



Senate

General Assembly

File No. 704

January Session, 2015

Substitute Senate Bill No. 948

Senate, April 16, 2015

The Committee on Government Administration and Elections reported through SEN. CASSANO, S. of the 4th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT INCREASING OPPORTUNITIES FOR SMALL CONTRACTORS AND MINORITY BUSINESS ENTERPRISES UNDER THE SET-ASIDE PROGRAM.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (i) of section 4a-60g of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective July*
3 *1, 2015*):

4 (i) In lieu of a performance, bid, labor and materials or other
5 required bond, (1) a contractor or subcontractor awarded a contract
6 under this section may provide to the awarding authority, and the
7 awarding authority shall accept a letter of credit, [Any] provided any
8 such letter of credit [shall be] is in an amount equal to ten per cent of
9 the contract for any contract that is less than one hundred thousand
10 dollars and in an amount equal to twenty-five per cent of the contract
11 for any contract that exceeds one hundred thousand dollars; or (2) the
12 Commissioner of Administrative Services may waive any such bond

13 requirements for the award by the commissioner of a contract under
 14 this section that is less than five hundred thousand dollars to a
 15 contractor or subcontractor certified under this section who (A) has
 16 been selected to be on a list established pursuant to subdivision (5) of
 17 subsection (a) of section 4b-91, and (B) has applied for a waiver in the
 18 form and manner prescribed by the commissioner. The commissioner
 19 shall determine whether to grant such waiver based on objective
 20 criteria, including, but not limited to, (i) the applicant's past
 21 performance on projects of a similar size, scope and complexity; (ii) the
 22 applicant's compliance with financial obligations applicable to
 23 construction projects; and (iii) the size, scope and complexity of the
 24 specific project for which the applicant is seeking a waiver. The
 25 commissioner shall adopt regulations in accordance with the
 26 provisions of chapter 54 establishing procedures and criteria for the
 27 application and waiver process.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2015	4a-60g(i)

GAE *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 16 \$	FY 17 \$
Statewide (includes various state agencies)	All Funds - Potential Cost	Potential Significant	Potential Significant

Note: All Funds=All Funds

Municipal Impact: None

Explanation

This bill allows the DAS commissioner to waive bond and surety requirements for set-aside contracts under \$500,000. In lieu of posting the required performance, bid, labor and materials bonds, the bill allows a business awarded a set-aside contract to provide the agency awarding the contract a letter of credit for an amount that depends on the contract's value. For contracts under \$100,000, the letter of credit must equal 10% of that value. For those over \$100,000, the letter of credit must equal 25% of the value.

To the extent that DAS waives such requirement and the contractor defaults, the state may incur a cost of up to \$400,000¹ for each contractor default, to re-bid the contract or complete the contract on a time and material basis.

The Out Years

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

¹The waived bond would still need a 25% letter of credit. Therefore, if a maximum contract (\$500,000) defaulted the state would recover \$100,000. This would leave the state with a maximum of a \$400,000 loss, per default.

OLR Bill Analysis**sSB 948*****AN ACT INCREASING OPPORTUNITIES FOR SMALL CONTRACTORS AND MINORITY BUSINESS ENTERPRISES UNDER THE SET-ASIDE PROGRAM.M*****SUMMARY:**

By law, state agencies must set aside a portion of their contracts for bidding exclusively by businesses the Department of Administrative Services (DAS) certifies as small or minority-owned business enterprises (see BACKGROUND). This bill makes it easier for these businesses to bid on set-aside contracts by allowing the DAS commissioner to waive bond and surety requirements the state typically imposes on the businesses awarded contracts. It allows her to waive these requirements for set-aside contracts under \$500,000 if they follow the procedure and meet the criteria the bill requires her to specify in regulations.

In lieu of posting the required performance, bid, labor and materials, or other bond, existing law, which the bill does not change, allows a business awarded a set-aside contract to provide the agency awarding the contract a letter of credit for an amount that depends on the contract's value. For contracts under \$100,000, the letter of credit must equal 10% of that value. For those over \$100,000, the letter of credit must equal 25% of the value.

EFFECTIVE DATE: July 1, 2015

APPLYING FOR WAIVERS

The bill allows the DAS commissioner to waive bond requirements for set-aside contracts under \$500,000 for certified small and minority-owned businesses that meet certain conditions. A business qualifies for a waiver if DAS prequalified it to bid on contracts for specified

services, including construction, remodeling, or demolishing public buildings that cost less than \$1.5 million.

The business must apply to DAS for the waiver as the commissioner prescribes, and she must decide whether to grant it based on objective criteria that, at a minimum, must include:

1. the contractor's past performance on projects of similar size, scope, and complexity;
2. the contractor's compliance with the financial obligations that apply to construction projects; and
3. the size, scope, and complexity of the project for which the contractor is seeking a waiver.

BACKGROUND

Small and Minority-Owned Business Set-Aside Requirements

By law, state agencies must set aside at least 25% of the total value of contracts they let for construction, goods, and services each year for bidding exclusively by state-certified small businesses. The agencies must further set aside 25% of the set-aside value for exclusive bidding by small businesses owned and operated by minority group members (CGS § 4a-60g).

Small and minority-owned small businesses may bid on a set-aside contract if they meet statutory criteria, as certified by DAS. A business qualifies as a small business if:

1. its principal place of business is in Connecticut;
2. it grossed no more than \$15 million in its most recent fiscal year; and
3. it does not depend on another person for personnel, facilities, equipment, other resources, and financial support, including bonding.

Nonprofit corporations that meet these criteria may also bid on set-aside contracts.

In addition to meeting these criteria, a small minority-owned business qualifies as a minority-owned business if:

1. at least 51% of the business is owned by women, members of minority groups, or people with disabilities and
2. these people possess managerial and technical competence and experience directly related to the business's principal activities.

A nonprofit corporation meets the 51% criterion if women, members of minority groups, or people with disabilities have authority over the corporation's operations, management, and policies.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 9 Nay 6 (03/30/2015)