



General Assembly

January Session, 2005

**Raised Bill No. 6741**

LCO No. 3523

\*03523 \_\_\_\_\_ GAE\*

Referred to Committee on Government Administration and Elections

Introduced by:  
(GAE)

**AN ACT REQUIRING THE PREQUALIFICATION OF SUBCONTRACTORS.**

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

1 Section 1. Section 4a-100 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) As used in this section: (1) "Prequalification" means  
4 prequalification issued by the Commissioner of Administrative  
5 Services to bid on a contract for the construction, reconstruction,  
6 alteration, remodeling, repair or demolition of any public building for  
7 work by the state or a municipality or to perform work as a  
8 subcontractor pursuant to any such contract; (2) "subcontractor" means  
9 a person who performs work with a value in excess of twenty-five  
10 thousand dollars for a contractor pursuant to a contract for work for  
11 the state or a municipality which is estimated to cost more than five  
12 hundred thousand dollars; (3) "principals and key personnel" includes  
13 officers, directors, shareholders, members, partners and managerial  
14 employees; (4) "aggregate work capacity rating" means the maximum  
15 amount of work an applicant is capable of undertaking for any and all

16 projects; and (5) "single project limit" means the highest estimated cost  
17 of a single project that an applicant is capable of undertaking.

18 (b) (1) Any person may apply for prequalification to the Department  
19 of Administrative Services. Such application shall be made on such  
20 form as the Commissioner of Administrative Services prescribes and  
21 shall be accompanied by a nonrefundable application fee as set forth in  
22 subdivision (2) of this subsection. The application shall be signed  
23 under penalty of false statement.

24 (2) The application fee shall be as follows:

T1	Aggregate Work Capacity Rating	Fee
T2	\$5,000,000.00 or less	\$600.00
T3	\$5,000,000.01 - \$8,000,000.00	\$750.00
T4	\$8,000,000.01 - \$10,000,000.00	\$850.00
T5	\$10,000,000.01 - \$15,000,000.00	\$1,000.00
T6	\$15,000,000.01 - \$20,000,000.00	\$1,500.00
T7	\$20,000,000.01 - \$40,000,000.00	\$2,000.00
T8	\$40,000,000.01 or more	\$2,500.00

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

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

28 (2) The applicant's principals and key personnel and any names  
29 under which the applicant, principals or key personnel conducted  
30 business during the past five years;

31 (3) The applicant's experience on public and private construction  
32 projects over the past five years, or on the applicant's ten most  
33 recently-completed projects and the names of any subcontractors used  
34 on the projects, as applicable;

35 (4) Any legal or administrative proceedings pending or concluded

36 adversely against the applicant or any of the applicant's principals or  
37 key personnel within the past five years which relate to the  
38 procurement or performance of any public or private construction  
39 contract and whether the applicant is aware of any investigation  
40 pending against the applicant or any principal or key personnel;

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

44 (6) A statement of whether (A) the applicant has been disqualified  
45 pursuant to section 4b-95, this section or section 31-57c or 31-57d, (B)  
46 the applicant is on the list distributed by the Labor Commissioner  
47 pursuant to section 31-57a, (C) the applicant is disqualified or  
48 prohibited from being awarded a contract pursuant to section 31-57b,  
49 (D) the applicant has been disqualified by another state, (E) the  
50 applicant has been disqualified by a federal agency or pursuant to  
51 federal law, (F) the applicant's registration has been suspended or  
52 revoked by the Department of Consumer Protection pursuant to  
53 section 20-341gg, (G) the applicant has been disqualified by a  
54 municipality, and (H) the matters that gave rise to any such  
55 disqualification, suspension or revocation have been eliminated or  
56 remedied; and

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

59 (d) The applicant shall include a statement of financial condition  
60 prepared by a certified public accountant which includes information  
61 concerning the applicant's assets and liabilities, plant and equipment,  
62 bank and credit references, bonding company and maximum bonding  
63 capacity, and other information as the commissioner deems relevant to  
64 an evaluation of the applicant's financial capacity and responsibility.

65 (e) Information contained in the application shall be current as of  
66 the time of filing except that the statement of financial condition shall

67 pertain to the applicant's most recently-completed fiscal year.

