

Annual Report to the Connecticut General Assembly



Contract Compliance and Small and Minority Owned Business Utilization

FY 2021

Introduction

The Commission on Human Rights and Opportunities (Commission) is the State of Connecticut's chief civil rights law enforcement agency. The Commission is responsible for reviewing, monitoring, and enforcing the state's equal opportunity, affirmative action, and contract compliance laws. In addition, pursuant to Conn. Gen. Stat. § 46a-56(a)(6), the Commission must "compile data concerning state contracts with female and minority business enterprises and submit a report annually to the General Assembly concerning the employment of such business enterprises as contractors and subcontractors."

Agencies and political subdivisions of the state are responsible for the execution of several state laws that require the implementation of affirmative procurement programs. These laws – the Contract Compliance Law (CONN. GEN. STAT. § 4a-60, "Contract Compliance Law"), and the Set-Aside Program for Small and Minority Owned Businesses, Individuals with a Disability and Nonprofit Corporations Law, (CONN. GEN. STAT. § 4a-60g, "Set-Aside Program") – require state agencies and political subdivisions to:

- Exert "good faith efforts" to aggressively solicit the participation of contractors in protected classes;
- Assure that contractors, through their actions, have exhibited "good faith efforts" to include protected classes as contractors and subcontractors and suppliers of materials;
- Establish and implement within the agency a contract set-aside program for small contractors and minority business enterprises; and
- Submit a report establishing small and minority business set-aside program goals for each fiscal year to the Commission, Department of Administrative Services (DAS) and co-chairs and ranking members of certain committees of the General Assembly.

The Contract Compliance Law and the Set-Aside Program were enacted to help provide economic development and to ensure that small and minority-owned businesses enter into the mainstream of economic commerce.

This report by the Commission is submitted to the General Assembly as an overview of the participation of small and minority-owned businesses for fiscal year 2019/20 (July 1, 2019 to June 30, 2020).

Scope of Governing Laws

Contract Compliance Law

Pursuant to CONN. GEN. STAT. 4a-60, the purpose of the Contract Compliance Law is to ensure nondiscrimination and affirmative action provisions are included in all contracts of the state and political subdivisions. Contractors signing these contracts must agree 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, gender identity or expression, status as a veteran, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such contractor that such disability prevents performance of the work involved. Pursuant to CONN. GEN. STAT. § 4a-60a, contractors must also agree to not discriminate or permit discrimination against any individual or group of persons on the grounds of sexual orientation.

Contractors must also agree to take affirmative action to ensure that applicants with job-related qualifications are employed and that employees are treated fairly without regard to their protected class status.

All solicitations or advertisements for employees placed by or on behalf of contractors must state that they are an “affirmative action-equal opportunity employer” in accordance with regulations adopted by the Commission. When dealing with labor

unions, vendors or representatives of workers under a collective bargaining agreement, contractors must provide a notice provided by the Commission advising the labor union or workers' representative of the contractor's commitments not to discriminate and they must post copies of that notice in conspicuous places available to employees and applicants for employment.

Contractors must also agree to provide the Commission with such information that is requested and to have access to pertinent books, records and accounts concerning the employment practices and procedures of the contractor as they relate to the Contract Compliance Law.

Contractors under a public works contract, municipal public works contract, or contract for a quasi-public agency project must agree to make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such projects.

If the contractor has one or more contracts with an awarding agency or if they are party to a municipal public works contract or contract for a quasi-public agency projects, they must provide the Commission with a certification of nondiscrimination.

Set-Aside Program for Small Contractors

Pursuant to CONN. GEN. STAT. § 4a-60g, the Set-Aside Program was established to help small contractors, minority business enterprises, nonprofit organizations and individuals with disabilities be considered for and awarded state contractors for the purchase of goods and services, public works contracts, municipal public works contracts and contracts for quasi-public agency projects in order to advance the public benefit and good.

A "Small Business Enterprise" (SBE) is one that maintains its principal place of business in Connecticut, has gross revenue not exceeding fifteen million dollars in the

most recently completed fiscal year, and is independent. A "Minority Business Enterprise" (MBE) is defined as any small contractor or nonprofit corporation fifty-one percent or more of whose capital stock or assets are owned by a person or persons who exercise operation authority over the daily affairs of the enterprise, have the power to direct the management and policies of the enterprise, possess managerial and technical competence directly related to the principal business activities of the enterprise and are members of a minority, individuals with a disability, or women. Determination and certification of SBEs and MBEs is done by DAS.

