



House of Representatives

General Assembly

File No. 513

January Session, 2003

Substitute House Bill No. 6417

House of Representatives, April 23, 2003

The Committee on Government Administration and Elections reported through REP. O'ROURKE of the 32nd Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING STATE CONSTRUCTION CONTRACTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 4b-91 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective January 1, 2004*):

3 (a) Every contract for the construction, reconstruction, alteration,
4 remodeling, repair or demolition of any public building for work by
5 the state, which is estimated to cost more than five hundred thousand
6 dollars, except (1) a contract awarded by the Commissioner of Public
7 Works for (A) a community court project, as defined in subsection (j) of
8 section 4b-55, (B) the Connecticut Juvenile Training School project, as
9 defined in subsection (k) of section 4b-55, (C) the downtown Hartford
10 higher education center project, as defined in subsection (l) of section
11 4b-55, (D) The University of Connecticut library project, as defined in
12 subsection (d) of section 4b-55, (E) a correctional facility project, as
13 defined in subsection (m) of section 4b-55, (F) a juvenile detention

14 center project, as defined in subsection (n) of section 4b-55, or (G) a
15 student residential facility for the Connecticut State University system
16 that is a priority higher education facility project, as defined in
17 subsection (f) of section 4b-55, or (2) a project, as defined in
18 subdivision (16) of section 10a-109c, undertaken and controlled by The
19 University of Connecticut in accordance with section 10a-109n, shall be
20 awarded to the lowest responsible and qualified general bidder who is
21 prequalified pursuant to section 3 of this act on the basis of
22 competitive bids in accordance with the procedures set forth in this
23 chapter, after the Commissioner of Public Works or, in the case of a
24 contract for the construction of or work on a building under the
25 supervision and control of the Joint Committee on Legislative
26 Management of the General Assembly, the joint committee or, in the
27 case of a contract for the construction of or work on a building under
28 the supervision and control of one of the constituent units of the state
29 system of higher education, the constituent unit, has invited such bids
30 by advertisements inserted at least once in one or more newspapers
31 having a circulation in each county in the state. The Commissioner of
32 Public Works, the joint committee or the constituent unit, as the case
33 may be, shall determine the prequalification classification and
34 aggregate work capacity rating required for the contract and shall
35 indicate the prequalification classification and aggregate work capacity
36 ratings in such advertisement. As used in this section, "prequalification
37 classification and aggregate work capacity rating" means the
38 prequalification classifications and aggregate work capacity ratings
39 established by the Commissioner of Administrative Services pursuant
40 to section 3 of this act.

41 (b) The Commissioner of Public Works, the joint committee or the
42 constituent unit, as the case may be, shall determine the manner of
43 submission and the conditions and requirements of such bids, and the
44 time within which the bids shall be submitted, consistent with the
45 provisions of sections 4b-91 to 4b-96, inclusive, as amended by this act.
46 Such award shall be made within sixty days after the opening of such
47 bids. If the general bidder selected as the general contractor fails to
48 perform the general contractor's agreement to execute a contract in

49 accordance with the terms of the general contractor's general bid and
50 furnish a performance bond and also a labor and materials or payment
51 bond to the amount specified in the general bid form, an award shall
52 be made to the next lowest responsible and qualified general bidder.
53 [If] No employee of the Department of Public Works, the joint
54 committee or a constituent unit with decision-making authority
55 concerning the award of a contract may communicate with any bidder
56 prior to the award of the contract if the communication results in the
57 bidder receiving information about the contract that is not available to
58 other bidders, except that if the lowest responsible and qualified
59 bidder's price submitted is in excess of funds available to make an
60 award, the Commissioner of Public Works, the Joint Committee on
61 Legislative Management or the constituent unit, as the case may be, [is
62 empowered to] may negotiate with such bidder and award the
63 contract on the basis of the funds available, without change in the
64 contract specifications, plans and other requirements. If the award of a
65 contract on said basis is refused by such bidder, the Commissioner of
66 Public Works, the Joint Committee on Legislative Management or the
67 constituent unit, as the case may be, may negotiate with other
68 contractors who submitted bids in ascending order of bid prices
69 without change in the contract, specifications, plans and other
70 requirements. In the event of negotiation with general bidders as
71 provided [herein] in this section, the general bidder involved may
72 negotiate with subcontractors on the same basis, provided such
73 general bidder shall negotiate only with subcontractors named on such
74 general bidder's general bid form.

75 (c) On and after January 1, 2004, no person may bid on a contract for
76 the construction, reconstruction, alteration, remodeling, repair or
77 demolition of any public building for work by the state or a
78 municipality, which is estimated to cost more than five hundred
79 thousand dollars and is paid for, in whole or in part, with state funds,
80 unless the person is prequalified in accordance with section 3 of this
81 act.

