



165 Capitol Avenue
Hartford, CT 06106-1658

HB 5051

An Act Expanding Municipal and State Reverse Auction Authority to Include the Purchase of Services

HB 5604

An Act Eliminating the Municipal Exemption from the Contract Compliance Requirements in State Contracts

HB 6319

An Act Establishing a Preference for Connecticut Companies for State Contracts

HB 6579

An Act Concerning the Prequalification of Subcontractors, Removing the Municipal Exemption from the Set-Aside Program and the Percentage of Contracts Reserved for Minority Business Enterprises

**Government Administration & Elections Committee
March 11, 2013**

The Department of Administrative Services ("DAS") thanks the Committee for the opportunity to submit comments on the four bills listed above. These bills propose a number of changes to DAS's procurement-related statutes, and address the following issues and programs:

- In-state preferences,
- The DAS construction contractor prequalification program,
- The state supplier diversity program and set-aside provisions and,
- Competitive bidding and negotiation in state contracting.

IN-STATE PREFERENCE & COMPETITIVE BIDDING

House Bill 6319, An Act Establishing a Preference for Connecticut Companies for State Contracts, would require DAS to add 2% to the original bid of every nonresident bidder.

DAS supports the concept of exploring all possible legal measures to encourage economic development in Connecticut and to ensure that Connecticut state businesses

and employers of Connecticut residents have the greatest possible access to state-funded contracts. DAS is concerned, however, about potential unintended consequences of establishing such a preference.

Many states have reciprocal preference laws, similar to the one enacted by Connecticut in 2008 (C.G.S. §4e-48). Under such reciprocal preference laws, a state adds a percent increase to the bid of a nonresident bidder equal to the percent of the preference given to such nonresident bidder in the state in which such nonresident bidder resides. Therefore, if Connecticut passes an in-state preference law, Connecticut companies that bid for state contracts in other states (with reciprocal preference laws) would be competitively disadvantaged with regard to those out-of-state contract bids.

DAS also urges the Committee and Legislature to carefully weigh the risk that neighboring states may view in-state preferences as protectionist and retaliate by taking protectionist measures of their own. New York, for example, already has legislation restricting and many cases prohibiting the bidding and contract opportunities available to companies located in states with in-state preferences. Receiving a preference from the state of Connecticut will not necessarily compensate a Connecticut business that has lost opportunities to sell goods and services to neighboring states like New York. DAS recently provided the Chairs with the 2011 In-State Preference Report (available on the DAS website) which expanded on this issue.

Additionally, DAS asks that when the Committee considers whether in-state preferences may be beneficial and under what circumstances, it bear in mind that preferences often result in paying higher prices for goods and services. DAS believes that it is important that public procurements are made under conditions that foster competition in order to maximize purchasing power and ensure that we do not pass unreasonable costs on to the taxpayers.

PREQUALIFICATION

House Bill 6579, An Act Concerning the Prequalification of Subcontractors, Removing the Municipal Exemption from the Set-Aside Program and the Percentage of Contracts Reserved for Minority Business Enterprises.

DAS has serious concerns about the proposal in Sections 1 and 2 of HB 6579 to create a separate application process and fee structure for construction subcontractors seeking to become prequalified by DAS.

Under the current law, any person seeking to bid or perform work on a public works contract with the state or a municipality that is estimated to cost more than five hundred thousand dollars and is funded, in whole or in part, by state funds must be

prequalified by DAS. It should be emphasized that there is one single prequalification standard; there is not one standard for contractors and another standard for subcontractors. This single standard is appropriate because (unlike bidding) prequalification is not project-specific. Indeed, one company could very easily act as a contractor for one project and a subcontractor on another project. The separate standards proposed in HB 6579 would be more complicated and time-consuming for DAS to administer and would make the prequalification process more confusing for construction companies and awarding authorities.

Section 2 of HB 6579 eliminates the need for a subcontractor to provide a statement of financial condition and a bonding company letter stating the applicant's aggregate work capacity and single project limit. This poses a serious problem for DAS because DAS relies on that documentation to determine the applicant's aggregate work capacity (AWC) and thus, what fee and level of prequalification would be appropriate. DAS does not possess the financial expertise to make such determinations in-house.

DAS understands that some companies have expressed concerns about the existing prequalification requirements. We have worked with the Legislature and vested stakeholders to address their concerns by developing legislation in 2011 to allow a company's affiliation with a certified community financial development institution as a substitute for the statements of financial condition. We are happy to continue these conversations; however, we believe it is important to maintain the core provisions of the prequalification requirements in order to insure that qualified general contractors and subcontractors are working on capital projects.

