

Regulations of Connecticut State Agencies

TITLE 32. Commerce and Economic and Community Development

Agency

Department of Economic Development

Subject

Small Contractors' Set Aside Program

Inclusive Sections

§§ 32-9f-1—32-9f-10a

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Small Contractors' Set Aside Program

Sec. 32-9f-1. Repealed

Repealed August 24, 1984.

Sec. 32-9f-1a. Definitions

“Commissioner” shall mean the Commissioner of the Department of Economic Development.

“Department” shall mean the Department of Economic Development.

“Authority” shall mean the Connecticut Development Authority.

“Set Aside” contracts means State Funded contracts or portions thereof, or purchase requests, for which competitive bids are to be sought by a State Agency only from eligible Contractors. Set Aside contracts also includes contracts for which competitive bids are not required by the General Statutes and which are let only to eligible Small Contractors. Any of the aforementioned contracts shall not be designated as Set Aside contracts if such designation would result in conflict with any federal Law or Regulation.

“Loan” shall mean a working capital loan.

“Working Capital” shall mean the cost related to material and labor.

(Effective June 21, 1988)

Sec. 32-9f-2. Repealed

Repealed August 24, 1984.

Sec. 32-9f-2a. Application for eligibility

(a) Small Contractors wishing to participate in the Set Aside Program must be certified as eligible by the Department.

(b) Applications for eligibility shall be submitted to the Department on forms provided by the Department. No application shall be considered unless the exhibits required by such forms accompany the application. Enterprises which are more than 51% minority owned may apply for certification as a MBE by providing substantiation of such minority ownership and providing the names and addresses of the owners of such enterprises on a form provided by the Department.

(c) The Department shall issue a Certificate of Eligibility stating the period of eligibility, as defined below, and any qualifications or conditions required by Law or Regulation.

(d) Upon issuance of a Certificate of Eligibility, the Department shall give notice of such certification to each State Agency.

(e) Each Certificate of Eligibility shall be valid only for the eligible Small Contractor's current fiscal year, and each Small Contractor shall be subject to recertification of Eligibility by the Department for each succeeding fiscal year.

(f) The Department shall rescind the Certificate of Eligibility of any Small Contractor found to have obtained the Certificate Eligibility through the use of false information or

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misrepresentation, and the Department shall report such action to the appropriate State's Attorney.

(Effective August 24, 1984)

Sec. 32-9f-3. Repealed

Repealed August 24, 1984.

Sec. 32-9f-3a. Criteria for approval

(a) Set Aside contracts shall be solicited as "Small Contractors Set Aside Contracts."

(b) In addition to other statutory requirements with respect to bid solicitation, Set Aside contracts shall be advertised in newspapers that are likely to be read by Small Contractors and minorities. The advertisements shall be placed by the State Agency responsible for letting the contract.

(c) A Set Aside contract bid shall not be accepted by any State Agency if it is more than ten percent above the price which could be anticipated in general bidding, based on staff analysis prior to going to bid. The staff analysis shall be made part of the award recommendation.

(d) No minimum number of certified vendor bids shall be required for award consideration of Set Aside contracts.

(e) A Set Aside contract shall be awarded by the State Agency that solicited it in accordance with Section 32-9e of the General Statutes, other applicable statutes, these regulations and the normal practices and procedures of the State Agency.

(f) Each Agency shall submit to the Department its procedures for competitive bidding based on Section 32-9e of the Connecticut General Statutes as amended by Section 1 of Public Act 83-390 and Section 7 of Public Act 84-412. The Commissioner shall review said procedures and determine if such procedures are in compliance of said section and regulations adopted pursuant thereto. Upon determination by the Commissioner that said procedures are in compliance with said statute and regulations, the Commissioner shall provide written approval of said procedures.

(g) Payment to Small Contractors under Set Aside contracts shall be made as stipulated by each State Agency for its standard contracts, but in no case shall payment be made later than thirty days after performance of the contract.

(h) Each State Agency shall submit to the Commissioner, by the tenth day of each month, a list of Set Aside contracts awarded, including personal services contracts, during the preceding month. The list shall include the names and addresses of the Small Contractors and the dollar value of the awards.

(Effective August 24, 1984)

Sec. 32-9f-4—32-9f-5. Repealed

Repealed August 24, 1984.

Minority Contractors Loan

Sec. 32-9f-4a. Eligibility for the minority business enterprise loan program

To be eligible for a loan, a small contractor must be defined as a Minority Business Enterprise and:

- (a) Must have been engaged in a construction, manufacturing or service business and maintained its principal office and place of business in Connecticut for a period of not less than one year.
- (b) Must have gross revenues not in excess of \$3,000,000 in its most recently completed fiscal year.
- (c) Must have been selected as the lowest responsible bidder of a state set-aside contract.

(Effective June 21, 1988)

Sec. 32-9f-5a. Loan application and commitment agreement

(a) Application for a working capital loan shall be submitted on Department of Economic Development loan application form. No application shall be considered unless the exhibits required are furnished.

(b) Upon approval of an application by the Authority or, if, the Authority so determines, by a committee of the Authority, the Department and the borrower shall enter into a loan agreement which shall set forth the terms and conditions required by these regulations and other terms and conditions applicable to the particular loan, which may be set by the Authority or said committee of the Authority.

(c) Each loan agreement shall be effective only upon execution by the Commissioner and the borrower.

