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RSNLT**LAW ALERT**

MBE and FBE Goals Applicable to School Construction Projects

March 16, 2012

On February 16, 2012, Governor Quinn announced that Illinois school districts statewide will receive more than \$623 million for school construction. Under Public Act 96-1064, which became effective July 16, 2010, each award of state funds of \$250,000 or more for capital construction costs or professional services is conditioned upon the school district's certification that it will comply with the Business Enterprise for Minorities, Females, and Persons with Disabilities Act, 30 ILCS 575/0.01 et seq. (the "Act").

Under the Act, the Business Enterprise Council (the "Council") establishes goals for each school construction project regarding the level of participation by minority owned businesses ("MBEs") and female owned businesses ("FBEs"). The goals are determined on a project-by-project basis, and apply only to that portion of the project financed with state funds. The goals can be met either through utilizing MBEs and FBEs as prime contractors, or by the prime contractor(s) entering into agreements with subcontractors and/or suppliers who are certified MBEs and FBEs.

Every school construction project utilizing \$250,000 or more in state funds for design and/or construction costs should include a MBE / FBE section in the project manual that is let for bidding. At a minimum, the MBE / FBE section should include the following:

- The Council's established MBE and FBE goals for the project.
- An explanation of how each bidder must assist the school district in meeting the goals (i.e., either through bidder's own certification as a MBE / FBE, or through bidder's subcontracting with certified MBE and FBE firms for labor, materials and equipment.
- A link to certified MBEs and FBEs, by trade and county:

http://www.cdb.state.il.us/CDBWEB_MBEFBE.nsf/websearch?OpenForm

- An attachment including all necessary certifications that will be required to be completed by the contractors and by the school district. The bid package should also require that the successful bidder cooperate with the school district in providing all information necessary to complete the required certifications and meet all other state requirements for funding.
- An explanation of the process by which a bidder may, after making a good-faith effort, seek waiver by the Council of the MBE / FBE requirements. This explanation should explain the interaction between the waiver process and the bid submittal process.

Samuel B. Cavnar, an associate in the firm's Chicago office prepared this *Law Alert*.

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