
OLR Bill Analysis

sSB 1153

AN ACT CONCERNING CONTRACT COMPLIANCE REQUIREMENTS FOR THE METROPOLITAN DISTRICT OF HARTFORD COUNTY.

SUMMARY:

This bill requires the Metropolitan District Commission (MDC) to participate in the state's small and minority business set-aside program (also called the supplier diversity program). The program requires state agencies to set aside some contracts for bidding exclusively by small businesses, including some exclusively for bidding by small businesses owned by women, racial minority groups, individuals with disabilities, or nonprofit organizations.

The bill also extends to MDC contracts various requirements for non-discrimination provisions that apply to state contracts. Under these provisions, contractors must agree, among other things, to (1) not discriminate against various protected classes, (2) take affirmative action to employ qualified applicants, and (3) give the Commission on Human Rights and Opportunities (CHRO) information and access to records concerning their employment practices.

Existing law already requires MDC to comply with various affirmative action laws that apply to the state (see BACKGROUND).

MDC is a nonprofit municipal corporation providing water and sewer service in the greater Hartford area. It operates primarily under a 1929 special act charter and answers to a 29-member commission consisting mostly of municipal representatives.

EFFECTIVE DATE: July 1, 2013

SET-ASIDE PROGRAM

The bill deems MDC to be a state agency for purposes of the state's

set-aside program, thus requiring MDC to participate in the program. The program requires state contracting agencies and other state entities (“state agencies”) and political subdivisions, other than municipalities, to annually set aside at least 25% of the value of their contracts for exclusive bidding by certified small businesses. They must also set aside 25% of that amount (6.25% of the total) for exclusive bidding by certified minority-owned businesses. For these purposes, small businesses are those with a principal place of business in Connecticut and up to \$15 million in gross revenues in the most recent fiscal year before applying to participate. Minority businesses are small businesses owned by women, members of specified minority groups, people with disabilities, or nonprofit organizations.

The contracts may be for constructing roads and buildings or providing goods and services. State agencies and political subdivisions that are otherwise required to participate are exempt from the program if the total value of their contracts is less than \$10,000 in any given year.

Under the bill, MDC must comply with the state’s requirements and procedures for bidding and awarding set-aside contracts. Consequently, businesses must be certified by the Department of Administrative Services (DAS) before they can bid on a set-aside contract. Participating contractors are prohibited from subcontracting with their affiliates. Anyone affiliated with another person is not eligible for awards if both affiliated persons considered together would not qualify as a small or minority business.

Administrative Options and Requirements

The set-aside program also includes several administrative options and requirements that the bill extends to MDC. Under these provisions, a state agency:

1. instead of setting aside contracts itself, may require general contractors to set aside subcontracts for certified small and minority-owned businesses, in the same percentages as specified above;

2. must notify the DAS commissioner about set-aside contract awards when bid documents for such contracts are made available to potential contractors;
3. must require (a) set-aside contractors or subcontractors to do at least 15% of the work with their own forces and (b) that at least 25% of the work be performed by set-aside contractors;
4. may require set-aside contractors or subcontractors to submit tax returns and other specified documents;
5. has the authority to audit businesses that apply for or are awarded set-aside contracts, or the audits can be done by DAS or CHRO, to determine eligibility and compliance with the law's requirements;
6. must accept letters of credit, meeting specified requirements, instead of bid, performance, and other bonds;
7. must follow the statutory enforcement procedure when it has reason to believe a contractor or subcontractor willfully violated set-aside requirements (including holding hearings pursuant to the Uniform Administrative Procedure Act and ordering civil penalties of up to \$10,000 per violation); and
8. must submit (a) annual reports on their set-aside program goals, (b) quarterly status reports on the implementation and results of such goals, and (c) written explanations to DAS and CHRO if the agency meets less than half of its set-aside goals by the end of the second quarterly reporting period each fiscal year.

The law also requires state agencies to pay contracts under the program not later than 30 days of the due date under the contract. This also applies to MDC under the bill.

Existing law requires the DAS commissioner to conduct regular training sessions, as he deems necessary, to explain the set-aside program to state agencies and to specify the factors that must be addressed in calculating program goals (CGS § 4a-60h). The bill does

not extend such training to MDC.

NONDISCRIMINATION REQUIREMENTS FOR CONTRACTORS

Existing law generally requires state contracts and contracts of political subdivisions, other than municipalities, to contain anti-discrimination provisions that protect people based on race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, intellectual disability, mental disability, physical disability, and sexual orientation. The bill deems MDC to be a state agency for these purposes, thus extending these requirements to MDC contracts. By law, a person claiming to be aggrieved by a violation of these provisions can file a complaint with CHRO (CGS § 46a-82).

Under these provisions, the contractor must generally agree:

1. that in the performance of the contract it will not discriminate or permit discrimination in any manner prohibited by state or federal law;
2. to take affirmative action to ensure that applicants with job-related qualifications are employed and that employees are not discriminated against (the affirmative action provision does not apply to sexual orientation);
3. in all solicitations or advertisements for employees placed by or on its behalf to state that it is an “affirmative action-equal opportunity employer” in accordance with CHRO regulations;
4. to provide each labor union or workers’ representative with which it has a collective bargaining agreement or other contract or understanding, and each vendor with which it has a contract or understanding, a notice from CHRO concerning the contractor’s anti-discrimination and affirmative action commitments, and to post copies of the notice in conspicuous places available to employees and applicants;
5. to comply with certain anti-discrimination and affirmative

action laws and CHRO regulations and orders; and

6. to provide CHRO with whatever information it requests and permit access to pertinent books, records, and accounts concerning its employment practices and procedures relating to anti-discrimination requirements.

In addition, if the contract is a public works contract, the contractor must agree to make good faith efforts to employ minority businesses as subcontractors and suppliers. The law sets out factors to establish good faith efforts and requires contractors to maintain documentation of such efforts.

Before entering a contract with the state or other political subdivision, a contractor must provide a representation or documentation to support the nondiscrimination agreement set forth above (the form varies based on the amount of the contract).

By law, these requirements do not apply to contracts in which each party is (1) a municipality or other political subdivision of the state, (2) a quasi-public agency, (3) another state, (4) the federal government, (5) a foreign government, or (6) an agency of any of the above.

BACKGROUND

Affirmative Action Plans and Related Requirements

Existing law requires state agencies, boards, and commissions ("agencies") with at least 25 full-time employees to develop and implement affirmative action plans covering all aspects of personnel and administration. MDC is deemed to be a state agency for this purpose.

The agencies must prepare the plans in cooperation with CHRO and according to its regulations, and plans must be approved by CHRO. The required frequency of the filing varies based on agency size. CHRO must monitor the agency's compliance with the plan and report its finding to the governor and the legislature by April 1 annually.

State agencies must also comply with various administrative and

procedural requirements. They must designate a full- or part-time equal employment opportunity officer. They must also comply with specified procedures for addressing discrimination complaints, such as generally referring certain cases to CHRO.

Related Bill

sSB 1164, reported favorably by the Judiciary Committee, makes numerous changes throughout the CHRO statutes and related laws. For example, it allows people aggrieved by alleged violations concerning the set-aside program and affirmative action plan requirements to file complaints directly with CHRO. The bill also requires state contractors to agree to take affirmative action to ensure that applicants with job-related qualifications are employed without regard to their sexual orientation.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 44 Nay 0 (04/16/2013)