

Construction Law Alert

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Dramatic Business Opportunities for Businesses Registered as Small Business Enterprises (SBE)

As you know, the State of New Jersey has committed approximately \$8 billion dollars towards what has been termed one of the largest school construction programs in the United States. This affords great opportunities for all contractors, but recent developments have dramatically increased business opportunities for smaller construction firms.

As a result of a recent lawsuit against the State of New Jersey, the State can no longer engage in Minority Business Enterprise (MBE) or Women Business Enterprise (WBE) set-asides as it has in the past. As a result of this lawsuit in July, 2003, the State of New Jersey Attorney General's Office entered into a Consent Agreement in which the State agreed to abolish its race and gender based set-aside programs. These programs were challenged as being unconstitutional under the equal protection clause of the U.S. Constitution. Therefore, the only program the State can employ in pursuing its diversity goals is one that is race and gender neutral otherwise known as the Small Business Enterprise (SBE) set-aside program.

We understand that the State is promoting this program because many of its former minority and women business enterprises will qualify under the SBE program. However, in addition to these entities, all small businesses that qualify and register will be eligible.

Properly certified entities should now have greater opportunities in all public works projects but especially in schools construction because the New Jersey Schools Construction Corporation (NJSCC) advised that it has a program goal of ensuring that 25% of the total dollar value of all publicly advertised contracts awarded by the NJSCC go to certified Small Business Enterprises.

New Criteria to Qualify as SBE

As part and parcel of these new developments, the State of New Jersey transformed its requirements as well as its eligibility standards for small business

certification. These changes may impact your company's ability to competitively obtain public works contracts and may further impact your ability to become certified or maintain your certification as a SBE.

Larger corporations that were previously registered as certified Small Business Enterprises may no longer be able to qualify under this category. This occurs because previous criteria did not have an annual gross revenue limit in order to qualify as a "small business." Rather, a company was generally required to establish that it was:

1. independently owned and operated with management owning at least 51% interest in the business;
2. incorporated, registered to do business and have a principal place of business in N.J., and
3. be a sole proprietorship, partnership or corporation with 100 or fewer employees in full-time positions.

The major change established by the State is a two-tier annual gross revenue standard. For purposes of this alert, HVAC contractors whose annual gross revenues over a three-year period do not exceed \$12 million dollars and who also comply with the above criteria, may be certified as a small business enterprise. If you qualify, this may be a major opportunity for you to become eligible as a SBE certified contractor and participate in the set-aside programs being administered by the State and especially by the NJSCC.



Please feel free to contact Edward J. Frisch, Esq. (efrisch@lindabury.com) of this office should you have any questions or if we can help you with your SBE application or other public construction needs.

The material in this Construction Law Alert is for information purposes only and is not intended as legal advice. For guidance on particular circumstances that affect your business, please consult qualified legal counsel.