

**STATE OF CONNECTICUT**  
**DEPARTMENT OF CONSTRUCTION SERVICES**

September 01, 2011

All Department of Construction Services Contractors

SUBJECT: Set-Aside Contract Laws

Dear Sir/Madam:

The administration of Governor Dannel P. Malloy is committed to supporting the subject programs by encouraging all contractors on State projects to improve their efforts in these areas.

State law requires contractors doing business with the State to demonstrate non-discrimination by making "good faith efforts" in both hiring and in sub-contracting practices (Conn. General Statute Section 4a-60).

What does "good faith efforts" mean? It means that you, as contractors, must act affirmatively. It is not good enough to say you can't find minorities and women. You must seek them out. That is the law, and the Department of Construction Services (CT DCS) is committed to enforcing the law. At the same time, we are ready to assist you in making "good faith efforts."

The Department of Construction Services is required by CGS 4a-60g(b) and (c) to set aside projects (amounting to 25% of its annual contract awards) for small business and 25% of that amount for minority business enterprises. CT DCS may require any general contractor to set aside a portion of the contract for subcontractors who are small businesses or minority business enterprises in lieu of setting aside a project or in addition to setting aside a project.

Therefore, unless otherwise specified in the bid proposal forms, CT DCS will require contractors to subcontract 25% of the total contract value to small businesses certified by the Department of Administrative Services (CT DAS) and further will require contractors to subcontract 25% of that 25% to minority and women small contractors certified as minority business enterprises by the CT DAS. These statutory goals represent the minimum values expected to be achieved by this program.

Together, we can meet the challenge of providing equal opportunity for minority and women-owned businesses and workers in our State. We expect superior results in the areas of affirmative action, equal employment opportunity, and set-aside contracts. The CT DCS standard in these areas is not just minimal effort. Our goal is to uphold the letter and the spirit of the law.

Sincerely yours,

Donald J. DeFronzo  
Acting Commissioner

PB:pb

## Non-Discrimination and Affirmative Action Provisions for State Contracts

### Section 1) CHRO – Contract Compliance Regulations Notification to Bidders

The contract to be awarded is subject to contract compliance requirements mandated by Sections 4a-60 and 4a-60a of the Connecticut General Statutes; and, when the awarding agency is the State, Sections 46a-71(d) and 46a-81i(d) of the Connecticut General Statutes. There are Contract Compliance Regulations codified at Section 46a-68j-21 through 43 of the Regulations of Connecticut State Agencies, which establish a procedure for awarding all contracts covered by Sections 4a-60 and 46a-71(d) of the Connecticut General Statutes.

According to Section 46a-68j-30(9) of the Contract Compliance Regulations, every agency awarding a contract subject to the contract compliance requirements has an obligation to “aggressively solicit the participation of legitimate minority business enterprises as bidders, contractors, subcontractors and suppliers of materials.” “Minority business enterprise” is defined in Section 4a-60 of the Connecticut General Statutes as a small contractor or supplier of materials fifty-one percent or more of the capital stock or assets of which is owned by a person or persons: (1) Who are active in the daily affairs of the enterprise; (2) who have the power to direct the management and policies of the enterprise; and (3) who are members of a minority, as such term is defined in subsection (a) of Section 32-9n.” “Minority” groups are defined in Section 32-9n of the Connecticut General Statutes as “(1) Black Americans . . . (2) Hispanic Americans . . . (3) persons who have origins in the Iberian Peninsula . . . (4) Women . . . (5) Asian Pacific Americans and Pacific Islanders; or (6) American Indians . . .” An individual with a disability is also a minority business enterprise as provided by Section 4a-60g of the Connecticut General Statutes. The above definitions apply to the contract compliance requirements by virtue of Section 46a-68j-21(11) of the Contract Compliance Regulations.