The Set-Aside Program requires awarding agencies, awarding quasi-public agencies, and awarding municipalities to establish a set-aside goal of at least twenty-five percent of the total value of all public contracts in a fiscal year for SBEs. Twenty-five percent of that set-aside portion must further be set aside for MBEs. Public works contracts awarded by agencies that are valued at less than ten thousand dollars are exempt from the set-aside provisions. State-funded contracts awarded by municipalities or quasi-public agencies valued at less than fifty thousand dollars are exempt from the set-aside provisions. The head of each awarding agency must notify the Commissioner of Administrative Services of all non-exempt contracts to be set aside at the time that bid documents are made available to potential contractors.

Each awarding agency must prepare a status report on the implementation and results of its set-aside program goals on a quarterly basis and submit these reports to the Commissioner of DAS and the Commission. Pursuant to CONN. GEN. STAT. § 46a-68c, contractors need to file affirmative action plans with the Commission if they have fifty or more employees and are awarded a contract for a project valued in excess of fifty thousand dollars in any fiscal year.

Findings and Observations

Procurement Reporting and Calculation

Pursuant to CONN. GEN. STAT. § 4a-60g, each state agency is required to prepare a report establishing an annual contracting/purchasing goal for SBEs and MBEs for each fiscal year (July 1 – June 30). This information is to be provided on a quarterly basis and is reported on a form provided by the Commission entitled, "Small/Minority Business Enterprise Quarterly Report ("Quarterly Report"). Information regarding expenditures for purchases and contracts for DAS certified MBEs is captured on the form that indicates the total value of contracts or purchases awarded to individuals identifying in the following categories pursuant to CONN. GEN. STAT. § 32-9n:

- (1) Black Americans, including all persons having origins in any of the Black African racial groups not of Hispanic origin;
- (2) Hispanic Americans, including all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;
- (3) all persons having origins in the Iberian Peninsula, including Portugal, regardless of race;
- (4) women;
- (5) Asian Pacific Americans and Pacific islanders; or
- (6) American Indians and persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

This data is collected by the Commission and put into a report indicating the agency's SBE and MBE yearly goals and the total reported SBE and MBE utilization in each quarter. Information is reported and collected where it is available. Not all agencies report

their SBE and MBE procurement practices to the Commission and the information submitted is not verified by the Commission.

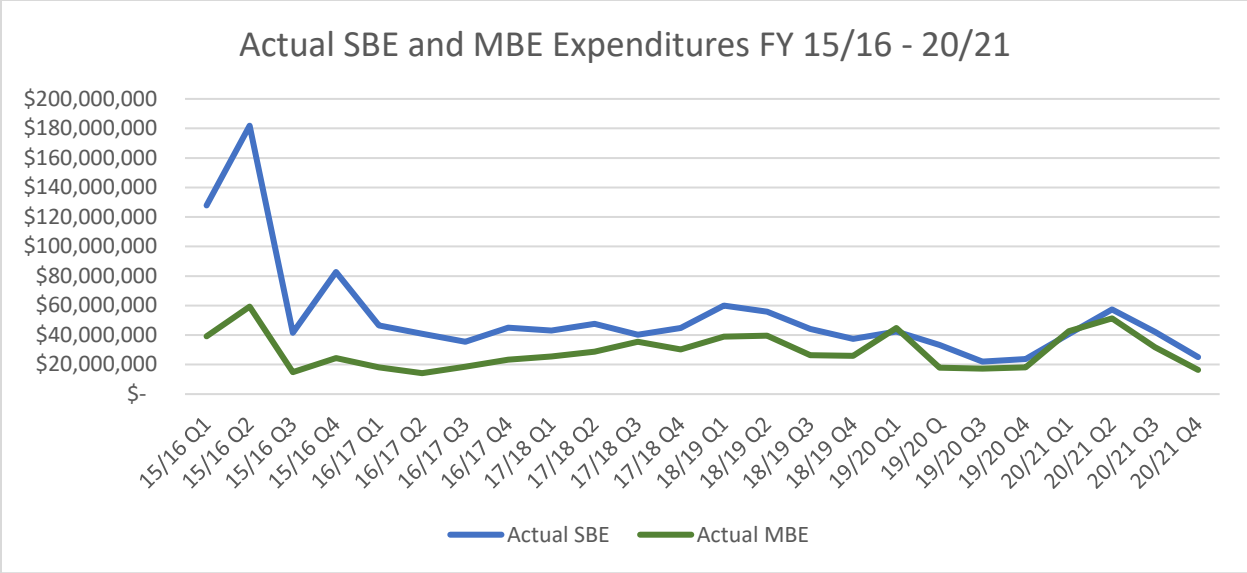
Procurement Findings

The Commission presents its findings, observations and issues of concern regarding the participation of minority, women and disabled business enterprises within the contract and procurement activities of the State of Connecticut for fiscal years 2015/16, 2016/17, 2017/18, 2018/19, 2019/20, 2020/21. The information is provided based on agency procurement which consists of spending on supplies and non-public works contracts.