68 (f) The commissioner shall determine whether to prequalify an  
69 applicant on the basis of the application and on relevant past  
70 performance according to procedures and criteria set forth in  
71 regulations which the commissioner shall adopt on or before October  
72 1, 2005, in accordance with chapter 54. Such criteria shall include, at a  
73 minimum, the record of the applicant's performance, including, but  
74 not limited to, written evaluations of the applicant's performance on  
75 public or private projects within the past five years, the applicant's  
76 past experience on projects of various size and type, the skill, ability  
77 and integrity of the applicant and any subcontractors used by the  
78 applicant, as applicable, the experience and qualifications of  
79 supervisory personnel employed by the applicant, the maximum  
80 amount of work the applicant is capable of undertaking as  
81 demonstrated by the applicant's financial condition, bonding capacity,  
82 size of past projects and present and anticipated work commitments,  
83 and any other relevant criteria that the commissioner prescribes. Such  
84 regulations shall also (1) provide that the criteria considered shall be  
85 assigned separate designated numerical values and weights and that  
86 the applicant shall be assigned an overall numerical rating on the basis  
87 of all criteria, and (2) establish prequalification classifications,  
88 aggregate work capacity ratings and single project limits. Such  
89 prequalification classifications shall be used to establish the types of  
90 work a contractor or subcontractor is qualified to perform and the  
91 aggregate work capacity ratings shall be used to establish the  
92 maximum amount of work a contractor or subcontractor is capable of  
93 undertaking.

94 (g) (1) The applicant shall indicate the prequalification  
95 classifications, aggregate work capacity ratings and single project  
96 limits that are sought. The commissioner may issue a certificate of  
97 prequalification to any applicant who meets the requirements of this  
98 section. Such certificate shall be effective for one year from the date  
99 issued and shall indicate the contractor's or subcontractor's

100 prequalification classifications, aggregate work capacity ratings and  
101 single project limits, as applicable. The commissioner may cause the  
102 initial certificate of prequalification to be effective for a period not to  
103 exceed two years and may require the applicant to remit payment of  
104 the application fee, as set forth in subsection (b) of this section, for the  
105 first twelve months of certification as well as a prorated application  
106 fee, as described in subdivision (3) of this subsection, for any  
107 additional period of certification beyond the first twelve months.

108 (2) A prequalified contractor or subcontractor may apply at any  
109 time for additional prequalification classifications, aggregate work  
110 capacity ratings or single project limits by submitting the applicable  
111 increase in fee, a completed update statement, and other information  
112 the commissioner requires.

113 (3) The commissioner may renew a prequalification certificate upon  
114 receipt of a completed update statement, any other material the  
115 commissioner requires and a nonrefundable fee in an amount equal to  
116 one-half of the application fee for the applicable aggregate work  
117 capacity rating as set forth in subsection (b) of this section, except that  
118 in no event shall such fee be less than six hundred dollars.

119 (h) Not later than sixty days after receiving a completed application,  
120 the commissioner shall mail or send by electronic mail a notice to the  
121 applicant concerning the commissioner's preliminary determination  
122 regarding the conditions of the prequalification certification, a denial  
123 of certification, a reduction in the level of certification sought or  
124 nonrenewal of certification. Any applicant aggrieved by the  
125 commissioner's preliminary determination may request copies of the  
126 information upon which the commissioner relied in making the  
127 preliminary determination, provided such request is made not later  
128 than ten days after the date the notice was mailed or sent by electronic  
129 mail to the applicant. Not later than twenty days after the date the  
130 notice was mailed or sent by electronic mail, the applicant may submit  
131 additional information to the commissioner with a request for

132 reconsideration. The commissioner shall issue a final determination  
133 regarding the application not later than ninety days after the date the  
134 commissioner mailed or sent by electronic mail the notice of the  
135 preliminary determination, which ninety-day period may be extended  
136 for an additional period not to exceed ninety days if (1) the  
137 commissioner gives written notice to the applicant that the  
138 commissioner requires additional time, and (2) such notice is mailed or  
139 sent by electronic mail during the initial ninety-day period.

140 (i) The commissioner may not issue a prequalification certificate to  
141 any contractor or subcontractor (1) who is disqualified pursuant to  
142 section 31-57c or 31-57d, (2) who has a principal or key personnel who,  
143 within the past five years, has a conviction or has entered a plea of  
144 guilty or nolo contendere for or has admitted to commission of an act  
145 or omission that reasonably could have resulted in disqualification  
146 pursuant to any provision of subdivisions (1) to (3), inclusive, of  
147 subsection (d) of section 31-57c or subdivisions (1) to (3), inclusive, of  
148 subsection (d) of section 31-57d, as determined by the commissioner.