The awarding agency will consider the following factors when reviewing the bidder’s qualifications under the contract compliance requirements:

- (a) the bidder’s success in implementing an affirmative action plan;
- (b) the bidder’s success in developing an apprenticeship program complying with Sections 46a-68-1 to 46a-68-17 of the Administrative Regulations of Connecticut State Agencies, inclusive;
- (c) the bidder’s promise to develop and implement a successful affirmative action plan;
- (d) the bidder’s submission of employment statistics contained in the “Employment Information Form”, indicating that the composition of its workforce is at or near parity when compared to the racial and sexual composition of the workforce in the relevant labor market area; and (e) the bidder’s promise to set aside a portion of the contract for legitimate minority business enterprises. See Section 46a-68j-30(10)(E) of the Contract Compliance Regulations.

\* The Commission on Human Rights and Opportunities (CHRO) “Employment Information Form” shall be submitted to CT DAS Procurement Services on behalf of the awarding agency, the Department of Construction Services (CT DCS).

**Section 2) Non-Discrimination and other Contract Compliance Requirements**

Pursuant to CONN. GEN. STAT. § 4a-60 and §4a-60a and, the Regulations of Connecticut State Agencies Sections 46a-68j-21 to 46a-68j-43, a contractor agrees to the following:

- 1) Not to discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, sexual orientation, mental retardation, or physical disability including, but not limited to, blindness (unless it is shown that such disability prevents performance of the work involved) in the performance of a contract, in any manner prohibited by the federal and Connecticut anti-discrimination and contract compliance laws;
- 2) To undertake affirmative action which will insure that applicants with job-related qualifications are employed and that employees are treated, when employed, without regard to whether they belong to any of the groups identified in Paragraph # 1) above;
- 3) To include a statement that the contractor is an "affirmative action-equal opportunity employer", in all solicitations or advertisements for employees placed by or on behalf of the contractor;
- 4) To provide each labor union or representative of workers with which such contractor has a collective bargaining agreement and each vendor with which such contractor has a contract, a notice advising them of the contractor's commitments under CONN. GEN. STAT. § 4a-60 and §4a-60a. The notice is available by contacting the Commission on Human Rights and Opportunities (the Commission);
- 5) To post copies of the notice referred to in item 4) in conspicuous places available to employees and applicants;
- 6) To provide the Commission with such information requested by said agency, permit access to pertinent books, records, and accounts, concerning the employment practices and procedures of the contractor as relate to the provisions of CONN. GEN. STAT. § 4a-60, §4a-60a and § 46a-56 and, cooperate fully with the Commission; and,
- 7) To include the language of CONN. GEN. STAT. § 4a-60 (a) and §4a-60a (a) in every subcontract or purchase order executed to fulfill any obligation of the contract with CT DCS.

**Section 3) Affirmative Action Requirements for Certain Public Works Contracts for Construction**

Pursuant to CONN.GEN. STAT. § 46a-68c and §46a-68d and, the Regulations of Connecticut State Agencies Sections 46a-68j-21 to 46a-68j-29, the following must file an affirmative action plan with the Commission:

- 1) A successful bidder on a public works contract<sup>1</sup> with a value of \$500,000 or more. The plan must be filed within thirty (30) days after a bid has been accepted by an awarding agency but before a contract is awarded. A plan may be filed in advance of or, at the same time as a bid is submitted.
- 2) A contractor with fifty (50) or more employees who has been awarded a public works contract in excess of \$50,000 in any fiscal year. A plan must be filed within thirty (30) days of the date a contract is awarded.

The Commission must review a plan within sixty (60) days of receipt and must either approve or reject a plan. Should the Commission approve an affirmative action plan, the Commission will issue a certificate of compliance. This certificate of compliance shall be proof of a successful bidder's or a contractor's eligibility to bid or be awarded contracts for a period of two (2) years from the date of the certificate. This certificate does not excuse a successful bidder or contractor from being monitored by the Commission for implementation of its affirmative action plan or, from its reporting requirements under CONN. GEN. STAT. § 46a-68e and § 46a-68f. (Refer to Section 6) Also, the Commission may revoke the certificate if a successful bidder or contractor does not implement its affirmative action plan.

Should the Commission opt to disapprove an affirmative action plan, the Commission must notify the successful bidder or contractor in writing within ten (10) days of the disapproval. The notice will state the reason for disapproval and may provide necessary proposals to bring the plan into compliance. The successful bidder or contractor must then submit a new or amended plan, within thirty (30) days of the date the notice of disapproval is mailed by the Commission.

