



Senate

General Assembly

File No. 605

January Session, 2019

Substitute Senate Bill No. 1081

Senate, April 10, 2019

The Committee on Planning and Development 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 CONCERNING MUNICIPAL SET-ASIDE REQUIREMENTS.

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

1 Section 1. Subdivision (14) of subsection (a) of section 4a-60g of the
2 general statutes is repealed and the following is substituted in lieu
3 thereof (*Effective October 1, 2019*):

4 (14) "Municipal public works contract" means that portion of an
5 agreement entered into on or after October 1, [2015] 2019, between any
6 individual, firm or corporation and a municipality for the construction,
7 rehabilitation, conversion, extension, demolition or repair of a public
8 building, highway or other changes or improvements in real property,
9 which is financed in whole or in part by the state, including, but not
10 limited to, matching expenditures, grants, loans, insurance or
11 guarantees, [but excluding any project of an alliance district, as defined
12 in section 10-262u, financed by state funding in an amount equal to
13 fifty thousand dollars or less] in an amount greater than five hundred
14 thousand dollars.

15 Sec. 2. Subsection (h) of section 4a-60g of the general statutes is
16 repealed and the following is substituted in lieu thereof (*Effective*
17 *October 1, 2019*):

18 (h) The provisions of this section shall not apply to (1) any awarding
19 agency for which the total value of all contracts or portions of contracts
20 of the types enumerated in subdivision (2) of subsection (b) of this
21 section is anticipated to be equal to ten thousand dollars or less, or (2)
22 any [municipal public works contract or] contract for a quasi-public
23 agency project for which the total value of the contract is anticipated to
24 be equal to fifty thousand dollars or less.

25 Sec. 3. Section 46a-68c of the general statutes is repealed and the
26 following is substituted in lieu thereof (*Effective October 1, 2019*):

27 In addition to the provisions of section 4a-60, each contractor with
28 fifty or more employees awarded either a public works contract [,
29 municipal public works contract] or contract for a quasi-public agency
30 project in excess of fifty thousand dollars, or a municipal public works
31 contract, in any fiscal year, but not subject to the provisions of section
32 46a-68d, shall develop and file with the Commission on Human Rights
33 and Opportunities an affirmative action plan which shall comply with
34 regulations adopted by the commission. Failure to develop an
35 approved affirmative action plan pursuant to this section shall act as a
36 bar to bidding on or the award of future contracts until such
37 requirement has been met. When the commission approves an
38 affirmative action plan pursuant to this section, it shall issue a
39 certificate of compliance to the contractor. This certificate shall be
40 prima facie proof of the contractor's eligibility to bid or be awarded
41 contracts for a period of two years from the date of the certificate. Such
42 certificate shall not excuse the contractor from monitoring by the
43 commission or from the reporting and record-keeping requirements of
44 sections 46a-68e and 46a-68f. The commission may revoke the
45 certificate of a contractor if the contractor does not implement its
46 affirmative action plan in compliance with this section and sections 4a-
47 60, 4a-60g, as amended by this act, 4a-62, 46a-56, 46a-68b, 46a-68d, and

48 46a-68e to 46a-68k, inclusive.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2019	4a-60g(a)(14)
Sec. 2	October 1, 2019	4a-60g(h)
Sec. 3	October 1, 2019	46a-68c

Statement of Legislative Commissioners:

In Sec. 3, "in excess of five hundred thousand dollars" was deleted for clarity and to avoid repetition, and "as amended by this act," was moved for accuracy.

PD *Joint Favorable Subst. -LCO*

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: None

Municipal Impact:

Municipalities	Effect	FY 20 \$	FY 21 \$
All Municipalities	Savings	Potential	Potential

Explanation

The bill raises a threshold for municipal public works contracts subject to the state set-aside program. This results in a savings to municipalities to the extent that it increases the number of contracts awarded to the lowest qualified bidder who does not meet set aside requirements.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to the value of municipal public works contracts.

OLR Bill Analysis

sSB 1081

AN ACT CONCERNING MUNICIPAL SET-ASIDE REQUIREMENTS.

SUMMARY

This bill limits the municipal public works contracts subject to state contract compliance requirements, including nondiscrimination, affirmative action, and set-aside requirements.

Under current law, contractors awarded state-funded municipal public works contracts must comply with specified nondiscrimination and affirmative action filing requirements. Such contractors must also comply with set-aside requirements if the total contract value exceeds \$50,000. For contracts entered into on or after October 1, 2019, the bill limits the application of each of these requirements to municipal public works contracts financed with more than \$500,000 of state funding.

