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State-Assisted Public School Projects Subject to Set-Aside and Non-Discrimination Requirements

Effective as of October 1, 2015, Connecticut's set-aside requirements for small contractors and minority-owned business enterprises, as well as Connecticut's statutory non-discrimination and affirmative action requirements, apply to construction contracts for state-assisted public school construction projects that meet the definition of a "Municipal Public Works Contract." Municipalities/school districts and their contractors will need to make changes in their procurement and contracting practices for state-funded projects in order to comply with these new requirements, which are generally described below.

The term "Municipal Public Work Contract" ("MPW Contract") is defined under CGS §4a-60g as a contract between a contractor and a municipality "for the construction, rehabilitation, conversion, extension, demolition or repair of a public building...which is financed in whole or in part by the state" ("MPW Project").

Non-discrimination and Affirmative Action:

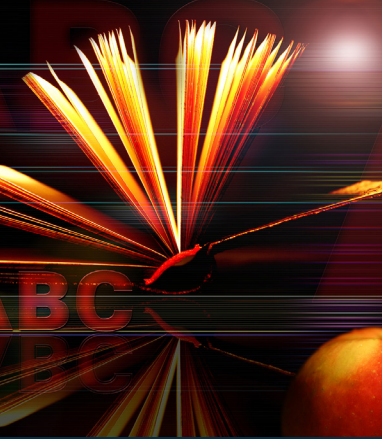
All MPW Contracts and subcontracts thereunder are required to include the statutory language set forth in CGS §4a-60a(a) (discrimination due to sexual orientation) and CGS §4a-60(a) (discrimination due to membership in various protected classes) by which a contractor/subcontractor agrees and warrants not to discriminate, nor to permit discrimination, in the performance of the contract and to take certain affirmative actions.

For MPW Contracts *valued at less than \$50,000* per year, each of these non-discrimination statutes require that the contractor provide a written or electronic representation to the Commission on Human Rights and Opportunities ("CHRO") that complies with the requirements of the statute.

For MPW Contracts *valued at \$50,000 or more* per year, the contractor is required to provide to CHRO with certain documentation that evidences the contractor's adoption of a company or corporate policy that complies with the contractor's statutory nondiscrimination and warranty obligations.

The municipality/school district is prohibited from awarding an MPW Contract if the contract awardee has failed to submit to the CHRO the representation or documentation described above, as applicable.

For MPW Contracts that have a *value in excess of \$50,000* in any fiscal year, but are in an *amount of \$500,000 or less*, and provided the contractor has fifty or more employees, the



contractor must also submit an affirmative action plan to the CHRO that complies with the requirements of CGS §46a-68c.

For those MPW Contracts that have a *value in excess of \$500,000*, the contractor must submit an affirmative action plan in compliance with CGS §46a-68d to the CHRO for the CHRO's review and approval. If CHRO provides conditional approval of the plan and the contract is awarded on that basis, the municipality/school district must withhold (in addition to retainage to be withheld under the contract) two percent (2%) of each payment to the contractor until such time as CHRO's unconditional plan approval is obtained.

Set-Aside Requirements for Small and Minority Owned Businesses:

For all MPW Contracts having a *value in excess of \$50,000*, the municipality/school district must include in its bid documents a statement that the contract awardee will be obligated to comply with Connecticut's set-aside requirements under CGS §4a-60g ("SBE/MBE Requirements").

Although, under CGS §7-148u, municipalities/school districts may elect to establish their own contract compliance programs rather than the state program, they may only do so if the percentage set-aside requirements are equal to or greater than those of the SBE/MBE Requirements.

Under the SBE/MBE Requirements, once a contractor is awarded a contract for a MPW Project, the contractor must, on the basis of competitive bidding procedures, set aside at least twenty-five percent of the total value of the state funding for the project for award to subcontractors that are small contractors and, of that set-aside amount, no less than twenty-five percent must be specifically reserved for award to subcontractors who are minority business enterprises.

The definitions of the terms "small contractor" and "minority business enterprise" are set forth in CGS §4a-60g. A small contractor is a contractor that maintains its principal place of business in Connecticut, has gross revenues in its most recently completed fiscal year not exceeding fifteen million dollars, and is independent. Generally speaking, a "minority business enterprise" is a small contractor in which 51% or more of the capital stock, if any, or assets are owned by a person or persons who exercise operation authority over day-to-day affairs, have the power to direct management of the company, possess managerial and technical competence in the business of the company and are members of a minority (as that term is defined in CGS §32-9n) or have a disability.

Questions or Assistance:

If you have any questions regarding compliance with these new requirements, please contact Christine Chipman at cchipman@goodwin.com or (860) 251-5048.

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