82 (d) On and after January 1, 2004, each bid submitted for such

83 contract shall include a copy of a prequalification statement issued by
84 the Commissioner of Administrative Services showing that the bidder
85 has the prequalification classification and aggregate work capacity
86 ratings required under such contract. The bid shall also be
87 accompanied by an update statement in such form as the
88 Commissioner of Administrative Services prescribes. The form for
89 such update statement shall provide space for information regarding
90 all projects completed by the bidder since the date the bidder's
91 prequalification certificate was issued, all projects the bidder currently
92 has under contract, including the percentage of work on such projects
93 not completed, the names and qualifications of the personnel who will
94 have supervisory responsibility for the performance of the contract,
95 any significant changes in the bidder's financial position or business
96 organization since the date the certificate was issued, and such other
97 relevant information as the Commissioner of Administrative Services
98 prescribes. Any bid submitted without a copy of the prequalification
99 certificate and an update statement shall be invalid.

100 (e) The bidder shall certify under penalty of false statement at the
101 conclusion of the bidding process that the information in the bid is
102 true, that there has been no substantial change in the bidder's financial
103 position or business organization since the bidder's most recent
104 prequalification certificate was issued, other than those changes noted
105 in the update statement, and that the bid was made without fraud or
106 collusion with any person.

107 (f) Any person who communicates with a public official or
108 employee concerning any construction, reconstruction, alteration,
109 remodeling, repair or demolition project on a public building prior to
110 the date that an advertisement for bids on the project is published shall
111 be disqualified from bidding on the project.

112 [(b)] (g) Notwithstanding the provisions of this chapter regarding
113 competitive bidding procedures, the commissioner may select and
114 interview at least three responsible and qualified general contractors,
115 and may negotiate with any one of such contractors a contract which is

116 both fair and reasonable to the state for a community court project, as
117 defined in subsection (j) of section 4b-55, the downtown Hartford
118 higher education center project, as defined in subsection (l) of section
119 4b-55, The University of Connecticut library project, as defined in
120 subsection (d) of section 4b-55, the Connecticut Juvenile Training
121 School project, as defined in subsection (k) of section 4b-55, a
122 correctional facility project, as defined in subsection (m) of section 4b-
123 55, a juvenile detention center project, as defined in subsection (n) of
124 section 4b-55, or a student residential facility for the Connecticut State
125 University system that is a priority higher education facility project, as
126 defined in subsection (f) of section 4b-55. Any general contractor
127 awarded a contract pursuant to this subsection shall be subject to the
128 same requirements concerning the furnishing of bonds as a contractor
129 awarded a contract pursuant to subsection (a) of this section.

130 Sec. 2. Section 4b-92 of the general statutes is repealed and the
131 following is substituted in lieu thereof (*Effective January 1, 2004*):

132 As used in this chapter and except as otherwise provided, the words
133 "lowest responsible and qualified bidder" shall mean the bidder who is
134 prequalified pursuant to section 3 of this act, and whose bid is the
135 lowest of those bidders possessing the skill, ability and integrity
136 necessary to faithful performance of the work based on objective
137 criteria considering past performance and financial responsibility.
138 Essential information in regard to such qualifications shall be
139 submitted with the bid in such form as the awarding authority may
140 require by specification in the bid documents and on the bid form.
141 Every general bid shall be accompanied by a bid bond or a certified
142 check in an amount which shall be ten per cent of the bid, provided no
143 such bid bond or certified check shall be required in relation to any
144 general bid in which the total estimated cost of labor and materials
145 under the contract with respect to which such general bid is submitted
146 is less than fifty thousand dollars. Failure to execute a contract
147 awarded as specified and bid shall result in the forfeiture of such bid
148 bond or certified check. In considering past performance the awarding
149 authority shall evaluate the skill, ability and integrity of bidders in

150 terms of the bidders' fulfillment of contract obligations and of the
151 bidders' experience or lack of experience with projects of the size of the
152 project for which the bids are submitted.

153 Sec. 3. (NEW) (*Effective January 1, 2004*) (a) As used in this section,
154 "prequalification" means prequalification issued by the Commissioner
155 of Administrative Services to bid on a contract for the construction,
156 reconstruction, alteration, remodeling, repair or demolition of any
157 public building for work by the state or a municipality.

158 (b) Any person may apply for prequalification to the Department of
159 Administrative Services. Such application shall be made on such form
160 as the Commissioner of Administrative Services prescribes and shall
161 be accompanied by a nonrefundable fee of one thousand five hundred
162 dollars. The application shall be signed under penalty of false
163 statement.

164 (c) The application form shall, at a minimum, require the applicant
165 to supply information concerning:

166 (1) The applicant's form of organization;

167 (2) The applicant's principals and key personnel;

168 (3) The applicant's experience on public and private construction
169 projects over the past five years, or on the applicant's twenty most
170 recently-completed projects;

171 (4) Any legal or administrative proceedings pending against the
172 applicant or concluded adversely to the applicant within the past five
173 years which relate to the procurement or performance of any public or
174 private construction contract;

175 (5) The nature of any financial, personal or familial relationship
176 between the applicant and any public or private construction project
177 owner listed on the application as constituting construction experience;

178 (6) A statement of whether the applicant has been disqualified

179 pursuant to subsection (e) of section 4b-95 of the general statutes, as
180 amended by this act, or section 31-57c or 31-57d of the general statutes;
181 and

182 (7) Other information as the commissioner deems relevant to the
183 determination of the applicant's qualifications and responsibilities.

