



House Bill No. 5684

Public Act No. 06-1

AN ACT CONCERNING REFORM OF THE STATE CONTRACTING PROCESS.

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

Section 1. (NEW) (*Effective from passage*) For purposes of sections 2 to 10, inclusive, and section 14 of this act:

(1) "Procurement" means contracting for, buying, purchasing, renting, leasing or otherwise acquiring or disposing of, any supplies, services, including but not limited to, contracts for purchase of services and personal service agreements, interest in real property, or construction, and includes all government functions that relate to such activities, including best value selection and qualification based selection.

(2) "Emergency procurement" means procurement by a state agency, as defined in section 4a-50 of the general statutes, quasi-public agency, as defined in section 1-120 of the general statutes, judicial department or constituent unit of higher education that is made necessary by a sudden, unexpected occurrence that poses a clear and imminent danger to public safety or requires immediate action to prevent or mitigate the loss or impairment of life, health, property or essential public services or in response to a court order, settlement agreement or

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other similar legal judgment.

(3) "Best value selection" means a contract selection process in which the award of a contract is based on a combination of quality and cost considerations.

(4) "Qualification based selection" means a contract selection process in which the award of a contract is primarily based on an assessment of contractor qualifications and on the negotiation of a fair and reasonable price.

(5) "State contracting agency" means any state agency or political subdivision of the state, other than the State Contracting Standards Board, as established pursuant to section 2 of this act, that is authorized by law to enter into contracts, including, but not limited to, any quasi-public agency, as defined in section 1-120 of the general statutes, and any state agency, as defined in section 4a-50 of the general statutes, that receives state funds. State contracting agency does not include the Judicial Department or the Joint Committee on Legislative Management.

(6) "Contractor" means any person or entity bidding on, submitting a proposal for, applying for or participating as a subcontractor for, a transaction, procurement or contract described in section 3 of this act, including, but not limited to, a small contractor, minority business enterprise, organization providing products and services by persons with disabilities, as described in section 17b-656 of the general statutes, and an individual with a disability, as defined in section 4a-60g of the general statutes.

(7) "Contract risk assessment" means (A) the identification and evaluation of loss exposures and risks, including, but not limited to, business and legal risks associated with the contracting process and the contracted goods and services, and (B) the identification,

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evaluation and implementation of measures available to minimize potential loss exposures and risks.

(8) "Privatization contract" means an agreement or series of agreements between a state contracting agency and a person, other than a nonprofit agency, in which such person agrees to provide services valued at five hundred thousand dollars or more over the life of the contract that are substantially similar to and in lieu of services provided, in whole or in part, by employees of such agency or by employees of another state agency for such state agency. "Privatization contract" does not include: (1) An agreement to only provide legal services, litigation support or management or financial consulting, or (2) a consultant services agreement with the Department of Public Works to provide professional architectural design services on a project-by-project basis for only a period of time.

(9) "Comparative costs" means a comparison of the costs of entering into a privatization contract to the costs of the state providing the services that are the subject of the privatization contract, using a comparative costs methodology.

(10) "Comparative costs analysis" means an examination of all direct and indirect costs to the state and an examination of the effect of a proposed privatization contract on the public health and safety of residents of the state who may utilize such privatized service.

(11) "Purchase of service agreement" means any contract between a state agency and a nonprofit agency, partnership or corporation for the purchase by the state of ongoing and routine health and human services for clients of the Departments of Social Services, Children and Families, Mental Retardation, Mental Health and Addiction Services, Public Health and Correction which is overseen by the Office of Policy and Management.

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(12) "Rebidding" means a state contracting agency's requesting of proposals or qualifications for a contract to provide goods or services that are specific to an existing facility or program provided such goods or services are being provided under a contract in effect as of the effective date of this section.

(13) "Established wage rate" means a minimum wage rate for employee positions with duties that are substantially similar to the duties performed by a regular agency, which rate shall be the lesser of step one of the grade or classification under which the comparable state agency employee is paid, or the standard private sector wage rate for said position, as determined by the Labor Commissioner in accordance with section 31-57f of the general statutes and shall include a percentage representing the normal costs of health care and pension benefits for comparable state employees hired at the time of the contract.

(14) "Nonprofit agency" means any organization that is not a for-profit business and provides services contracted for by (A) the state, or (B) a nonstate entity. It also means private institutions of higher learning which receive state financial assistance.

