that a contractor or supplier has (1) fraudulently qualified as an MBE or (2) performed services or supplied materials on behalf of another contractor or supplier, knowing it has fraudulently qualified and that the supplies or materials will be used for a set-aside contract (CGS § [46a-56\(d\)](#)).

However, both DAS and CHRO report that the hearing authority is rarely if ever used. DAS indicated that holding informal meetings with contractors is the most common way to address noncompliance. Additionally, non-compliance with set-aside requirements may also be grounds for terminating the contract.

Supplier diversity compliance is also indirectly enforced through affirmative action plan requirements. If a firm is the winning bidder for a project costing more than \$ 500,000 for the construction, alteration, repair or demolition of any public building (and subject to competitive bidding requirements in CGS § [4b-91](#) et seq.), it must file an affirmative action plan with CHRO before entering into the contract. The commission's regulations require the plan to, among other things, establish goals for awarding work to MBEs. CHRO must approve, conditionally approve, or reject the plan within 60 days of receipt. The state must withhold 2% of the contract price per month until CHRO approves the contractor's affirmative action plan (CGS § [46a-68d](#)).

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