184 (d) The applicant shall include a statement of financial condition
185 prepared by a certified public accountant which includes information
186 concerning the applicant's assets and liabilities, plant and equipment,
187 bank and credit references, bonding company and maximum bonding
188 capacity, and other information as the commissioner deems relevant to
189 an evaluation of the applicant's financial capacity and responsibility.

190 (e) Information contained in the application shall be current as of
191 the time of filing except that the statement of financial condition shall
192 pertain to the applicant's most recently-completed fiscal year.

193 (f) Any materially false statement in the application or any update
194 statement may, in the discretion of the awarding authority, result in
195 termination of any contract awarded the applicant by the awarding
196 authority and shall constitute cause for disqualifying the applicant
197 pursuant to this section and subsection (e) of section 4b-95 of the
198 general statutes, as amended by this act. The awarding authority shall
199 provide written notice to the commissioner of such false statement not
200 later than thirty days after discovering such false statement. The
201 commissioner shall provide written notice of such false statement to
202 the Commissioner of Public Works not later than thirty days after
203 discovering such false statement or receiving such notice.

204 (g) The commissioner shall evaluate each applicant on the basis of
205 the application and on relevant past performance according to
206 procedures and criteria set forth in regulations which the
207 commissioner shall adopt, in accordance with chapter 54 of the general
208 statutes. Such criteria shall include, at a minimum, the record of the
209 applicant's performance, including, but not limited to, written
210 evaluations of the applicant's performance on public or private projects

211 within the past five years, the applicant's prior experience on projects
212 of various size and type, the experience and qualifications of
213 supervisory personnel employed by the applicant, the maximum
214 amount of work the applicant is capable of undertaking as
215 demonstrated by the applicant's financial condition, bonding capacity,
216 size of past projects and present and anticipated work commitments,
217 and any other relevant criteria that the commissioner prescribes.

218 (h) Such regulations shall also (1) provide that the criteria
219 considered shall be assigned separate designated numerical values and
220 weights and that the applicant shall be assigned an overall numerical
221 rating on the basis of all criteria, and (2) establish prequalification
222 classifications and aggregate work capacity ratings. Such
223 prequalification classifications shall be used to establish the types of
224 work a contractor is qualified to perform and the aggregate work
225 capacity ratings shall be used to establish the maximum amount of
226 work a contractor is capable of undertaking.

227 (i) The commissioner may not issue a prequalification certificate to
228 any contractor who has been disqualified pursuant to subsection (e) of
229 section 4b-95 of the general statutes, as amended by this act, or section
230 31-57c or 31-57d of the general statutes.

231 (j) The applicant shall indicate the classifications and aggregate
232 work capacity rating for which prequalification is sought. The
233 commissioner may issue a certificate of prequalification to any
234 applicant that meets the requirements of this section. Such certificate
235 shall be effective for one year from the date issued and shall indicate
236 the contractor's classifications and aggregate work capacity ratings.
237 The commissioner may renew such certificate upon receipt of a
238 nonrefundable fee of five hundred dollars, a completed update
239 statement and any other material the commissioner requires.

240 (k) The commissioner shall notify an applicant of the
241 commissioner's preliminary determination regarding the conditions of
242 the prequalification certification, a denial of certification, a reduction in
243 the level of certification or a revocation or nonrenewal of certification.

244 Any applicant aggrieved by the division's preliminary determination
245 may request copies of the information upon which the commissioner
246 relied in making the preliminary determination provided such request
247 is made not later than five days after receiving notice. Not later than
248 ten business days after receiving notice the applicant may submit
249 additional information to the commissioner with a request for
250 reconsideration. The commissioner shall issue a final determination
251 regarding the application not later than thirty business days after the
252 date of the commissioner's preliminary determination unless the
253 applicant agrees to an extension of time.

254 (l) Upon receiving additional information regarding a contractor's
255 qualifications, the commissioner may revoke a contractor's
256 prequalification or reduce the contractor's prequalification
257 classification or aggregate work capacity ratings.

258 (m) The provisions of this section and section 4 of this act shall not
259 apply to subcontractors.

260 (n) The commissioner shall establish an update statement for use by
261 bidders for certificate renewal purposes and for purposes of
262 submitting a bid pursuant to section 4b-91 of the general statutes, as
263 amended by this act.

264 (o) Any applicant aggrieved by the commissioner's final
265 determination concerning a preliminary determination, a denial of
266 certification, a reduction in the level of certification or a revocation or
267 nonrenewal of certification may appeal to the Superior Court in
268 accordance with section 4-183 of the general statutes.

269 (p) Documents submitted to the commissioner in an application
270 pursuant to this section shall not be deemed to be public records under
271 the Freedom of Information Act, as defined in section 1-200 of the
272 general statutes.