Current law exempts alliance district projects from these requirements if they were financed by \$50,000 or less of state financial assistance. The bill makes a conforming change by eliminating this exemption. (Alliance districts are the 30 school districts in the state with the lowest district performance index scores, which is a weighted measure of student mastery test scores by district).

By law, municipalities may not enter into a municipal public works contract with any bidder or prospective contractor that does not comply with the (1) law's nondiscrimination and affirmative action requirements or (2) municipality's own contract compliance program approved by the Commission on Human Rights and Opportunities (CHRO). Contractors that violate the law's nondiscrimination and affirmative action requirements are subject to CHRO's enforcement authority.

EFFECTIVE DATE: October 1, 2019

MUNICIPAL PUBLIC WORKS CONTRACT SET-ASIDES

Set-Aside Requirements

By law, contractors who are awarded certain state-funded municipal public works contracts must, on the basis of competitive bidding procedures, (1) set aside at least 25% of the contract's state funded amount for certified small contractors and (2) reserve 25% of the set-aside value (6.25% of the total) for minority business enterprises (MBEs)(see BACKGROUND).

Under current law, the set-aside requirement applies to municipal public works contracts that are valued at more than \$50,000 and receive any amount of state funding. For agreements entered into beginning October 1, 2019, the bill limits these requirements to contracts that are financed with more than \$500,000 of state funding.

By law, a "municipal public works contract" is the portion of an agreement, financed with state funding, between a municipality and any individual, firm, or corporation for constructing, rehabilitating, converting, extending, demolishing, or repairing a public building or highway, or other changes or improvements to real property. State funding may include matching expenditures, grants, loans, insurance, or guarantees.

Municipal Notice of Set-Aside Requirements

The bill similarly limits, to contracts financed with more than \$500,000 in state funding, the requirement that municipalities must state in their solicitation notices for competitive bids or requests for proposals or qualifications that the contractor must comply with the above set-aside requirements and the law's nondiscrimination and affirmative action requirements (see below).

As under existing law, the set-aside requirements do not apply to municipalities that have set-aside programs under which the MBE set-aside equals or exceeds 6.25%.

NONDISCRIMINATION REQUIREMENTS

Under current law, contractors who are awarded municipal public works contracts must comply with specified nondiscrimination requirements, regardless of the contract's value. The bill limits the contractors who must comply with these requirements to contractors awarded municipal public works contracts financed with more than \$500,000 of state funding.

These requirements require contractors to, among other things:

1. file with CHRO a representation or documentation that they comply with state anti-discrimination laws (the requirements vary depending on whether the contract is valued at more or less than \$50,000 per year),
2. state in their job advertisements that they are "affirmative action-equal opportunity employers,"
3. comply with nondiscrimination and affirmative action requirements and orders issued by CHRO,
4. provide CHRO with access to certain employment practice records, and
5. agree and warrant that they will make good faith efforts to employ MBEs as subcontractors and materials suppliers.

AFFIRMATIVE ACTION FILINGS

Two provisions under current law require contractors that bid on, or are awarded, municipal public works contracts to file an affirmative action plan with CHRO. The first provision applies to successful bidders for municipal public works contracts valued at \$500,000 or more and paid for in whole or in part with state funds (CGS § 46a-68d). Such bidders (1) must file with and obtain CHRO's approval for an affirmative action plan before the contract is awarded and (2) are subject to a 2% retainage of the total contract price per month until CHRO approves the plan.

The second provision applies to contractors that have 50 or more employees and are awarded a municipal public works contract valued at more than \$50,000, but are not subject to the above filing requirement (CGS § 46a-68c). By law, such contractors must still file an affirmative action plan with CHRO, but the plan does not need to be filed before the contract is awarded.

The bill limits the contractors subject to these requirements to contractors who are awarded municipal public works contracts financed with at least \$500,000 of state funding. Although the bill retains references to municipal public works contracts in CGS § 46a-68c, it appears that no such contracts meet that provision's criteria.

BACKGROUND

Small Contractors and Minority Business Enterprises

By law, a "certified small contractor" is a business that (1) maintains its principal place of business in Connecticut, (2) had gross revenues of \$15 million or less during its most recent fiscal year, and (3) is independent.

MBEs are small contractors owned by women, minorities, or people with disabilities. The owner must have managerial and technical experience directly related to his or her principal business activities.

COMMITTEE ACTION

Planning and Development Committee

Joint Favorable

Yea 13 Nay 9 (03/25/2019)