

NEW STATUTORY CHANGES TO 4a-60g

During the 2013 legislative session, the Connecticut General Assembly made a number of changes to the laws relating to the state's "set aside" or "supplier diversity" program.

[P.A. 13-304](#), effective October 1, 2013, makes the following changes:

- **Changing the Definition of "Small Contractor"**

Currently, to be certified in Connecticut as a "small contractor" (SBE), a company must (1) maintain its principal place of business in the state, and (2) have gross revenues not exceeding fifteen million dollars in the most recently completed fiscal year. P.A. 13-304 adds to these factors, by also requiring that any company seeking to be certified as an SBE be "independent." To be "independent," the viability of the small business must not depend upon another person or company, as determined by an analysis of the small business's relationship with any other person or company in regards to the provision of personnel, facilities, equipment, other resources and financial support, including bonding.

Implementation: The Department of Administrative Services (DAS) will be updating its application forms and processes to reflect this change in the law.

- **Changing the Definition of "Minority Business Enterprise"**

P.A. 13-304 also modifies the definition of "Minority Business Enterprise" (MBE) by requiring that the minority owner(s) "possess managerial and technical competence and experience directly related to the principal business activities of the enterprise." This change clarifies that, while the minority owners of MBEs will not necessarily need to hold the license required to conduct the primary work of their business (although that is certainly one way to show technical competence), they will be required to demonstrate that they have both the managerial and technical skill and experience to control and operate the company.

Implementation: DAS will be updating its application forms and processes to reflect this change in the law.

- **Self-Performance & Subcontracting Requirements**

P.A. 13-304 increases the percentages of work required to be performed by any prime SBE/MBE company that is awarded a contract under the set-aside statutes. Previously, a company awarded a set-aside contract was required to self-perform at least 15% of such contract; it will now be required to self-perform at least 30%. Further, SBEs and MBEs that subcontract some of the work under their set-aside contracts will be required to subcontract at least 50% of the remaining work (i.e. the work not self-performed by the prime) to SBEs and

MBEs, respectively, instead of 25%, under current law. Please note that the 50% requirement applies to the work subcontracted; in other words, the percentage to be self-performed by the prime contractor cannot be used to accomplish the 50% requirement.

- Example: If an SBE is awarded a \$100,000 state contract under the set-aside statutes, that SBE will be required to perform at least \$30,000 of the work under the contract with its own workforce. If the SBE self-performs \$30,000 of the work, and chooses to subcontract the remainder, the SBE must subcontract at least \$35,000 of the work to another certified SBE (50% of the remaining \$70,000 on the contract).

Implementation:

- Each awarding (contracting) agency is responsible for implementing and enforcing the self-performance and subcontracting requirements in 4a-60g(e). If an agency sets aside a contract (or a portion of a contract) for SBE or MBE participation, these requirements will apply. Awarding agencies will have to modify contract language to ensure that these requirements are included, and must track the performance of their SBE and MBE contractors to make certain that they are not exceeding the statutory thresholds if/when they subcontract their work under the contract. The Connecticut Commission on Human Rights & Opportunities (CHRO) also has authority to monitor contract compliance in this area.
 - The changes made under P.A. 13-304 do not impact the set-aside spend goals established for agencies under 4a-60g(b). Currently, agencies are required to make good faith efforts to set aside at least 25% of their contracts for SBEs, and at least 25% of those contracts (6.25%) for MBEs. Those goals have not been modified.
 - P.A. 13-304 also did not change the requirements or procedures regarding agency spend reporting. As the CHRO has authority to monitor the agencies' achievement of set-aside goals, CHRO will need to determine if and when it wants to look at this area more closely.
- Due Process Rights Enacted

P.A. 13-304 establishes hearing and appeal procedures for companies whose SBE and MBE certifications are revoked for cause by DAS. Before DAS is able to revoke an SBE or MBE certification, it will be required to provide notice and an opportunity for a hearing conducted in accordance with the Uniform Administrative Procedures Act (UAPA). A company that loses its certification after such a hearing will be entitled to appeal the decision in Superior Court.

Under the new law, DAS was also given the authority to revoke or deny certification, or issue a penalty on companies, not to exceed \$10,000, if a

company has included a materially false statement on its SBE or MBE application. Such penalty may only be imposed after the company has received notice and an opportunity for a UAPA hearing. In cases where DAS determines that the company willfully included a materially false statement in its SBE or MBE application, DAS is required to revoke/deny the application, although the imposition of a penalty remains discretionary.