273 Sec. 4. (NEW) (*Effective January 1, 2004*) (a) The Commissioner of
274 Administrative Services shall establish a standard contractor

275 evaluation form. Each public agency, as defined in section 1-200 of the
276 general statutes, shall complete and submit the form to the
277 commissioner after completion of a building project under the agency's
278 control if the building project is funded, in whole or in part, by state
279 funds. The commissioner shall include the evaluation in the
280 contractor's prequalification file. The official from the public agency, or
281 a designee, or the architect or engineer responsible for the oversight of
282 the project, shall certify that the information contained on the
283 contractor evaluation form represents, to the best of the official's,
284 architect's or engineer's knowledge, an accurate analysis of the
285 contractor's performance record on the project. The official, architect or
286 engineer shall mail the evaluation form to the contractor. Any
287 contractor who wishes to contest any information contained in the
288 evaluation form may submit a written response to the commissioner
289 not later than thirty days after the date the form was mailed as
290 indicated by the postmark on the envelope. Such response shall set
291 forth any additional information concerning the building project or the
292 oversight of the contract by the public agency that may be relevant in
293 the evaluation of the contractor's performance on the contract. The
294 commissioner shall include any such response in the contractor's
295 prequalification file.

296 (b) Upon fifty per cent completion of any building project under a
297 public agency's control, the agency shall advise the contractor in
298 writing of the agency's preliminary evaluation of the contractor's
299 performance on the project.

300 (c) Any public agency that fails to complete and submit a contractor
301 evaluation form required by this section, or any written response by
302 any contractor, to the commissioner within seventy days of the
303 completion of a project shall be ineligible to receive public funds from
304 the state for the purpose of any construction, reconstruction, alteration,
305 remodeling, repair or demolition of a public building.

306 (d) Documents submitted to the commissioner in an evaluation
307 pursuant to this section shall not be deemed to be public records under

308 the Freedom of Information Act, as defined in section 1-200 of the
309 general statutes.

310 Sec. 5. Subsection (e) of section 4b-95 of the general statutes is
311 repealed and the following is substituted in lieu thereof (*Effective*
312 *January 1, 2004*):

313 (e) Any general contractor who violates any provision of this section
314 or section 9-333n, as amended by house bill 6096 of the current session,
315 shall be disqualified from bidding on other contracts that are subject to
316 the provisions of this chapter for a period not to exceed twenty-four
317 months, commencing from the date on which the violation is
318 discovered, for each violation. The commissioner may disqualify a
319 general contractor from bidding on such contracts for a period not to
320 exceed twenty-four months commencing from the date the
321 commissioner receives notice from the Commissioner of
322 Administrative Services or the awarding authority of any materially
323 false statement in the general contractor's application for
324 prequalification submitted pursuant to section 3 of this act or any
325 update statement. The awarding authority shall periodically review
326 the general contractor's subcontracts to insure compliance with such
327 provisions, and shall after each such review prepare a written report
328 setting forth its findings and conclusions.

329 Sec. 6. Subsection (m) of section 1-84 of the general statutes is
330 repealed and the following is substituted in lieu thereof (*Effective*
331 *January 1, 2004*):

332 (m) No public official or state employee shall knowingly accept,
333 directly or indirectly, any gift, as defined in subsection (e) of section 1-
334 79, from any person the official or employee knows or has reason to
335 know: (1) Is doing business with or seeking to do business with the
336 department or agency in which the official or employee is employed;
337 [or] (2) is engaged in activities which are directly regulated by such
338 department or agency; or (3) is prequalified under section 3 of this act
339 and the official or employee has decision-making authority over the
340 award of contracts for the construction, reconstruction, alteration,

341 remodeling, repair or demolition of any public building. No person
342 shall knowingly give, directly or indirectly, any gift or gifts in violation
343 of this provision.

344 Sec. 7. (NEW) (*Effective January 1, 2004*) (a) Not later than January 1,
345 2004, and semiannually thereafter, each awarding authority shall
346 prepare a report on the status of (1) any ongoing project for the
347 construction, reconstruction, alteration, remodeling, repair or
348 demolition of any public building which is estimated to cost more than
349 five hundred thousand dollars, or (2) any property management
350 contract awarded by the Department of Public Works which has an
351 annual value of one hundred thousand dollars or more. The awarding
352 authority shall submit the report to the Governor and the joint
353 standing committees of the General Assembly having cognizance of
354 matters relating to government administration and finance, revenue
355 and bonding. The report shall be submitted in accordance with section
356 11-4a of the general statutes. The first report submitted after a contract
357 is awarded shall indicate: (A) When, where and how the request for
358 bids was advertised; (B) who bid on the projects; (C) if there was any
359 deviation from standard procedure in awarding the contract; (D) the
360 names of the individuals who had decision-making authority in
361 awarding the contract, including, but not limited to, the individuals
362 who served on any awarding panel; (E) if an awarding panel was used,
363 whether the recommendation of the panel was followed and, if
364 applicable, the reason why such recommendation was not followed;
365 and (F) whether the awarding authority has any other contracts with
366 the contractor who was awarded the contract, and if so, the nature and
367 value of the contract.