Sec. 2. (NEW) (*Effective from passage*) (a) There is established a State Contracting Standards Board that shall consist of thirteen members appointed as follows: Seven members shall be appointed by the Governor, two members shall be appointed by the speaker of the House of Representatives, two members shall be appointed by the president pro tempore of the Senate, one member shall be appointed by the majority leader of the Senate and one member by the majority leader of the House of Representatives whenever the Governor is of a different political party than that which controls both houses of the General Assembly; seven members shall be appointed by the Governor, one member shall be appointed by the majority leader of the Senate, one member by the majority leader of the House of

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Representatives and four members appointed by the highest ranking leader of the opposing party of the applicable house of the General Assembly whenever the political party of the Governor also controls only one of the houses of the General Assembly; seven members shall be appointed by the Governor, one member shall be appointed by the majority leader of the Senate, one member by the majority leader of the House of Representatives and two members by the minority leader of the House of Representatives and two members by the minority leader of the Senate whenever the political party of the Governor controls both houses of the General Assembly; and seven members by the Governor, two members by the speaker of the House of Representatives, two members by the president pro tempore of the Senate, one member by the majority leader of the Senate and one member by the majority leader of the House of Representatives whenever the Governor is an independent. Each member shall be appointed in accordance with the provisions of section 4-7 of the 2006 supplement to the general statutes and have demonstrated sufficient knowledge by education, training or experience in several of the following enumerated areas: (1) Procurement; (2) contract negotiation, selection and drafting; (3) contract risk assessment; (4) requests for proposals and real estate transactions; (5) business insurance and bonding; (6) the code of ethics; (7) federal and state statutes, policies and regulations; (8) outsourcing and privatization proposal analysis; (9) small and minority business enterprise development; (10) engineering and information technologies; and (11) personnel and labor relations. Such education, training or experience shall have been acquired over not less than a continuous five-year period and shall have been acquired within the ten-year period preceding such appointment. Nothing in this section shall be construed to prohibit an appointing authority from selecting a member of the general public who has demonstrated an interest in governmental ethics and integrity to serve on the board as such appointing authority's appointee. The chairperson of the board shall be appointed by the members of the

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board. The terms of the members shall be coterminous with the terms of the appointing authority for each member. If any vacancy occurs on the board, the appointing authorities having the power to make the appointment under the provisions of this subsection shall appoint a person in accordance with the provisions of this subsection.

(b) The State Contracting Standards Board shall be an independent body within the Executive Department.

(c) The chairperson of the board shall be compensated two hundred dollars per diem up to a maximum of thirty thousand dollars annually. Other members of the board shall be compensated two hundred dollars per diem up to a maximum of twenty-five thousand dollars annually. No person shall serve on the board who holds another state or municipal governmental position and no person on the board nor any spouse, child, stepchild, parent or sibling of such person shall be directly or indirectly involved in any enterprise that does business with the state.

(d) The Governor shall appoint an executive director who shall serve as an ex-officio, nonvoting member of the board. The executive director shall be appointed in accordance with the provisions of section 4-7 of the 2006 supplement to the general statutes and may be removed from office for reasonable cause, in accordance with chapter 67 of the general statutes. The board shall, annually, conduct a performance evaluation of such executive director.

(e) The board may employ secretaries, real estate examiners, contract specialists, forensic fraud examiners, property and procurement specialists, paralegals, attorneys and such other employees as the board deems necessary, all of whom shall be in the state classified service.

(f) The reasonable expenses of the State Contracting Standards

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Board and its employees shall be paid from the budget of the board upon the approval of the board.

(g) No employee of the State Contracting Standards Board shall hold another state or municipal position, nor shall any such employee or any nonclerical employee or any spouse, child, stepchild, parent or sibling of such employee of the board be directly or indirectly involved in any enterprise that does business with the state. Each member and employee of the State Contracting Standards Board shall file, with the board and with the Office of State Ethics, a financial statement indicating all sources of business income of such person in excess of one thousand dollars, and the name of any business with which such member or employee is associated, as defined in subsection (b) of section 1-79 of the 2006 supplement to the general statutes. Such statement shall be a public record. Financial statements for the preceding calendar year shall be filed with the commission on or before April fifteenth of each year if such employee or member held such a position during the preceding calendar year.

(h) Any violation of the provisions of subsection (c) or (g) of this section shall constitute a violation of part I of chapter 10 of the general statutes and may be the subject of a complaint and investigation filed and conducted in accordance with the provisions of section 1-82 of the 2006 supplement to the general statutes.