149 (j) The commissioner may revoke a contractor's or subcontractor's  
150 prequalification or reduce the contractor's or subcontractor's  
151 prequalification classification or aggregate work capacity ratings, after  
152 an opportunity for a hearing, if the commissioner receives additional  
153 information that supports such revocation or reduction.

154 (k) (1) Any materially false statement in the application or any  
155 update statement may, in the discretion of the awarding authority,  
156 result in termination of any contract awarded the applicant by the  
157 awarding authority. The awarding authority shall provide written  
158 notice to the commissioner of such false statement not later than thirty  
159 days after discovering such false statement. The commissioner shall  
160 provide written notice of such false statement to the Commissioner of  
161 Public Works and the Commissioner of Consumer Protection not later  
162 than thirty days after discovering such false statement or receiving  
163 such notice.

164 (2) The commissioner shall revoke the prequalification of any  
165 person, after an opportunity for hearing, if the commissioner finds that  
166 the person has included any materially false statement in such  
167 application or update statement, has been convicted of a crime related  
168 to the procurement or performance of any public or private  
169 construction contract or, within the past five years or has otherwise  
170 engaged in fraud in obtaining or maintaining prequalification. Any  
171 person whose prequalification has been revoked pursuant to this  
172 subsection shall be disqualified for a period of two years after which  
173 the person may reapply for prequalification, except that a person  
174 whose prequalification has been revoked on the basis of conviction of a  
175 crime or engaging in fraud shall be disqualified for a period of five  
176 years after which the person may reapply for prequalification. The  
177 commissioner shall not prequalify a person whose prequalification has  
178 been revoked pursuant to this subdivision until the expiration of said  
179 two or five-year disqualification period and the commissioner is  
180 satisfied that the matters that gave rise to the revocation have been  
181 eliminated or remedied.

182 (l) The commissioner shall provide written notice of any revocation,  
183 disqualification, reduction in classification or capacity rating or  
184 reinstated prequalification to the Commissioner of Public Works and  
185 the Commissioner of Consumer Protection not later than thirty days  
186 after any final determination.

187 [(m) The provisions of this section and section 4a-101 shall not apply  
188 to subcontractors.]

189 [(n)] (m) The commissioner shall establish an update statement for  
190 use by bidders and subcontractors for purposes of renewing or  
191 upgrading a prequalification certificate and for purposes of submitting  
192 a bid pursuant to section 4b-91.

193 [(o)] (n) Any applicant aggrieved by the commissioner's final  
194 determination concerning a preliminary determination, a denial of  
195 certification, a reduction in prequalification classification or aggregate

196 work capacity rating or a revocation or nonrenewal of certification  
197 may appeal to the Superior Court in accordance with section 4-183.

198 Sec. 2. Section 4a-101 of the general statutes is repealed and the  
199 following is substituted in lieu thereof (*Effective from passage*):

200 (a) On or before October 1, 2005, the Commissioner of  
201 Administrative Services shall adopt regulations, in accordance with  
202 chapter 54, to establish a standard contractor and subcontractor  
203 evaluation form. Such form shall include, at a minimum, the following  
204 evaluation criteria: (1) Timeliness of performance; (2) quality of  
205 performance; (3) cost containment, including, but not limited to, the  
206 contractor's or subcontractor's ability to work within the contract's  
207 allotted cost, the accuracy of the contractor's or subcontractor's billing,  
208 and the number and cause of change orders and the manner in which  
209 the contractor or subcontractor, as applicable, determined the price on  
210 the change orders; (4) safety; (5) the quality of the contractor's or  
211 subcontractor's working relationship with the agency and the quality  
212 of the contractor's or subcontractor's supervision of the work area; (6)  
213 communication with the agency; (7) the quality of the contractor's or  
214 subcontractor's required documentation; (8) the performance of the  
215 contractor's subcontractors, as applicable, to the extent known by the  
216 official who completes the evaluation; and (9) the contractor's and any  
217 subcontractor's compliance with part III of chapter 557, or chapter 558,  
218 or the provisions of the federal Davis-Bacon Act, 40 USC, Sections 276a  
219 to 276a-5, inclusive, as from time to time amended, to the extent  
220 known by the official who completes the evaluation.