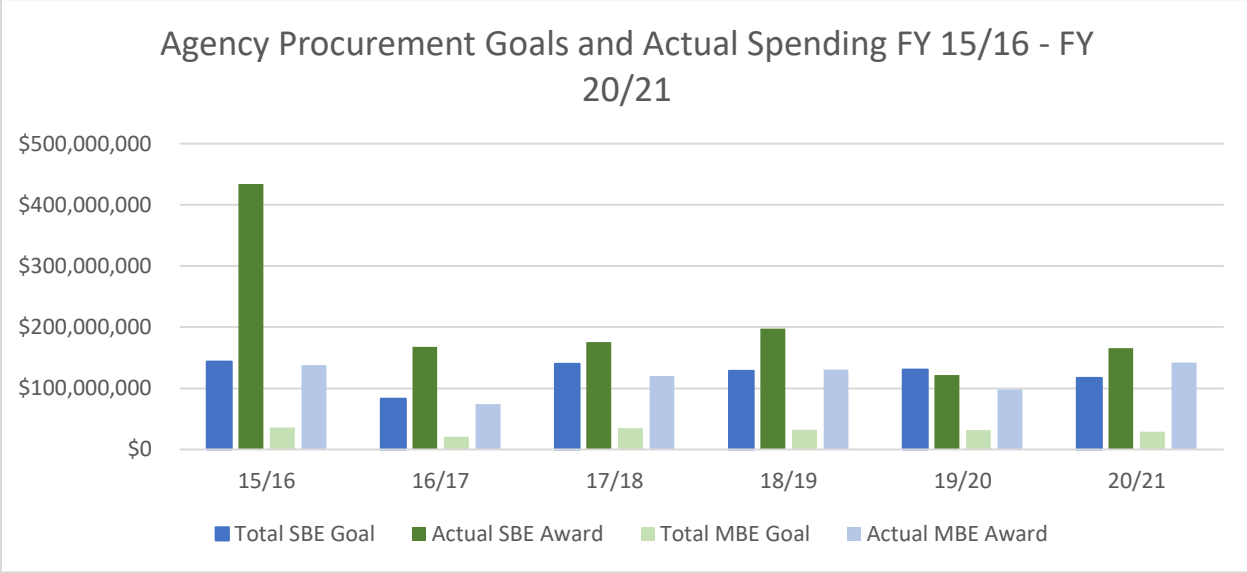
SBE and MBE Procurement Goals and Achievement FY 15/16 – 19/20

FY Year	Total SBE Goal	Total MBE Goal	Actual SBE Award		Actual MBE Award	
			\$ Amount	% of Goal	\$ Amount	% of Goal
15/16	\$143,939,512	\$35,915,999	\$434,162,384	302%	\$137,935,225	384%
16/17	\$82,995,537	\$20,748,876	\$167,954,723	202%	\$74,274,331	358%
17/18	\$140,092,716	\$35,022,169	\$175,761,767	125%	\$120,052,067	343%
18/19	\$128,318,235	\$32,079,137	\$197,458,143	154%	\$130,658,288	407%
19/20	\$130,881,977	\$31,710,492	\$121,502,494	93%	\$98,141,582	309%
20/21	\$116,972,091	\$29,243,003	\$165,517,238	142%	\$142,068,113	486%

The State of Connecticut routinely exceeds the goals it sets for procurement from SBEs and MBEs and did so in 2020/21. State agencies had an average SBE goal of \$123,866,678 over the past six fiscal years and an average of \$210,392,792 actually spent on SBE procurement. This is an average of 170% achievement of the state's SBE goals. State agencies averaged \$30,786,613 in MBE goals during that time and spent an average of \$117,188,268. This is an average MBE goal achievement of 381%.



