SELF-PERFORMING MBEs MUST DEMONSTRATE GOOD FAITH EFFORTS TO EMPLOY OTHER MBEs AS SUBCONTRACTORS AND SUPPLIERS OF MATERIALS.

Several features of contracting practices law point toward expecting self-performing minority business enterprises (MBE)[1] to follow the same rules that apply to other contractors. In the case of a minority contractor who self-performs, simply being an MBE would often be enough to comply with the law. All the contractor would need to do would be to "perform not less than thirty per cent of the work with the workforces of such contractor" and make sure "that not less than fifty per cent of the work be performed by contractors or subcontractors eligible for awards under" CONN. GEN. STAT. § 4a-60g(e).

Normally when goals are met we don't look behind that and address good faith efforts. By meeting goals we assume the contractor's efforts were good enough--that goal attainment speaks for itself. There are exceptions to this rule of course. We will consider good faith efforts despite goal attainment where we suspect a contractor was deceiving us, such as the company used was a sham or a contractor was not actually soliciting the entities it claimed to have solicited. A situation where an MBE self-performs presents another special circumstance where an inquiry into good faith efforts can be made. While no statute directly says as much, language in several statutes indirectly leads to this conclusion.

As an administrative agency, the CHRO doesn't make law. We apply or enforce the law we're given by the legislature. "In areas where the legislature has spoken...the primary responsibility for formulating public policy must remain with the legislature". (Citation and internal quotation marks omitted.) Mayer v. Historic District Commission,

[1] References to MBE include ethnic minority-owned businesses, women owned businesses and businesses owned by individuals with disabilities.

325 Conn. 765, 780 (2017). That policy resides in statutes. Thibodeau v. Design Group One Architects, LLC, 260 Conn. 691, 720 (2002).

In CONN. GEN. STAT. § 4a-60g(b) the legislature included an explanation for the set-aside program:

> It is found and determined that there is a serious need to help small contractors, minority business enterprises, nonprofit organizations and individuals with disabilities to be considered for and awarded state contracts for the purchase of goods and services, public works contracts, municipal public works contracts and contracts for quasi-public agency projects. Accordingly, the necessity of awarding such contracts in compliance with the provisions of this section, sections 4a-60h to 4a-60j, inclusive, and sections 32-9i to 32-9p, inclusive, for advancement of the public benefit and good, is declared as a matter of legislative determination.

The legislature intended the set-aside program to have a broad reach. It considered the lack of MBE participation to be "serious", and made compliance a "necessity" that would lead to a "public benefit and good". One way to achieve that purpose is to help as many MBEs as possible and not to confine the program's benefits to a few beneficiaries.

Some of this philosophy carries over into CONN. GEN. STAT. § 4a-60. CONN. GEN. STAT. § 4a-60(b) requires contractors to "make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works or quasi-public agency project." Good faith efforts are not optional; the contractor "agrees and warrants" to make these efforts. Nothing here or elsewhere excludes MBEs, WBEs or DisBEs from the good faith requirement, and the CHRO can't read in an exception that the legislature did not think right to provide by word or implication. Caulkins v. Petrillo, 200 Conn. 713, 719 (1986).

Further, as a remedial statute, any exception would have to be read narrowly. Fairchild Heights, Inc. v. Dickal, 305 Conn. 488, 502 (2012). Statutes under the CHRO's

jurisdiction are remedial. Thames Talent, Ltd. v. CHRO, 265 Conn. 127, 138 (2003); CHRO v. Sullivan Associates, 250 Conn. 763, 782 (1999) (CT's housing statute). "The principles of statutory construction direct us to construe remedial statutes 'liberally in order to effectuate the legislature's intent.'" (Citations omitted.) Id.

Among other things, CONN. GEN. STAT. § 4a-60(f) defines "good faith efforts" to include the "contractor's employment and subcontracting policies, patterns and practices". Although the subsection (f) indicia of good faith are not exclusive, it would be anomalous to find a self-performing contractor satisfied its statutory responsibility to "make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials" when the contractor has in fact made no such efforts. Statutes are interpreted to produce a sensible result. Curry v. Alan S. Goodman, Inc., 286 Conn. 390, 412-13 (2008).

In the absence of clear statutory language, the best interpretation here is that CONN. GEN. STAT. § 4a-60 holds every contractor to the same obligation to employ MBEs as subcontractors and suppliers of materials and that the CHRO, in evaluating a contractor's good faith efforts, will consider a contractor's subcontracting policies, patterns and practices regardless of the contractor's MBE status. The lack of an exemption for MBEs and the legislature's expansive notions about the scope of the set-aside program both point in this direction.