(i) The board shall adopt such rules as it deems necessary for the conduct of its internal affairs, in accordance with section 4-167 of the general statutes, including, but not limited to, rules of procedure for any appeal taken pursuant to section 10 of this act and any review undertaken pursuant to section 12 of this act.

(j) Seven members of the board shall constitute a quorum which shall be required for the transaction of business by the board.

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Sec. 3. (NEW) (*Effective January 1, 2007*) (a) On or before January 1, 2008, the State Contracting Standards Board shall prepare a uniform procurement code applicable to state contracting agency expenditures, including, but not limited to, expenditures: (1) By municipalities that receive state funds, (2) involving any state contracting and procurement processes, including, but not limited to, leasing and property transfers, purchasing or leasing of supplies, materials or equipment, as defined in section 4a-50 of the general statutes, consultant or consultant services, as defined in section 4b-55 of the 2006 supplement to the general statutes, personal service agreements, as defined in section 4-212 of the general statutes, purchase of service agreements or privatization contracts, and (3) relating to contracts for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building. Nothing in this section shall be construed to require the application of uniform procurement code procedures when such procurement involves the expenditure of federal assistance or contract funds and federal law provides applicable procurement procedures to the extent such procedures are inconsistent with the uniform procurement code.

(b) The uniform procurement code described in subsection (a) of this section shall be designed to: (1) Establish uniform contracting standards and practices among the various state contracting agencies; (2) simplify and clarify the state's laws governing contracting standards and procurement policies and practices, including, but not limited to, procedures for competitive sealed bids, competitive sealed proposals, small purchases, sole source procurements, emergency procurements and special procurements; (3) ensure the fair and equitable treatment of all businesses and persons who deal with the procurement system of the state; (4) include a process to maximize the use of small contractors and minority business enterprises, as defined in section 4a-60g of the general statutes; (5) provide increased economy in state procurement activities and maximize purchasing value to the

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fullest extent possible; (6) ensure that the procurement of supplies, materials, equipment, services, real property and construction required by any state contracting agency is obtained in a cost-effective and responsive manner; (7) preserve and maintain the existing contracting, procurement, disqualification and termination authority and discretion of any state contracting agency when such contracting and procurement procedures represent best practices; (8) include a process to improve contractor and state contracting agency accountability; (9) include standards by which state contracting agencies must evaluate proposals to privatize state or quasi-public agency services and privatization contract bid proposals. Such standards shall, at a minimum, include: (A) A requirement for a comparative costs analysis to be completed prior to any state or quasi-public agency decision to privatize services, (B) adequate notification requirements to affected employees and, where applicable, certified bargaining agents, (C) a requirement for the preparation of an employee impact statement including measures to be taken by the bidder to retain qualified state and quasi-public agency employees, (D) a provision requiring state agencies and quasi-public agencies to provide adequate information and resources to their employees for the purpose of encouraging and assisting such state or quasi-public employees to organize and submit a bid to provide the services that are the subject of such privatization contract, (E) a requirement that bidders disclose all relevant information pertaining to past performance, pending or concluded legal or regulatory proceedings or complaints, including, but not limited to, compliance with fair employment practices and nondiscrimination standards, as described in section 46a-60 of the general statutes, and compliance with federal fair employment and nondiscrimination standards, (F) a requirement that where any applicable collective bargaining agreement allows layoffs resulting from privatization, the contract offer available employee positions pursuant to the contract to qualified regular employees of the agency whose state employment is terminated because of such privatization

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contract provided such employees satisfy the hiring criteria of the contractor, and (G) provisions for a fair wage according to objective standards, such as the established wage rate defined in section 1 of this act; (10) provide that the renewal, modification, extension or rebidding of a privatization agreement in effect on or before the effective date of this section, or reentered into after the effective date of this section, shall be subject to the procurement code on and after January 1, 2009; (11) establish standards for leases and lease-purchase agreements and for the purchase and sale of real estate; and (12) provide a process for competitive sealed bids, competitive sealed proposals, small purchases, sole source procurements, emergency procurements, special procurements, best value selection, qualification based selection and the conditions for their use.

(c) In preparing the uniform procurement code described in subsection (a) of this section, the State Contracting Standards Board shall conduct a comprehensive review of existing state contracting and procurement laws, regulations and practices and shall utilize existing procurement procedures and guidelines that the board deems appropriate.