368 (b) Each report shall also include information on the number of
369 projects under the awarding authority's control, the project costs,
370 timeliness of completion and any problems that have developed in
371 implementation.

372 Sec. 8. Section 4b-100 of the general statutes is repealed and the
373 following is substituted in lieu thereof (*Effective January 1, 2004*):

374 (a) Not later than July 1, 2004, the Commissioner of Public Works
375 shall adopt regulations, in accordance with chapter 54, to implement
376 the procedures set forth in sections 4b-91 to 4b-100, inclusive, as
377 amended by this act.

378 **(b)** The Commissioner of Public Works shall adopt regulations, in
379 accordance with the provisions of chapter 54, establishing a procedure
380 for promptly hearing and ruling on claims alleging a violation or
381 violations of sections 4b-91 to 4b-100, inclusive, as amended by this act.
382 Such claims may be initiated by the Department of Public Works or
383 any party whose financial interests may be affected by the decision on
384 such a claim.

385 Sec. 9. (NEW) (*Effective January 1, 2004*) (a) There shall be established
386 within the Department of Public Works a Construction Services Award
387 Panel which shall consist of five members: Three of whom shall be
388 appointed by the Commissioner of Public Works and shall be current
389 employees of the Department of Public Works; and the remaining
390 members shall be appointed by the head or acting head of the user
391 agency and shall serve only for deliberations involving the project for
392 which such member was appointed. The members of the selection
393 panel appointed by the Commissioner of Public Works shall serve for
394 terms of one year from July first. If any vacancy occurs on the panel,
395 the Commissioner of Public Works or the head or acting head of the
396 user agency, as appropriate, shall appoint a person for the unexpired
397 term in accordance with the provisions of this subsection.

398 (b) The panel established pursuant to subsection (a) of this section
399 shall not be deemed to be a board or commission within the meaning
400 of section 4-9a of the general statutes. Such panel shall be the selection
401 panel for any contract for the construction, reconstruction, alteration,
402 remodeling, repair or demolition of any public building pursuant to
403 sections 4b-91 to 4b-100, inclusive, of the general statutes, as amended
404 by this act.

This act shall take effect as follows:
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Section 1	<i>January 1, 2004</i>
Sec. 2	<i>January 1, 2004</i>
Sec. 3	<i>January 1, 2004</i>
Sec. 4	<i>January 1, 2004</i>
Sec. 5	<i>January 1, 2004</i>
Sec. 6	<i>January 1, 2004</i>
Sec. 7	<i>January 1, 2004</i>
Sec. 8	<i>January 1, 2004</i>
Sec. 9	<i>January 1, 2004</i>

GAE *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Type	FY 04 \$	FY 05 \$
Pub. Works, Dept.	GF - Cost	50,000	50,000
Comptroller Misc. Accounts (Fringe Benefits)	GF - Cost	128,000	273,300
Admin. Serv., Dept	GF - Cost	630,000	630,000
Admin. Serv., Dept	GF - Revenue Gain	750,000	250,000
Ethics Com.; CT State Univ.; Colleges, Regional Comm.-Tech.	GF - Cost	None	None

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill requires contractors to pre-qualify to bid on public building construction contracts estimated to cost more than \$500,000. Contractors must submit their pre-qualification application, along with an application fee to the Department of Administrative Services (DAS.) If the contractor meets the pre-qualification requirements, they are issued a certificate that indicates the type of work the contractor is qualified to perform.

DAS is required to analyze and evaluate each pre-qualification application. DAS must examine each applicant's past performance record on public and private projects for the past five years or the 20 most recently completed projects; any legal or administrative proceedings pending against him in the past five years; and whether the applicant has been disqualified from bidding on other state contracts. DAS must also analyze each applicant's statement of financial condition (which show the applicant's assets and liabilities, plant and equipment, bank and credit references, bond company and

maximum bonding capacity). This bill also requires DAS to establish prequalification classification and aggregate work capacity ratings for construction contracts.

This bill would significantly expand the responsibilities of DAS and would result in a significant workload increase that may necessitate the creation of a new unit within DAS. The number of positions needed by DAS to handle the bill's requirements depends on the number of contractors who seek pre-qualification applications. According to the Department of Consumer Protection, there are approximately 1,000 major contractors licensed with the state. DPW estimates that as many as 500 of these licensed contractors would seek DAS pre-qualification applications.

To process, analyze, and evaluate the estimated 500 pre-qualification applications, DAS will need 9 new positions. The positions would include a manager, three construction analysts, three financial analysts and two clerical positions. It is estimated that the salary costs for the new personnel would be approximately \$630,000. The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller¹. DAS will also incur one-time costs of \$80,000 for equipment and supplies for the new employees.