SET-ASIDE/SUPPLIER DIVERSITY

House Bill 6579, An Act Concerning the Prequalification of Subcontractors, Removing the Municipal Exemption from the Set-Aside Program And the Percentage of Contracts Reserved for Minority Business Enterprises.

House Bill 5604, An Act Eliminating the Municipality Exemption from the Contract Compliance Requirements in State Contracts.

The State's set-aside statute, C.G.S. §4a-60g, defines "small business enterprises" and "minority business enterprises" and directs agencies to set aside at least 25% of the total value of the contracts let by each agency for small business enterprises (SBEs) and to set aside at least 25% of those SBE contracts for minority business enterprises (MBEs). Under current law, a company owned and operated by a woman qualifies as a minority business enterprise.

Section 3 of HB 6579 would remove women from the definition of minority. It also would change the set aside goals such that 50% of all SBE contracts would have to be set aside for companies owned and operated by a member of the newly defined minority group.

The current set-aside statutes are based on a disparity study that is 25 years old. DAS strongly believes that any attempt to change existing set-aside goals, to create new set-aside categories or to separate out ethnic minority goals from other defined "minorities" (such as women-owned businesses) must be supported with a disparity study. A new, up-to-date disparity study that identifies differences between the proportion of minority-owned business in Connecticut and the share of state contracting the businesses receive will provide data essential to the process of developing new, legally justifiable goals and definitions.

Under the current law, municipalities are exempt from the set-aside requirements that apply to state agencies and political subdivisions. Section 4 of HB 6579 and HB 5604 would eliminate this exemption and require all municipalities in the state to participate in the set-aside program. Neither bill, however, specifies who will be responsible for establishing the set-aside goals for the municipalities. While DAS believes the intent of these proposals is laudable, DAS cautions that it does not have the resources to administer a set-aside program for municipalities.

Currently, the set-aside program applies to 81 state agencies and approximately 31 political subdivisions. As the administrator of this program, DAS's supplier diversity unit analyzes the budgets of each participant, sets individualized set-aside goals for each participant, verifies that the vendors receiving the contracts are, in fact certified by the state as small or minority owned businesses, and offers training and assistance to the participants. (This work is in addition to auditing the records of companies that apply for small business or minority business enterprise certification and engaging in education and outreach in the business community.)

DAS is able to manage this workload effectively because all state agencies use the State's Accounting System, CoreCT. As a result, DAS has immediate access to the agencies' budgets and spends. In fact, through CoreCT, each time a state agency cuts a purchase order, that information is automatically compared with the state's list of certified small business and minority business enterprise to determine if the contract can be counted toward the agency's set-aside goals.

It appears that HB 5604 and Section 4 of HB 6579 seek to add all 169 municipalities to the state program, increasing the number of participating entities by 151%. The greater difficulty, however, is that none of the 169 municipalities are in the CoreCT system. Thus, every goal calculation would have to be done manually, hugely increasing the amount of time and resources required.

An added level of complexity is created by the fact that many municipalities have separate budget structures for their different boards and councils; for example, a town's board of education budget is often completely separate from its operating budget. These bills do not address how this factor should be considered in determining the set-aside goals and compliance.

Moreover, more than doubling the number of participating entities is likely to prompt a similar increase in the number of vendors seeking certification, which in turn will increase the number of audits performed and disputes investigated by DAS. At a conservative estimate, if DAS became responsible for administering the set-aside program for municipalities, it would need **at least five more full-time employees** to handle the increased workload.

REVERSE AUCTIONS

House Bill 5051, An Act Expanding Municipal and State Reverse Auction Authority Include Goods and Services, would amend C.G.S. §4a-60b and expand the authority for municipalities, school districts and state agencies to use reverse auctions for the purchase of services, not just goods and supplies.

To date, DAS has utilized reverse auctions ten times, producing a savings of \$207,000. DAS supports HB 5051 because having the authority to utilize reverse auctions for the procurement of services when doing so would be advantageous to the contracting agency and will ensure a competitive contract award gives towns, school districts and state agencies another tool to help them reduce costs.

DAS would be happy to discuss these or other procurement, set-aside/supplier diversity, or prequalification programs and proposal with the Committee at any time. Please feel free to contact Terrence Tulloch-Reid at (860) 713-5085.