In addition, the Commission may conditionally approve an affirmative action plan for a successful bidder on a public works contract valued at \$500,000 or more. The Commission must notify the successful bidder in writing within ten (10) days of the conditional disapproval and state the reason for conditional approval and, may provide necessary proposals to bring the plan into compliance. The successful bidder must then submit a new or amended plan or, provide written assurances that it will amend its plan to conform to affirmative action requirements, within thirty (30) days of the date the notice is mailed by the Commission.

The awarding agency (CT DCS) will provide a successful bidder or contractor with a copy of the Commission's Affirmative Action Plan format. All sections of this Affirmative Action Plan format must be completed by the successful bidder or contractor and forwarded to the Commission. Also, the awarding agency (CT DCS) shall withhold 2% of the total contract price per month from any payment made to a contractor until such time as the contractor has developed an affirmative action plan, which has been approved by the Commission.

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<sup>1</sup> According to CONN. GEN. STAT. § 46a-68b, a "public works contract" means any agreement between any individual, firm or corporation and the state or any political subdivision of the state other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the state, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

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**Section 4) “Good Faith Efforts” to Include Minority Business Enterprises as Subcontractors**

In addition to, or in the absence of, any other subcontractor requirements included in this project, contractors are required to make “good faith efforts” to include minority business enterprises in the work of this project as subcontractors (for services and/or material suppliers). For purpose of identifying minority business enterprises, a minority business enterprise shall be a subcontractor which has a valid certification as such from the Department of Administrative Services (DAS) and/or a subcontractor for which an affidavit has been submitted by the contractor attesting that the subcontractor named as a minority business enterprise meets the minority business enterprise criteria set out in CONN. GEN. STAT. § 4a-60(b).

For purposes of identifying a minority business enterprise who is not certified by DAS, and in order to recognize the contractor’s “good faith efforts” to include minority business enterprises in the work of the project, a contractor who becomes the apparent low bidder will be requested by the awarding agency (CT DCS) to submit an Affidavit for Certification of Subcontractors as Minority Business Enterprises (MBE), prior to the award of a contract. For purposes of identifying any small contractor and/or minority business enterprise which will participate on the project as a “set-aside” subcontractor, only a subcontractor which has a valid certification issued by DAS shall be acceptable.

“Good faith effort” means “that **degree of diligence** which a reasonable person would exercise in the performance of legal duties and obligations” and *includes*, but is not limited to, the following **factors**: the contractor’s employment and subcontracting policies and practices; affirmative advertising, recruitment, training, technical assistance activities and such other reasonable activities or efforts as the Commission may recommend to ensure the participation of minority business enterprises in state projects.

This contract may be subject to the provisions the Set-Aside Program for Small Contractors found at CONN. GEN. STAT. § 4a-60g and may be awarded only to a contractor certified as a small and/or minority business enterprise by DAS. The notification as to this special provision will be found in the Invitation to Bid for this contract. The listing of eligible “Set-Aside” contractors is found on DAS’ web site. ([www.das.state.ct.us/purchase/setaside/index.html](http://www.das.state.ct.us/purchase/setaside/index.html)) In the event that the Set-Aside Program for Small Contractors applies to this contract, the following special provisions will also apply:

**5.1 Amount of Work Required to Be Done by “Set-Aside” Contractors**

A contractor awarded a contract on a project pursuant to the provisions of CONN. GEN. STAT. § 4a-60g shall be required to perform not less than fifteen (15) per cent of the work with his/her own forces and shall ensure that not less than twenty five (25) per cent of the work be performed by contractors or subcontractors who are certified as small contractors or minority business enterprises pursuant to CONN. GEN. STAT. § 4a-60g.

The primary product/service performed by contractors working on a contract awarded under CONN. GEN. STAT. § 4a-60g must be the same as the primary product/service described for the contractors on their “Certificate of Eligibility” which is provided to them by DAS.