The DAS pre-qualification application fee of \$1,500, with an annual renewal fee of \$500, will result in a General Fund revenue gain. It is estimated that there will be 500 licensed major contractors seeking pre-qualification. Based on that assumption, the pre-qualification fee will generate first year revenues of \$750,000. Subsequent years would see declining revenue, as the renewal fee is \$500. The second year revenues are estimated to be \$250,000. The language requires the Department of Public Works (DPW) to prepare semiannual reports on

¹ The total fringe benefit reimbursement rate as a percentage of payroll is 40.21%, effective July 1, 2002. However, first year fringe benefit costs for new positions do not include pension costs lowering the rate to 18.81% in FY 03. The state's pension contribution is based upon the prior year's certification by the actuary for the State Employees Retirement System.

ongoing construction projects that will be submitted it to the GAE Committee (the first report is due 1/1/04). The agency does not have the resources or flexibility to implement this provision so passage of the bill will result in an FY 04 cost to the state of approximately \$59,400 and \$70,000 in FY 05. Included in this sum is \$50,000 for a full year salary of one Planning Analyst under DPW. Also included is \$9,400 for fringe benefit costs in FY 04 and \$20,000 in FY 05. Fringe benefits are budgeted centrally in miscellaneous accounts administered by the Comptroller¹.

The bill also requires DPW to (1) determine the prequalification classification and aggregate work capacity rating (maximum amount of work a contractor is capable of undertaking) required for a contract and indicate it in advertisements for the contract, and (2) establish a Construction Services Award Panel. The agency already performs these functions and will modify existing procedures to implement these changes, which will not result in any additional costs.

DPW will use existing staff and resources to adopt the regulations required by the bill.

The Connecticut State University System and the Regional College Technical System will also be required to prepare semiannual reports on ongoing construction projects and submit it to the GAE Committee. It is expected that both agencies will use existing staff and resources to prepare these reports.

Any workload increased required for the Ethics Commission to implement the provisions of the bill would be handled within existing staff and resources.

OLR Bill Analysis

sHB 6417

AN ACT CONCERNING STATE CONSTRUCTION CONTRACTS

SUMMARY:

This bill:

1. requires contractors to prequalify to bid on public building construction contracts estimated to cost more than \$500,000;
2. except as otherwise provided in law, redefines "lowest responsible qualified bidder" to include a prequalified contractor;
3. requires advertisements for bids on these contracts to include the financial capacity, prior experience, and workforce required to do the job;
4. permits the Department of Public Works (DPW) commissioner to disqualify contractors who lie on their prequalification application;
5. prohibits state officials and employees with decision-making authority from accepting gifts from prequalified building contractors;
6. prohibits employees with decision-making authority from communicating with bidders on building construction contracts under certain circumstances;
7. establishes a Construction Services Award Panel within DPW;
8. requires state agencies to evaluate contractors after construction is completed and requires the Department of Administrative Services (DAS) commissioner to place the evaluation in the contractor's prequalification file;
9. requires agencies that award building construction contracts to make semi-annual status reports to the governor and the legislature; and

10. requires the DPW commissioner to adopt regulations to implement bidding and contracting procedures for building construction.

EFFECTIVE DATE: January 1, 2004

CONSTRUCTION CONTRACTS OVER \$500,000

Bidders and Awards

Beginning January 1, 2004, the bill requires contractors to prequalify before they can bid on a contract funded in whole or part by the state for the construction, reconstruction, alteration, remodeling, repair, or demolition (building construction) of any state or municipal building estimated to cost more than \$500,000. It requires the awarding authorities to award the contract to the lowest responsible qualified bidder and prequalified bidder on the basis of competitive bidding. Current law requires the contract to be awarded to the lowest responsible qualified bidder on the basis of competitive bidding.

Advertisement

The bill requires advertisements for bids on these contracts that awarding authorities are required by law place in newspapers that circulate in the state to include the prequalification classification and aggregate work ratings (i.e., the types of work the contractor must be able to perform and the maximum amount of work he must be capable of undertaking). The authorities authorized by law to award these contracts are the DPW commissioner, the Joint Committee on Legislative Management for work or construction on buildings under its supervision, and public colleges and universities for work or construction on buildings under their supervision or control.

Bids

Beginning January 1, 2004, the bill requires each bid on these large contracts to include a copy of a prequalification statement from the DAS commissioner showing that the bidder has the prequalification classification and aggregate work capacity ratings required under the contract. The bid must also have an update statement (see below) in the form the commissioner prescribes. Any bid submitted without these documents is invalid.

At the end of the bidding process, the bill requires the bidder to certify under penalty of false statement that (1) the bid information is true; (2) there were no substantial changes in his financial position or business organization since his most recent prequalification certificate was issued, other than those noted in the update statement; and (3) he made the bid without fraud or collusion with anyone.

CONTRACTOR PREQUALIFICATION

Prequalification Application

Contractors, but not subcontractors, can seek prequalification by submitting an application to DAS on a form prescribed by the DAS commissioner together with a \$1,500 nonrefundable fee. Application documents are confidential and not subject to disclosure under the Freedom of Information Act (FOIA).

