



SPONSOR: Rep. Dorsey Walker & Sen. Townsend

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 387

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO DISADVANTAGED BUSINESS ENTERPRISES IN THE STATE PROCUREMENT SYSTEM.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 6902, Title 29 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline and by redesignating accordingly:

3 §6902. Definitions [For application of this section, see 82 Del. Laws, c. 36, § 3]

4 For purposes of this chapter:

5 (10) "Disadvantaged Business Enterprise" means a business that has been certified by either the Delaware Office
6 of Supplier Diversity, as a minority, women, veteran, service-disabled veteran, or individual with a disability business
7 or by the Delaware Department of Transportation as a Disadvantaged Business Enterprise.

8 Section 2. Amend § 6962, Title 29 of the Delaware Code by making deletions as shown by strike through and
9 insertions as shown by underline as follows:

10 §6962. Large public works contract procedures [For application of this section, see 82 Del. Laws, c. 36, § 3]

11 (d) Bid specifications and plans ~~requirements~~—requirements.

12 (13) Bid evaluation, contract award and execution ~~procedure~~—procedure.

13 a. The contracting agency shall award any public works contract within 30 days of the bid opening to the
14 lowest responsive and responsible bidder, unless the agency elects to award on the basis of best value, in which
15 case the election to award on the basis of best value shall be stated in the invitation to bid. Any public school
16 district and its board shall award public works contracts in accordance with this section's requirements except it
17 shall award the contract within 60 days of the bid opening. A contracting agency shall extend the 30-day bid
18 evaluation period by a total of 5 working days and a school district shall extend the 60-day bid evaluation period
19 by a total of 5 working days if a bid is nonresponsive or a bidder is judged to be not responsible, and the bidder
20 cannot be notified in writing a minimum of 5 days prior to the end of the 30-day bid evaluation period in the case
21 of an agency, or the 60-day bid evaluation period in the case of a school district. Written notification to the bidder
22 or bidders whose bid is non-responsive or who have been determined to be not responsible shall be received at

23 least 5 working days prior to the end of the original or the extended evaluation period and shall specify the reason
24 or reasons why the bid is nonresponsive or the bidder determined to be not responsible. If the bid evaluation period
25 is extended by 5 working days, the contracting agency or school district shall notify each bidder in writing prior to
26 the end of the 30-day bid evaluation period in the case of an agency, or the 60-day bid evaluation period in the
27 case of a school district, that the bid evaluation period is being extended by 5 working days. The written
28 notification to all bidders shall include the calendar date by which the agency or school district shall award a
29 contract or reject all bids.

30 4. A. If the agency elects to award on the basis of best value, the agency must determine that the
31 successful bidder is responsive and responsible, as defined in this subsection. The determination of best value
32 shall be based upon objective criteria that have been communicated to the bidders in the invitation to bid. The
33 following objective criteria shall be assigned a weight consistent with all of the following factors:

34 I. Price — must be at least 70% but no more than 90%.

35 II. Schedule — must be at least 10% but no more than 20%.

36 III. Performance — must be at least 10% but no more than 20%.

37 IV. Disadvantaged Business Enterprise participation (only for projects valued in excess of
38 \$30,000,000) - must be at least 10% but no more than 30%.

SYNOPSIS

This Act is the result of a successful pilot project involving disadvantaged business enterprises in State contracts. In 2023, Section 189 of Senate Bill No. 35, as amended by Senate Amendment No. 2, authorized the Office of Management and Budget (OMB) to engage in a pilot program to include Community Workforce Agreements as part of large public works projects using businesses that met the definition of Disadvantaged Business Enterprise (DBE). If an agency elects to award based on best value, this Act requires projects, valued in excess of \$30,000,000, to be scored using DBE usage of at least 10% but no more than 30%. This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.