State agencies saw a spike in SBE and MBE procurement during the first two quarters of FY 15/16 and another spike in the fourth quarter of that year. Spending on SBEs and MBEs remained relatively steady over the remainder of the reporting period. In the third quarter of FY 17/18, MBE spending exceeded SBE spending for the first time and did so again in the first quarters of FY 19/20 and 20/21.



Actual spending on both SBEs and MBEs was highest in FY 15/16 with \$434,162,384 and \$137,935,225 spent on SBEs and MBEs respectively. While goals for both SBEs and

MBEs fell by 42% the next year, actual spending dropped even more. In FY 16/17, actual SBE spending fell by 61% and MBE spending fell by 46%. This means that, while spending still exceeded the goals set for that year, the drop showed a significant decline in agency spending on SBEs and MBEs overall. In FY 17/18, both goals and actual spending rebounded somewhat. Goals for that year increased by 69% and spending increased by 22%. In FY 18/19, the goals actually decreased from their 17/18 levels yet actual spending increased by 11%. These trends remained consistent through to FY 20/21

Public Works Contracts Reporting and Calculation

Pursuant to CONN. GEN. STAT. § 4a-60, contractors must file reports for state-funded public works contracts they are working on that indicate the total contract value, how much was awarded to SBEs, MBEs, Women-owned Business Enterprises (WBEs), and Business Enterprises Owned by Individuals with Disabilities (DisBEs). This information is recorded at the time the project is finally closed out with the Commission. Due to the reporting structure, the dollar values recorded may have been disbursed in an earlier fiscal year than the close out year.

The Commission has two different reporting methods for closing out a project. Projects where contractors submit all close out documents indicating the final contract value and final subcontractor payments contain close out documents indicating the actual values for the project. In FY 15/16, the Commission created an expedited close out procedure to resolve outstanding project plans where the plan had been completed a significant time period before but where all close out documents have not been submitted. These plans had not been closed out due to significant Commission staffing shortages which resulted in a backlog. For projects closed through this expedited process, the numbers recorded are taken from the initial plan documents. These numbers may not accurately reflect the final payments made. In order to ensure accuracy, these have been listed separately.

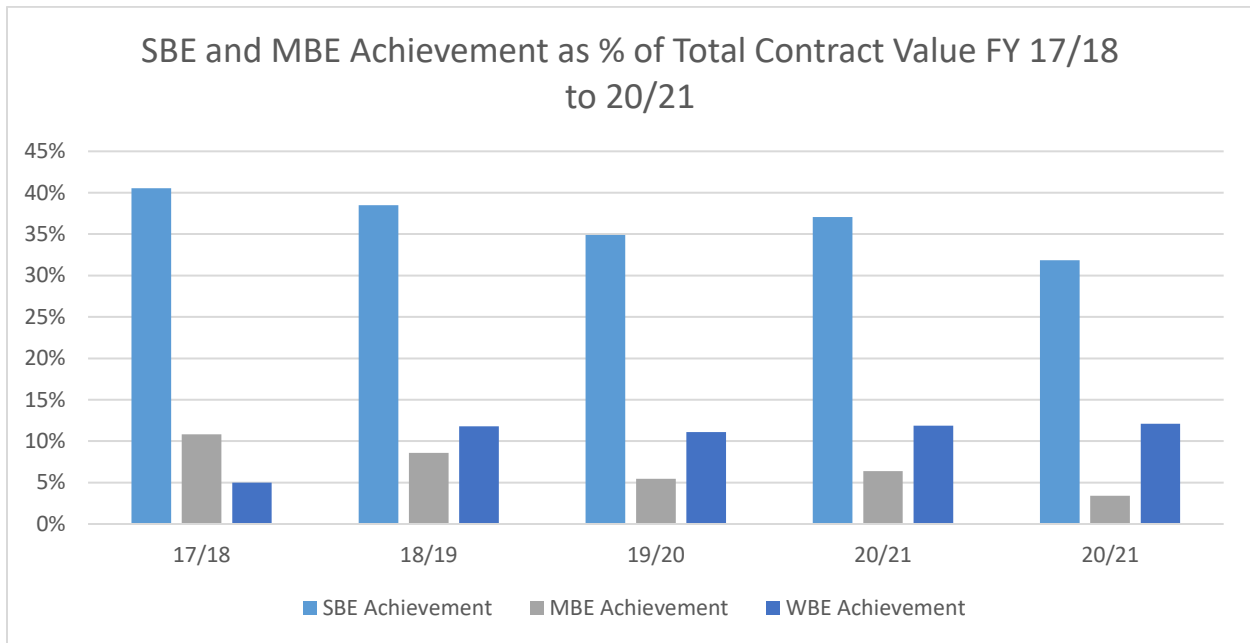
State-funded Public Works Contracts Closed Out FY 15/16 – 19/20					
FY	Total Contract Value	SBE Achievement	MBE Achievement	WBE Achievement	DisBE Achievement
15/16*	\$123,705,836	\$28,949,837	\$8,448,942	\$9,688,009	\$511,268
15/16	\$197,714	\$ 156,000	-	\$41,714	-
16/17	\$ 7,431,384	\$ 1,838,832	\$803,481	\$371,908	-
17/18	\$214,929,211	\$38,351,568	\$18,461,704	\$25,331,289	\$571,771
18/19	\$1,191,418,492	\$216,469,451	\$65,069,255	\$132,146,269	\$2,132,505
19/20	\$711,648,450	\$132,733,168	\$45,523,291	\$84,422,343	\$1,159,935
20/21	\$823,827,588	\$133,447,104	\$28,053,922	\$99,734,761	\$1,140,939