The applicant must include information current at the time of filing, except the statement of financial condition described below must reflect the most recently completed fiscal year. The applicant must sign the application under penalty of false statement.

The application must, at a minimum, require the applicant to disclose:

1. how he is organized;
2. his principals and key personnel;
3. his construction experience over the past five years or on the 20 most recently completed projects;
4. any legal or administrative proceedings pending against or concluded adversely to him in the past five years concerning the procurement or performance of a construction contract;
5. his relationship, whether financial, personal, or familial, with the owner of any construction project he listed as construction experience;
6. whether he has been disqualified from bidding on other state construction contracts; and

7. any other information the commissioner deems relevant to determining the applicant's qualifications and responsibility.

The applicant must include in the application a statement of financial condition prepared by an accountant that shows the applicant's assets and liabilities, plant and equipment, bank and credit references, bonding company and maximum bonding capacity, and any other information the commissioner deems relevant to the determination of the applicant's financial capacity and responsibility.

Prequalification Classification and Aggregate Work Capacity Rating

Applicants must indicate the classifications and aggregate work capacity rating he is seeking. The DAS commissioner may issue to any applicant that meets the requirements a certificate of prequalification that includes his classifications and aggregate work capacity ratings (e.g., the types of work the contractor can perform and the maximum amount of work he is capable of undertaking).

The certificate is effective for one year from the date issued and may be renewed upon receipt of a \$500 nonrefundable fee, a completed update statement, and any other material the commissioner requires. Awarding authorities must use the classifications to determine the types of work a contractor is qualified to perform and use the aggregate work capacity ratings to establish the maximum amount of work he is capable of undertaking.

To determine classifications and aggregate work capacity ratings, the commissioner must evaluate each applicant based on the application and on relevant past performance in accordance with procedures and criteria that she must adopt in regulations. At a minimum, the criteria must include (1) the applicant's past performance record, including written evaluations on his performance on public or private projects in the past five years; (2) his prior experience on projects of various sizes and type; (3) his supervisory personnel's experience and qualifications; (4) his maximum work capacity as demonstrated by his financial condition, bonding capacity, size or past projects, and present and anticipated work commitments; and (5) any other relevant information the commissioner prescribes.

The regulations must also (1) provide that the criteria be assigned

different numerical values and weights and that each applicant will be assigned an overall numerical rating based on all criteria and (2) establish prequalification classifications and aggregate work capacity ratings.

False Applications

The contract awarding authority may terminate a contract with or disqualify any applicant for making a materially false statement on an application or statement update (see below). The awarding authority must give the DAS commissioner written notice of the false statement within 30 days after discovering it. And the DAS commissioner must, in turn, give the DPW commissioner written notice of it within 30 days after discovery or after receiving notice from the awarding authority.

Decision on Applications and Review Process

The DAS commissioner must notify applicants of her preliminary (1) determination of the prequalification certification conditions or (2) decision to deny certification, reduce the certification level, or revoke or refuse to renew certification.

Any applicant aggrieved by a preliminary determination may, within five days of receiving notice of the determination, ask for copies of the information that the commissioner relied on to make it. Not later than 10 days after notice of the preliminary determination, the applicant can give the commissioner additional information and ask her to reconsider the application.

The commissioner must make a final determination on the application within 30 business days after the date of the preliminary determination, unless the applicant agrees to an extension. Any applicant aggrieved by the final determination may appeal to the Superior Court.

Prequalification Revocation

The bill authorizes the commissioner to revoke a contractor's prequalification or reduce his classification or aggregate work capacity ratings based on additional information that she receives about the contractor's qualifications.

UPDATE STATEMENTS

The commissioner must establish an update statement for certificate renewals and for use by contractors who bid on building construction contracts with an estimated value of over \$500,000. The statement must provide space for information on (1) all of the projects the bidder has completed since the date of his prequalification certificate; (2) all projects the bidder has under contract at that time, including the percentage incomplete; (3) the names and qualifications of personnel who will supervise the contract; (4) any significant change in the bidder's financial position or business organization since the certificate was issued; and (5) any other relevant information the commissioner prescribes.

DISQUALIFICATION

The bill requires the DPW commissioner to disqualify general contractors who violate restrictions on campaign contributions by individuals with large state contracts. The contractor cannot bid on state building contracts for up to 24 months from the date the violation was discovered. It allows the commissioner to impose the same disqualification for up to the same period against a contractor who makes a material false statement on his prequalification application or update statement. By law, the commissioner can disqualify contractors who violate state bidding laws or engage in certain illegal, unethical, or irresponsible conduct for up to 24 months.

The bill prohibits the DAS commissioner from prequalifying any contractor disqualified (1) for the two reasons the bill establishes or (2) by the DPW or transportation commissioner for up to two years for certain illegal, unethical, or irresponsible acts.

The bill provides that anyone who communicates with a public official or employee about any building construction project on any public building before an advertisement for bids is published is disqualified, presumably by the DPW commissioner, from bidding on the project. The bill does not specify the length of the disqualification period.