**5.2 Alternate Bonding Available to “Set Aside” Contractors**

In lieu of a performance, bid, labor and materials or other required bond, a contractor or subcontractor awarded a contract under CONN. GEN. STAT. § 4a-60g may provide to the awarding authority (CT DCS) and the awarding authority shall accept a “Letter of Credit”. Any such “Letter of Credit” shall be in an amount equal to ten (10) per cent of the contract for any contract that is less than one hundred thousand (\$100,000) dollars, and in the amount of twenty-five (25) per cent for any contract that is one hundred thousand (\$100,000) dollars or more.

**5.3 Procedures to Follow Regarding Substitution of Named Project “Set-Aside” Subcontractors** The awarding authority (CT DCS) may also require the contractor to set aside a portion of the contract for subcontractors who are eligible for set aside contracts. The awarding authority shall not permit substitution of a subcontractor for one named in accordance with the provisions of CONN. GEN. STAT. § 4b-95 or substitution of a subcontractor for any designated sub-trade work bid to be performed by the contractor’s own forces, except for good cause.

Pursuant to CONN. GEN. STAT. § 4b-95, the term “good cause” includes but is not limited to a subcontractor’s or, where appropriate, a general contractor’s:

- 1) Death or physical disability, if the listed subcontractor is an individual;
- 2) Dissolution, if a corporation or partnership;
- 3) Bankruptcy;
- 4) Inability to furnish any performance and payment bond shown on the bid form;
- 5) Inability to obtain, or loss of, a license necessary for the performance of the particular category of work;
- 6) Failure or inability to comply with a requirement of law applicable to contractors and subcontractors, or to subcontracts for construction, alteration, or repair projects;
- 7) Failure to perform his/her agreement to execute a subcontract under CONN. GEN. STAT. § 4b-96.

Any general contractor who violates any provision of CONN. GEN. STAT. § 4b-95 shall be disqualified from bidding on other contracts that are subject to the provisions of Chapter 60 (Construction and Alterations of State Buildings) of the Connecticut General Statutes, for a period not to exceed twenty-four (24) months, commencing from the date on which the violation is discovered, for each violation.

### Section 6) Contract Monitoring and Reporting

The Commission has the authority to monitor state contractor pursuant to CONN. GEN. STAT. § 46a-68e and 46a-68f and Section 46a-68j-23(3) of the Administrative Regulations of Connecticut State Agencies. In addition, under Sections 46a-68j-25(e) and 46a-68j-26 (g) of the Administrative Regulations of Connecticut State Agencies, the Commission has the authority to monitor the implementation of an affirmative action plan regarding: a) a successful bidder who has been awarded a public works contract valued at \$500,000 or more and, b) a contractor with fifty (50) or more employees who has been awarded a public works contract in excess of \$50,000 in any fiscal year. In order to monitor the implementation of these plans, the Commission requires that the following contract monitoring reports be compiled and submitted:

- 1) Quarterly Small Contractor and Minority Business Enterprise Payment Status Report (form chro: cc-258). A contractor is required to report on the participation of small contractors or minority business enterprises identified to participate on the project. The report must be submitted to the contract awarding agency (CT DCS) and to the Commission by the 15<sup>th</sup> day following the end of each calendar quarter during the term of the on-site construction work of the project.

**Website page:** [http://www.state.ct.us/chro/metapages/ContractCompliance/CC\\_forms/CHRO-CC-258.pdf](http://www.state.ct.us/chro/metapages/ContractCompliance/CC_forms/CHRO-CC-258.pdf)

- 2) Monthly Employment Utilization Report (form chro: cc-257). A contractor, on behalf of itself and all subcontractors who perform work on the project during a given month, is required to report on the work hour participation of minority male and female workers in each trade category on the project. The report must be submitted to the contract awarding agency (CT DCS) and to the Commission by the 15<sup>th</sup> day following the end of each calendar month during the term of the on-site construction work of the project.