*Expedited Close Outs Only

The data shows that contractors routinely exceed the minimum goals established by the Set-Aside Program. For each state-funded public works contract, 25% of the total contract value should be set-aside for SBEs. Of that quarter of the total value, there needs to be a further goal that 25% (or 6.25% of the total contract value) is set-aside for MBEs (which include WBEs and DisBEs). Contractors were able to exceed the MBE goal for every year of the reporting period; in FY15/16, MBEs totaled 15% of the total contract value, in FY 16/17, MBEs totaled 16% of the total contract value, in FY 17/18, MBEs totaled 21% of the total contract value, in FY 18/19, MBEs totaled 17% of the total contract value, in FY 19/20, MBEs totaled 18% of the total contract value, and in FY 20/21 MBEs totaled 16% of the total contract value. While not all contractors were able to exceed their goals on individual projects, contractors were, as a whole, able to ensure a significant portion of the total contract value was awarded to Connecticut-based MBEs.

The same is true for the performance of SBEs. When combining SBEs and MBEs, contractors were able to well exceed the 25% goal. In FY 15/16, 38% of the total contract value was awarded to SBEs and MBEs. In FY 16/17, the percentage rose to 41%. In FY

17/18, the percentage fell back down to 38% and it fell again in FY 18/19 to 35%. The percentage rose again in FY 19/20 to 37%, well above the 25% goal. In FY 20/21, the percentage fell to 32%, still well above 25% goal.



Note: DisBE values not included as the values of do not constitute a significant percentage of the total contract value.

Recommendations

For the Commission to adhere to the Contract Compliance and Set-Aside Program Laws and to be in compliance with all agency-reporting laws, it must have the full commitment of all agencies and of state leadership. It must also have the ability, tools, and personnel needed to implement the law. It is therefore the recommendation of the Commission to do the following:

1. Work more directly with government and non-government agencies, businesses, and organizations to ensure that all persons are being represented and utilized in the mainstream of economic commerce regardless of their protected class;

2. Work more directly with the Department of Administrative Services to assist more SBEs/MBEs/WBEs/DisBEs in becoming certified;
3. Initiate and complete a Disparity Study as it is needed to document the extent to which SBEs/MBEs/WBEs/DisBEs are underutilized and to establish set-aside goals that will help correct this underutilization;
4. Continue to provide public outreach to help implement business growth and development through both the Commission's Contract Compliance Unit and its Business Training Institute;
5. Provide field monitoring of contractors to ensure that the Contract Compliance and Set-Aside Program Laws are being fully observed;
6. Provide field inspections of new SBE/MBE/WBE/DisBE contractors to confirm their DAS Certifications are accurate and valid; and,
7. Seek legislative changes to provide a penalty for state agencies that fail to comply with the filing and reporting requirements of the Contract Compliance and Set-Aside Program Laws.

Conclusion

Pursuant to CONN. GEN. STAT. § 46a-56(a)(6), the Commission must "compile data concerning state contracts with female and minority business enterprises and submit a report annually to the General Assembly concerning the employment of such business enterprises as contractors and subcontractors." As the state's chief civil rights law enforcement agency, the Commission is responsible for reviewing, monitoring, and enforcing the state's equal opportunity, affirmative action, and contract compliance laws. This report was submitted by the Commission to the legislature as an overview of the participation of small and minority owned businesses for FY 2020/21.



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