ETHICS

Gifts to Decision-Makers on Contract Awards

The bill prohibits public officials and state employees authorized to make decisions on building construction contract awards from

knowingly accepting, either directly or indirectly, a gift from any person they know or have reason to know is a prequalified contractor. It also prohibits these contractors from giving them gifts. Public officials and state employees are already prohibited from accepting gifts from people doing business with or seeking to do business with their agency. The people seeking to do business with the state are also prohibited from giving public officials and state employees gifts. The State Ethics Commission can fine violators up to \$2,000 per violation or issue a cease and desist order.

Prohibited Communications

The bill prohibits certain employees of the awarding authorities from communicating with a bidder on a building contract prior to the award of the contract if the communication results in the bidder receiving information about the contract that is not available to other bidders. The prohibition applies to those employees with decision-making authority concerning the contract. The prohibition does not apply to negotiations with the lowest responsible qualified bidder when his price exceeds the amount of funds allocated for construction.

CONSTRUCTION SERVICES AWARD PANEL

The bill establishes a five-member Construction Services Award Panel within DPW. The commissioner must appoint current DPW employees as three of the members. The agency requesting the construction must appoint the remaining two members, who serve only for deliberations on their projects. The DPW commissioner appointees serve for one year, beginning on July 1. The DPW commissioner or head of the requesting agency, as appropriate, must appoint people to fill vacancies for an unexpired term. The bill specifies that the panel is not a board or commission for the purpose of appointments.

The panel must “be the selection panel for contract awards,” including recipients of eight special building projects authorized by law which are a community court, Connecticut Juvenile Training School, downtown Hartford higher education center, University of Connecticut library, a correctional facility, a juvenile detention center, and a student residential facility for the Connecticut State University system.

The awarding process for these special projects is unclear given the panel's duty, presumably, to award contracts and the DPW commissioner's authority, by law, to select and interview at least three responsible and qualified general contractors to complete special projects and negotiate with any one of them a contract that is fair and reasonable to the state.

CONTRACTOR EVALUATIONS

The bill requires each public agency to complete and submit an evaluation form on each contractor, but not subcontractor, that does state-funded work funded on a building under the agency's control. The evaluation must be completed on a form the DAS commissioner establishes when the work is 50% completed and again after the work is totally completed. The commissioner must include the evaluation in the contractor's prequalification file.

The agency official or designee, or the architect or engineer over seeing the project must certify that the evaluation represents, to the best of the person's knowledge, an accurate analysis of the contractor's performance record on the project. The person certifying the evaluation must mail it to the contractor.

A contractor may contest any information in the evaluation by submitting a written response to the DAS commissioner no later than 30 days after the date the evaluation was postmarked. The response may indicate anything that may be relevant to the contractor's performance on the contract. The commissioner must include the response in the contractor's prequalification file.

The bill makes agencies that fail to complete or submit evaluations or a contractor's written response to the commissioner within 70 days after the project is completed ineligible to receive state funds for the construction, reconstruction, alteration, remodeling, repair, or demolition of a public building.

Lastly, it makes the evaluation, and presumably any response from a contractor, confidential and not subject to public disclosure under FOIA.

STATUS REPORTS

By January 1, 2004, and semiannually thereafter, the bill requires each awarding authority to prepare a report on the status of any (1) ongoing building construction contracts estimated to cost more than \$500,000 or (2) DPW-awarded property management contract with an annual value of \$100,000 or more. They must submit the reports to the governor and the Government Administration and Elections and Finance, Revenue and Bonding committees.

The bill requires the first report submitted after a contract is awarded to indicate:

1. when, where, and how bids were advertised;
2. the bidders;
3. if there was any deviation from standard contract awarding procedures;
4. the people responsible for awarding the contract, including the names of people on any awarding panel;
5. whether an awarding panel was used and its recommendation followed;
6. why any panel recommendations were not followed; and
7. the existence and nature of any other contract the authority has with the contractor-subject of the report.

The bill requires each report to include the number of projects under the awarding authority's control, their costs, the timeliness of their completion, and any implementation problems.

BACKGROUND

Bid Disqualifications Under Current Law

A contractor can be disqualified from bidding on, applying for, or participating as a subcontractor under state contracts for certain specific causes. These include:

1. conviction of, entry of a guilty or nolo contendere plea, or admission

to a criminal offense incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of one;

2. conviction of, entry of a guilty or nolo contendere plea, or admission to a violation of any state or federal law for (a) embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or honesty that affects responsibility as a state contractor or (b) antitrust, collusion, or conspiracy offenses arising from submission of bids or proposals for any public or private contract or subcontract;
3. willful failure to perform according to terms, a history of performance failure, or unsatisfactory performance; or
4. willful violation of statutory or regulatory requirements applicable to a public contract, agreement, or transaction.

The existence of a cause for disqualification cannot be the only factor the commissioners consider. They must also consider the seriousness of the contractor's acts or omission and any mitigating factors when deciding whether to disqualify him.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute
Yea 19 Nay 0