221 (b) Each public agency shall compile evaluation information during  
222 the performance of the contract and complete and submit the  
223 evaluation form to the commissioner after completion of a building  
224 project under the agency's control if the building project is funded, in  
225 whole or in part, by state funds. Such evaluation information shall be  
226 available to any public agency for purposes of assessing the  
227 responsibility of the contractor or subcontractor, as applicable, during

228 a bid selection and evaluation process. The designated official from  
229 such agency shall certify that the information contained in the  
230 evaluation form represents, to the best of the certifying official's  
231 knowledge, a true and accurate analysis of the contractor's or  
232 subcontractor's performance record on the contract. The commissioner  
233 shall include the evaluation in the contractor's or subcontractor's  
234 prequalification file, as applicable. The official shall mail a copy of the  
235 completed evaluation form to the contractor or subcontractor, as  
236 applicable. Any contractor or subcontractor who wishes to contest any  
237 information contained in the evaluation form may submit a written  
238 response to the commissioner not later than thirty days after the date  
239 the form was mailed as indicated by the postmark on the envelope.  
240 Such response shall set forth any additional information concerning  
241 the building project or the oversight of the contract by the public  
242 agency that may be relevant in the evaluation of the contractor's or  
243 subcontractor's performance on the project. The commissioner shall  
244 include any such response in the contractor's or subcontractor's  
245 prequalification file, as applicable.

246 (c) As used in this section, "public agency" means a public agency,  
247 as defined in section 1-200, but does not include The University of  
248 Connecticut with respect to any project, as defined in subdivision (16)  
249 of section 10a-109c, that is undertaken and controlled by the  
250 university, and "subcontractor" means [a person who performs work  
251 with a value in excess of twenty-five thousand dollars for a contractor  
252 pursuant to a contract for work for the state or a municipality which is  
253 estimated to cost more than five hundred thousand dollars]  
254 subcontractor, as defined in subsection (a) of section 4a-100.

255 (d) Upon fifty per cent completion of any building project under a  
256 public agency's control, the agency shall advise the contractor and  
257 subcontractor in writing of the agency's preliminary evaluation of the  
258 contractor's and subcontractor's performance on the project, as  
259 applicable.

260 (e) No public agency, employee of a public agency or certifying  
261 official of a public agency shall be held liable to any contractor or  
262 subcontractor for any loss or injury sustained by such contractor or  
263 subcontractor as the result of the completion of an evaluation form, as  
264 required by this section, unless such agency, employee or official is  
265 found by a court of competent jurisdiction to have acted in a wilful,  
266 wanton or reckless manner.

267 (f) Any public agency that fails to submit a completed evaluation  
268 form, as required by this section, not later than seventy days after the  
269 completion of a project, shall be ineligible for the receipt of any public  
270 funds disbursed by the state for the purposes of the construction,  
271 reconstruction, alteration, remodeling, repair or demolition of any  
272 public building or any public works project until such completed  
273 evaluation form is submitted.

274 Sec. 3. Section 4b-91 of the general statutes is amended by adding  
275 subsection (j) as follows (*Effective from passage*):

276 (NEW) (j) On and after the effective date of this section, no person  
277 may perform work as a subcontractor, except for a project described in  
278 subdivision (2) of subsection (a) of this section, for the construction,  
279 reconstruction, alteration, remodeling, repair or demolition of any  
280 public building for work by the state or a municipality, which is  
281 estimated to cost more than five hundred thousand dollars and is paid  
282 for, in whole or in part, with state funds, unless the person is  
283 prequalified in accordance with section 4a-100, as amended by this act.

284 Sec. 4. Section 4b-100 of the general statutes is repealed and the  
285 following is substituted in lieu thereof (*Effective from passage*):

286 (a) The Commissioner of Public Works shall adopt regulations, in  
287 accordance with chapter 54, to implement the provisions of sections  
288 4b-91 to 4b-100, inclusive. Such regulations shall include (1) objective  
289 criteria for evaluating the qualifications of bidders and subcontractors,  
290 (2) objective criteria for evaluating proposals, and (3) the procedures

291 for evaluating bids after the prequalification status of the bidder and  
292 subcontractor has been verified.

293 (b) The Commissioner of Public Works shall adopt regulations, in  
294 accordance with the provisions of chapter 54, establishing a procedure  
295 for promptly hearing and ruling on claims alleging a violation or  
296 violations of sections 4b-91 to 4b-100, inclusive. Such claims may be  
297 initiated by the Department of Public Works or any party whose  
298 financial interests may be affected by the decision on such a claim.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	4a-100
Sec. 2	<i>from passage</i>	4a-101
Sec. 3	<i>from passage</i>	4b-91
Sec. 4	<i>from passage</i>	4b-100

**Statement of Purpose:**

To require subcontractors to be prequalified in order to be able to perform work on large state construction projects.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*