

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 13-304—sSB 430

*Government Administration and Elections Committee
Environment Committee*

**AN ACT CONCERNING THE STATE FLEET AND MILEAGE, FUEL
AND EMISSION STANDARDS, THE CERTIFICATION OF MINORITY
BUSINESS ENTERPRISES AND PREFERENCE FOR A BOND
GUARANTY PROGRAM**

SUMMARY: This act makes various changes to the state’s small and minority business set-aside program (also called the supplier diversity program). It adds to the requirements that contractors must meet in order to participate in the program by requiring that (1) a business be “independent” in order to be certified as a small contractor (also called a small business enterprise (SBE)) and (2) a certified minority business enterprise’s (MBE) owners possess managerial and technical competence and experience directly related to the enterprise’s principal business activities.

The act increases certain performance targets that set-aside contractors must meet. Under prior law, state agencies had to require a contractor or subcontractor awarded a set-aside contract to perform at least 15% of the work with its own forces. They also had to require that at least 25% of the work under such a contract be performed by SBEs or MBEs. The act doubles both of these percentages (to 30% and 50%, respectively).

The act allows the Department of Administrative Services (DAS), which administers the set-aside program, to adopt regulations to implement its requirements. It also expands existing law’s enforcement provisions by allowing DAS to levy a fine against prospective or certified SBEs and MBEs and revoke or deny their certifications for certain violations.

Lastly, the act requires (1) DAS to give each prequalified contractor and substantial subcontractor written notice of the Department of Economic and Community Development’s (DECD) bond guaranty program and (2) DECD to give priority in the program to prequalified contractors and substantial subcontractors. The DECD guaranty program, which is administered by the Hartford Economic Development Corporation, assists minority contractors with the bonding requirements of public works projects. A prequalified contractor or substantial subcontractor is one that has received a prequalification certificate from DAS; such a certificate is required in order to bid on most state public works contracts that cost more than \$500,000 (or, for substantial subcontractors, subcontracts that cost more than \$500,000).

EFFECTIVE DATE: July 1, 2013

ELIGIBILITY REQUIREMENTS

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The set-aside 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 SBEs. They must also set aside 25% of that amount (6.25% of the total) for exclusive bidding by MBEs.

The act expands the criteria that SBEs and MBEs must meet. Under existing law, SBEs 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. An SBE cannot receive certification if it is affiliated with another person and together their revenues exceed \$15 million. By law, “affiliated” means one person, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with another person.

The act additionally requires that SBEs be independent. An SBE meets this criterion if its viability does not depend upon another person, as determined by an analysis of the contractor’s relationship to another person regarding the provision of personnel, facilities, equipment, other resources, and financial support, including bonding.

Under existing law, MBEs are small businesses or nonprofits with at least 51% ownership held by one or more people, who must be women, members of minority groups, or people with disabilities, with authority over daily operations, management, and policies and who receive beneficial interests. (For nonprofits, the 51% requirement applies to people with authority over operations, management, and policies.) The act additionally requires that, for both businesses and nonprofits, these individuals possess managerial and technical competence and experience directly related to the enterprise’s principal business activities. By law, nonprofits are eligible under the set-aside program only for certain housing project predevelopment contracts.

ENFORCEMENT PROVISIONS

The act adds to existing law’s enforcement provisions for set-aside program violations (see BACKGROUND). It allows the DAS commissioner to revoke an SBE or MBE’s certificate for cause, except that revocation is mandatory in cases where a contractor or subcontractor willfully included a materially false statement on an application (see below). The commissioner must provide the contractor with notice and an opportunity for a hearing in accordance with the Uniform Administrative Procedure Act (UAPA). A person aggrieved by a certificate revocation may appeal to Superior Court in accordance with the UAPA.

The act also allows the commissioner to impose a civil penalty of up to \$10,000 against a certified or prospective SBE or MBE that included a materially false statement in its certification and application. The commissioner must provide notice and hold a hearing in accordance with the UAPA (with an aggrieved party presumably allowed to appeal to Superior Court). The notice must include (1) a reference to the allegedly false statements; (2) the maximum civil penalty; and (3) the time and place of the hearing, which must be no more than 14 days from the date the notice is sent. The commissioner must also send a copy of the notice to the Commission on Human Rights and Opportunities (CHRO).

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Under the act, if the commissioner, after a hearing, finds that the contractor or subcontractor willfully included a materially false statement, he must revoke or deny the certification and may impose a civil penalty of up to \$10,000. If the contractor or subcontractor does not appear at the hearing, the commissioner may take these actions as the facts require. The commissioner (1) must send the respondent contractor or subcontractor a copy of any such order and (2) may cause proceedings to be instituted by the attorney general to enforce any order imposing a civil penalty.

BACKGROUND

Enforcement Provisions in Existing Law

Under existing law, an 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 as an MBE and that the supplies or materials will be used for a set-aside contract (CGS § 46a-56(d)).

Related Act

PA 13-247 (§ 24) requires the Metropolitan District Commission to participate in the set-aside program.

OLR Tracking: TA:JR:JKL:RO