**Website page:** [http://www.state.ct.us/chro/metapages/ContractCompliance/CC\\_forms/monthlyemployutil257.pdf](http://www.state.ct.us/chro/metapages/ContractCompliance/CC_forms/monthlyemployutil257.pdf)

In addition, the Commission expects that a contractor will designate an Equal Opportunity/Contract Compliance Officer for its public works project who will compile the above quarterly and monthly reports, as well as, undertake the following responsibilities for implementation of its project Affirmative Action Plan (AAP):

- 1) Maintain a project Equal Employment Opportunity (EEO) file to include all records, correspondence and other documentation relate to the project AAP.
- 2) Communicate to and inform all project subcontractors, regardless of tier, and labor referral organizations (if applicable) about project equal employment and AAP commitments and performance requirements.
- 3) Participate in project job meetings to inform project subcontractors about project equal employment and AAP performance requirements.
- 4) Track the use of employment recruitment sources identified in the project AAP regarding all employment opportunities with all subcontractors on the project. Also, maintain documentation of all contacts with these recruitment sources and their responses.

The Commission will forward a copy of the quarterly and monthly report to each contractor on a public works project.

**NOTE: Bidders and state contractors may review the full text of the before referenced Connecticut General Statutes by accessing either the State Law Library's web site (<http://www.cslib.org/statutes/index.htm>) or, the State Legislatures' web site (<http://prdbasis.cga.state.ct.us/BASIS/TSPBKCP/LIN1/PUB/MSF>).**

The full text of the Regulations of Connecticut State Agencies Sections 46a-68j-21 through 46a-68j-43 may be reviewed by accessing the Commission's web site (<http://www.state.ct.us/chro/>) In the alternative, bidders or state contractors may request a copy of these state statutes and regulations by contacting the Commission at (860) 541-3400 (in Hartford) or 1 (800) 477-5737.

Commission on Human Rights and Opportunities Contract Compliance Unit 21 Grand Street Hartford, CT 06106		1. MONTHLY EMPLOYMENT UTILIZATION REPORT (FORM CHRO cc-257)		PROJECT AREA (MSA): 2. EMPLOYERS FEIN NO.:		3. PROJECT AAP GOALS MINORITY: _____ FEMALE: _____		4. REPORTING PERIOD FROM: _____ TO: _____						
PROJECT NAME: CONTRACT NUMBER:		NAME AND LOCATION OF CONTRACTOR (submitting report):				STATE AWARDDING AGENCY:								
5.	CONSTRUCTION TRADE (please identify)	CLASSIFICATION	6. WORK HOURS OF TRADE WORKERS EMPLOYED ON PROJECT						7.	8.	9.		10.	
			a. TOTAL HOURS BY TRADE		b. BLACK (incl of Hispanic Origin)		c. HISPANIC				d. ASIAN OR PACIFIC ISLANDERS		e. AMERICAN INDIAN OR ALASKAN NATIVE	
		Journey Worker Apprentice Trainee SUB-TOTAL	M	F	M	F	M	F	M	F	M	F	M	F
		Journey Worker Apprentice Trainee SUB-TOTAL												
		Journey Worker Apprentice Trainee SUB-TOTAL												
		Journey Worker Apprentice Trainee SUB-TOTAL												
TOTAL JOURNEY WORKERS														
TOTAL APPRENTICES														
TOTAL TRAINEES														
GRAND TOTAL														
11. COMPANY OFFICIAL'S SIGNATURE AND TITLE				12. TELEPHONE NUMBER (including area code)				13. DATE SIGNED				PAGE _____ OF _____		

Addenda # A

Form CHRO cc-257

QUARTERLY SMALL CONTRACTOR AND  
MINORITY BUSINESS ENTERPRISE  
PAYMENT STATUS REPORT

Quarter Ending \_\_\_\_\_

- 1) General Contractor Name
- 2) State Contract Number
- 3) State Contract Award Agency
- 4) Project Name
- 5) Estimated Completion Date \_\_\_\_\_
- 6) Project Value  
(Include all change orders)
- 7) Percent Completed to Date \_\_\_\_\_
- 8) Listing of all small contractors and minority business enterprise contractors on the project to comply with contractual small business set aside provisions:

Company Name	Total Contract Amount (Include all change orders)	Total Monies Paid to Date
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Signature of Company Official \_\_\_\_\_

Date of Report \_\_\_\_\_

Copy: 1) Contract Awarding Agency  
2) Commission on Human Rights & Opportunities:  
21 Grand Street, Hartford, CT 06106

Addenda # B

CHRO cc-258