


PUBLIC CONSTRUCTION BIDDING LAWS WORKFORCE PARTICIPATION GOAL REQUIREMENTS

A training by:

Deborah A. Anderson , Esq.
Office of the Attorney General

Deborah.Anderson@Mass.gov, 617-963-2371




Workforce Participation Goal Requirements under M.G.L. c. 149, § 44A(2)(G)

All contracts by a state agency or state-assisted contracts for design, construction, reconstruction, installation, demolition, maintenance or repair **must** contain workforce participation goals for minorities and women.

History of Workforce Participation Goals Law

- Chapter 280 of the Acts of 1998: state agencies were directed to establish goals for women's participation. Remedies for non-compliance included (1) suspension of payments; (2) termination of contract; (3) recovery by the commonwealth of the contract award price as liquidated damages; or (4) denial of the right to participate in future projects for a maximum of three years.
- A&F 14 (2009) established the goal of 6.9% for women and 15.3% for minorities.
- Chapter 462 of the Acts of 2012 enacted c. 149, § 44A(2)(G).



Aren't these the same?

Workforce Participation Goals and W/MBE Goals

M/WBE goals refer to participation by businesses owned by minorities and women.

Workforce participation goals refer to the makeup of the contractors' workforce.

They are two separate requirements independent of one another.

State-Mandated Workforce Participation Goals

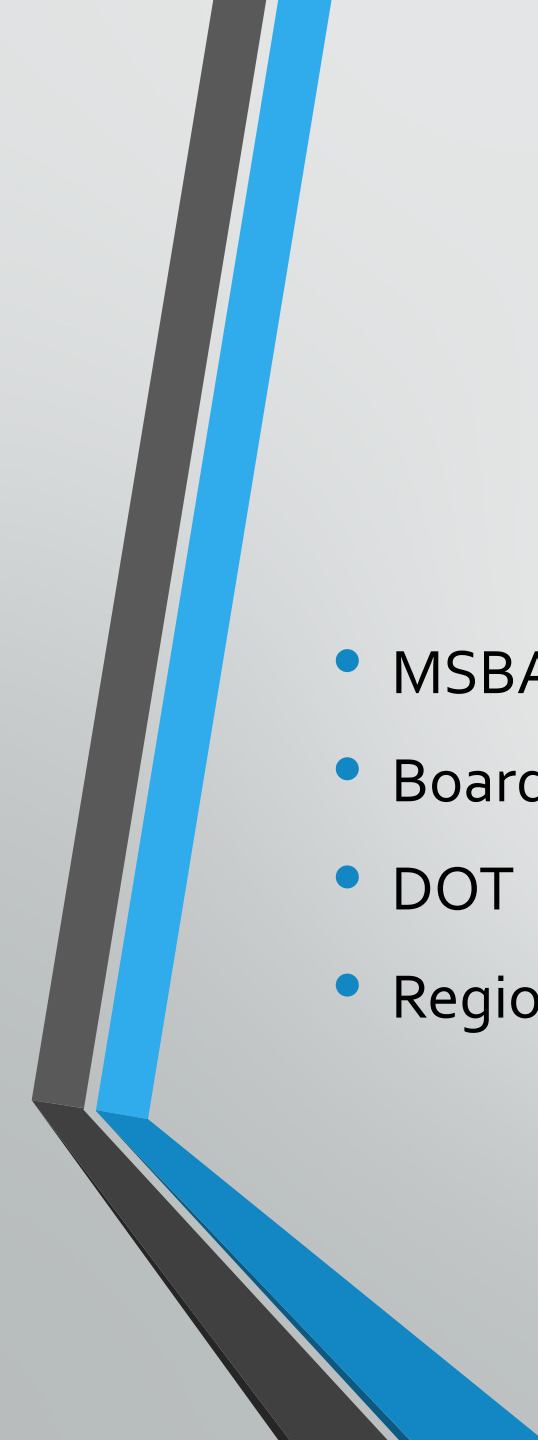
- 6.9% for women
- 15.3% for minorities

See Administration & Finance Administrative Orders:

<https://www.mass.gov/administrative-bulletin/equal-opportunity-and-non-discrimination-on-state-and-state-assisted>

What qualifies as a “state-assisted” contract?

- A design or construction project undertaken by a political subdivision of the commonwealth or 2 or more subdivisions thereof for planning, acquisition, design, construction, demolition, installation, repair or maintenance of a public building or public work and whose costs are paid for, reimbursed, grant funded, or otherwise supported, in whole or in part, by the commonwealth.



Examples of State-Assisted Contracts

- MSBA
- Board of Library Commissioners
- DOT
- Regional 911

MSBA Requirements

See Project Advisory 66, January 2021:

- Project Funding Contract:
 - § 4.21: The District will work with its local counsel to ensure contracts meet the requirements of the statute and contain the goals and the o ensure compliance with the workforce participation goals, including reporting and enforcement provisions.
- Project Scope and Funding Contract
 - §5.10 The District will work with local counsel ensure that any contracts related to the Project, to which the District is a party, meet the applicable requirements of M.G.L. c. 149, § 44A (2)(g), and contain workforce participation goals for minorities and women, and include the processes and procedures to ensure compliance with the workforce participation goals, including reporting and enforcement provisions.
- Design Contract:
 - §17.10: The Designer shall be required to provide regular reports of the gender and race/ethnicity of employees engaged in work under this contract, for both prime and subconsultants, in the form and format required by the District, including but not limited to, by electronic reporting through the requested means and with the frequency required by the District.
- OPM Contract:
 - §8.13 The OPM shall provide monthly progress reports describing, *inter alia*, the Designer and Contractor or CM at Risk's M.G.L. c. 149 Workforce Participation activities.
 - §8.15(b) The OPM shall monitor and report on the Designer's and Contractor's or CM at Risk's compliance with the Workforce Participation Goals Law.

Compliance History

- C. 149, § 44D1/2: One of the issues looked at during General Contractor prequalification is: (vii) Compliance Record, Information on and evidence of evidence of the firm's compliance record with respect to minority business enterprise and women business enterprise inclusion goals and workforce inclusion goals, if applicable.
- C. 149A § 5: same language in prequalification of CM's

Bid and Contract Requirements for Workforce Participation Goals

- The bid documents should include a reference to the goals that will be contained in the contract.
- What must these contracts include in addition to the goals?
 - The contract must include the processes and procedures to ensure compliance with the workforce participation goals, including reporting and enforcement provisions.
- See M.G.L. c. 149, § 44A(2)(G).

What Happens if a Bid or Contract Does Not Contain these Requirements?

- The bid documents and contract should be revised to include the required goals and processes.
- Any contract that is included in the bid documents that does not comply with the requirements is subject to a Bid Protest and a re-bid, if necessary.