

CHAPTER 37

AN ACT concerning entities under contract with the Department of Transportation and making an appropriation.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Findings and declarations.

The Legislature finds and declares that:

a. The COVID-19 pandemic has wreaked havoc on supply chains across the globe. Supply shortages have stemmed from a series of supply chain disruptions hitting industries around the world, from port congestion in Asia and the United States to labor shortages at factories.

b. In the construction sector, construction materials are in short supply and have seen price spikes, driving up project costs and affecting companies from contractors to insurers. In 2021, the construction industry saw steel prices rising 200 percent and lumber prices rising 288 percent at different points during the year.

c. Many small business enterprises (SBEs) have been strongly impacted by the escalation of the cost of the acquisition of materials to the point that some have been threatened with their survival as business enterprises.

d. It is in the public interest of the State of New Jersey that public works projects be administered efficiently and at a reasonable and equitable cost.

e. The unforeseen emergency of the unanticipated escalation in construction material prices has imposed substantial inequity upon the SBEs, which have been awarded contracts or are subcontractors on contracts after public bidding, and the inequities have threatened the ability of those contractors and subcontractors to fulfill their obligations under the contracts.

f. In these unique and unprecedented circumstances, it is in the public interest for the Department of Transportation to establish and administer a grant program, funded from the federal "Coronavirus State Fiscal Recovery Fund" established pursuant to the federal "American Rescue Plan Act", Pub.L.117-2, to promptly and reasonably assist SBE contractors and subcontractors in meeting their obligations resulting from increases in the cost of acquisition of materials regarding eligible contracts awarded by the department.

g. Given the time-sensitive nature of the circumstances presented here, the Legislature acknowledges that the department does not have time to promulgate rules regarding the establishment and administration of a grant program. In order to expedite the making of such grants, the department shall establish streamlined procedures for the application process and post such forms, conditions, and requirements on the department's website as soon as reasonably possible.

h. In order to be considered eligible for a grant, a contractor or subcontractor shall be registered with the State of New Jersey as an SBE.

i. The department shall award grants to qualified SBE contractors and subcontractors under the grant program on a first come, first served basis.

j. This act does not create a right for subcontractors to submit direct claims to the department and preserves the department's immunity from subcontractors' direct claims under the New Jersey Contractual Liability Act, N.J.S.59:13-1 et seq.

k. This act is not intended to impact the contractual relationships and provisions contained within eligible contracts or other department contracts.

l. This act is not intended to allow for so-called equitable adjustments or for the recovery of force majeure claims regarding eligible contracts or other department contracts and preserves the department's rights under eligible contracts or other department contracts and

immunities under the law, including the New Jersey Contractual Liability Act, N.J.S.59:13-1 et seq.

m. The grant of funds by the department under this act shall not create entitlement for a contractor or subcontractor for additional compensation, including time or money or both from the department under an eligible contract or other department contracts.

2. Definitions.

For the purposes of this act:

“Commissioner” means the Commissioner of Transportation.

“Department” means the Department of Transportation.

“Eligible contract” means a construction contract awarded by the department based upon bids submitted prior to April 1, 2020.

“Eligible materials” means materials purchased or invoiced in connection with an eligible contract after March 1, 2020 that have realized an increase in the cost of acquisition of such materials in excess of five percent between March 1, 2020 and the time of purchase or invoice.

“SBE” means a contractor or subcontractor which is registered with the State of New Jersey as a small business enterprise.

3. Eligibility for a Grant.

a. A contractor or subcontractor shall demonstrate to the satisfaction of the department that it holds an eligible contract.

b. The contractor or subcontractor shall provide documentation sufficient for the department to determine, based upon the available documentation, including but not limited to, an appropriate nationally recognized economic index published by the United States Department of Labor, that there has been an increase in excess of five percent in the cost of acquisition of materials for a contractor or subcontractor purchasing eligible materials for an eligible contract.

c. The contractor or subcontractor as applicable shall demonstrate that it is an SBE.

d. A contractor or subcontractor shall not be eligible for a grant if the department determines that there is unacceptable or excessive material under an eligible contract.

e. An application by a contractor or subcontractor under the grant program shall preclude the contractor or subcontractor from otherwise submitting claims to the department regarding or related to the same materials under an eligible contract.

4. Grant Program.

a. The department shall establish a grant program to issue grants to eligible contractors and subcontractors.

b. The department shall establish streamlined procedures for the application process and post such forms, conditions, and requirements on the department’s website as soon as reasonably possible. The application period shall remain open for 90 days. If funds appropriated under this act remain, following the initial application period and eligibility determinations, the department may open the application period for an additional 30 days.

c. The grant program shall provide that grant awards shall be made in the order in which applications are received and approved.

d. If a contractor or subcontractor is determined to be eligible pursuant to this act, the department may provide a grant to the contractor or subcontractor for the cost difference paid by the contractor or subcontractor for eligible materials in an amount equal to the increase in the cost of acquisition of those eligible materials.

e. The commissioner may impose any additional conditions or requirements for receipt of a grant as the commissioner deems appropriate.

f. The New Jersey Contractual Liability Act, N.J.S.59:13-1 et seq., shall apply to all applications submitted under this act.

5. Appropriation.

There is appropriated \$10,000,000 to the Division of Disaster Recovery and Mitigation in the Department of Community Affairs from the federal “Coronavirus State Fiscal Recovery Fund” established pursuant to the federal “American Rescue Plan Act”, Pub.L.117-2, which shall be made available to and used by the Department of Transportation to effectuate the provisions of P.L.2022, c.37, and of which a reasonable amount, not to exceed 2.5 percent, may be used by the department for organizational, administrative, and other work and services, including salaries, equipment, services, and materials necessary to administer the activities authorized by this act. The Department of Transportation shall enter into a memorandum of understanding or grant agreement, as applicable, with the division to effectuate the purposes of this subsection, to establish appropriate administrative costs, and to ensure compliance with federal rules and guidance, including with respect to the “American Rescue Plan Act,” Pub.L.117-2.

6. This act shall take effect immediately and shall expire upon the exhaustion of funds appropriated pursuant to section 5 of this act.

Approved June 30, 2022.