(d) Such loan agreement shall provide, without limitation, that the borrower agrees:

(1) That the funds provided will not be used to repay existing debt or to finance receivables;

(2) To provide the Department with such financial and other reports as the Commissioner, in his discretion, may require from time to time;

(3) To notify the Department promptly of any material adverse change in the financial condition or business prospects of the borrower;

(4) To provide such security for the loan as the Authority or the committee of the Authority may require pursuant to Section 32-9f-6a of these Regulations and to execute and deliver all documents in connection therewith;

(5) To the extent the loan is secured by a contract or contracts, to:

(A) Notify the Department of the modification of any provision of a contract which is security for the loan when said modification affects the total amount due under the contract affects the time or manner of payment, or in any other way substantially affects the contract or the manner of performance of said contract;

(B) Notify the Department of the termination of any part of a contract or the termination of the entire contract by any party to the contract;

(C) Notify the Department of the failure of either party to a contract to perform any of

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its obligations under the contract;

(D) Notify the Department of the rejection of any material or article delivered in the performance of a contract;

(E) Use the funds advanced only to pay for labor and material, on the pledged contract;

(e) The Authority or the committee may cause an application to be denied based upon examination of the application, supporting information or results of any investigation.

(Effective June 21, 1988)

Sec. 32-9f-6a. Loans

(a) The loan must be secured by assignment of specific contract and personal guarantee of borrower and any other security deemed appropriate by the Commissioner.

(b) The terms of a working capital loan shall not exceed one year from the date of the first disbursement made under the loan.

(c) No loan shall exceed \$10,000 and (shall in no event exceed the amount estimated to cover labor and material costs of the contract). If the loan is to be secured, the amount of the loan shall not exceed the value of the security provided pursuant to Section 32-9f-6a of these regulations.

(d) A small contractor must not have used the set-aside loan program fund for more than three state contracts.

(e) The Commissioner shall determine whether the loan is to be repaid in periodic payments or in a single payment of interest and a single payment of principal.

(f) The loan shall be made at the discretion of the Commissioner in accordance with the provisions of the loan agreement and the instructions of the Authority.

(Effective June 21, 1988)

Sec. 32-9f-7a. Note

(a) Each loan shall be evidenced by a promissory note which shall contain a provision permitting the borrower to prepay the loan in whole or in part upon any interest payment date without penalty.

(b) The promissory note shall provide for the payment of interest at a rate not to exceed 1% above the interest paid by the State of Connecticut on the latest general obligation issued prior to the date of the loan closing.

(c) The promissory note may provide for the collection of a late charge, not to exceed 2% percent of any installment more than fifteen days in arrears. Late charges shall be separately charged to and collected from the borrower.

(d) The failure of the borrower to abide by the terms of the loan agreement, the promissory note, or other documents signed by the borrower in connection with such loan shall be considered in default under such promissory note.

(e) The promissory note shall contain a provision that the failure of the borrower to make a full payment of any principal or interest due under the promissory note within fifteen days from the due date shall constitute a default.

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(f) The promissory note shall provide that upon default, any and all sums owing by the borrower under the promissory note shall, at the option of the Commissioner, become immediately due and payable.

(g) The promissory note shall provide that in the event of default, interest on the promissory note shall automatically increase to twelve percent per annum and shall apply not only after default, but after any judgment rendered upon said promissory note.

(h) The promissory note shall provide for payment of reasonable attorney's fees and legal costs in the event the borrower shall default in the payment of the note.

(i) The promissory note shall contain such other clauses and covenants as the Commissioner, in its discretion, may require.

(j) Upon default the contractor will be ineligible to apply for funds under any other Department of Economic Development or the Connecticut Development Authority loan programs.

(k) Any borrower may have only one loan outstanding at a time.

(Effective June 21, 1988)

Sec. 32-9f-8a. Disbursement and use of proceeds

(a) Disbursement of the loan shall be made at the discretion of the Commissioner in accordance with the provisions of the commitment and the instructions of the Authority.

(b) Loan proceeds shall be used only to pay for labor and material, and equipment rental on specific contracts. The loan proceeds, for example, may not be used to repay existing obligations, purchase fixed assets or to finance receivables.

(Effective June 21, 1988)

Sec. 32-9f-9a. Loan agreement

The borrower shall enter into a loan agreement with the State of Connecticut wherein the borrower shall agree:

(1) To notify the Commissioner of the modification of any provision of the contract which is the basis for the loan when said modification affects the total amount due under the contract, affects the time or manner payment or any other modification which shall substantially affect contract or the manner or performance of said contract;

(2) To notify the Commissioner of the termination of any part of the contract or the termination of the entire contract by any party to the contract;

(3) To notify the Commissioner of the failure of either party to the contract to perform any of its obligations under the contract;

(4) To notify the Commissioner of the rejection of any material or article delivered in the performance of the contract;

(5) To make periodic progress reports at such time and in such manner as the Commissioner, in his discretion, shall require;

(6) That he will not take on or enter into any additional contracts without the prior written approval of the Commissioner;

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(7) That the funds advanced shall be used only to pay for labor and material on a specific contract;

(8) To represent and warrant that it has the power and authority to enter into the loan agreement and to incur the obligations therein provided for, and that all documents and agreements executed and delivered in connection with the loan will be valid and binding upon the borrower in accordance with their respective terms.

(Effective June 21, 1988)

Sec. 32-9f-10a. Place of performance of contract

The place of performance of a contract pledged as security must be within the State of Connecticut.

(Effective June 21, 1988)