(d) Upon request by the State Contracting Standards Board, each state contracting agency engaged in procurement shall provide the board, in a timely manner, with such procurement information as the board deems necessary. The board shall have access to all information, files and records related to any state contracting agency in furtherance of this purpose. Nothing in this section shall be construed to require the board's disclosure of documents that are exempt from disclosure pursuant to chapter 14 of the general statutes or that may be protected from disclosure under claim of an attorney-client privilege.

(e) Such uniform procurement code shall be submitted to the General Assembly for its approval. The board shall file such code with the clerks of the House of Representatives and the Senate not later than

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January 15, 2008, and not later than January 20, 2008, the speaker of the House of Representatives and the president pro tempore of the Senate shall submit such code to the joint standing committee of the General Assembly having cognizance of matters relating to government administration and elections. Said committee shall hold a public hearing on such code and shall report its recommendations, including any changes thereto, to the House of Representatives and the Senate concerning the approval or rejection of the code. The General Assembly shall take a vote on such code not later than the end of the 2008 regular session.

Sec. 4. (NEW) (*Effective July 1, 2008*) In addition to the preparation of the uniform procurement code described in section 3 of this act, the duties of the State Contracting Standards Board shall include:

(1) Recommending the repeal of repetitive, conflicting or obsolete statutes concerning state procurement;

(2) Developing, publishing and maintaining the uniform procurement code for all state contracting agencies;

(3) Assisting state contracting agencies in complying with the code by providing guidance, models, advice and practical assistance to state contracting agency staff relating to: (A) Buying the best service at the best price, (B) properly selecting contractors, and (C) drafting contracts that achieve state goals and protect taxpayers' interest;

(4) Reviewing and certifying that a state contracting agency's procurement processes are in compliance with the code;

(5) Triennially, recertifying each state contracting agency's procurement processes and providing agencies with notice of any certification deficiency and exercising authority as provided under section 6 of this act if a determination of noncompliance is made;

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(6) Defining the training requirements for state contracting agency procurement professionals;

(7) Monitoring implementation of the state contracting portal and making recommendations for improvement to the Department of Administrative Services;

(8) Defining the contract data retention requirements for state agencies concerning retention of information on: (A) The number and type of state contracts currently in effect state-wide, (B) the dollar value of such contracts, (C) a list of client agencies, (D) a description of services purchased under such contracts, (E) contractor names, and (F) an evaluation of contractor performance, and assuring such information is available on the state contracting portal;

(9) Providing the Governor and the joint standing committee of the General Assembly having cognizance of matters relating to government administration and elections with recommendations concerning the uniform procurement code; and

(10) Approving an ethics training course for state employees involved in procurement and for state contractors and substantial subcontractors who are prequalified pursuant to the provisions of section 4a-100 of the general statutes, as amended by this act. Such ethics training course may be developed and provided by the Office of State Ethics or by any person, firm or corporation provided such course is approved by the State Contracting Standards Board.

Sec. 5. (NEW) (*Effective October 1, 2008*) (a) The State Contracting Standards Board shall triennially conduct audits of state contracting agencies to ensure compliance with the uniform procurement code. In conducting such audit, the State Contracting Standards Board shall have access to all contracting and procurement records, may interview personnel responsible for contracting, contract negotiation or

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procurement and may enter into an agreement with the State Auditors of Public Accounts to effectuate such audit.

(b) Upon completion of any such audit, the State Contracting Standards Board shall prepare and issue a compliance report for such state contracting agency. Such report shall identify any process or procedure that is inconsistent with the uniform procurement code and indicate those corrective measures the board deems necessary to comply with code requirements. Such report shall be issued and delivered not later than thirty days after completion of such audit and shall be a public record.

(c) After notice and hearing, the State Contracting Standards Board may restrict the authority of any state contracting agency to enter into any contract or procurement agreement if the board, upon a vote of two-thirds of the members of the board present and voting for such purpose, determines that such state contracting agency failed to comply with statutory contracting and procurement requirements, and evidenced a reckless disregard for applicable procedures and policy and such limitation or restriction is in the state's best interest. Such limitation or restriction shall remain in effect until such time as the board determines that such state contracting agency has implemented corrective measures and demonstrated compliance with code requirements.

Sec. 6. (NEW) (*Effective October 1, 2008*) For cause, the State Contracting Standards Board may review or terminate any contract or procurement agreement undertaken by any state contracting agency after providing fifteen days notice to the state contracting agency and the applicable contractor, and consulting with the Attorney General. Such termination of a contract or procurement agreement by the board may occur only upon a vote of two-thirds of the members of the board present and voting for that purpose. Such action shall be accompanied by notice to the state contracting agency and any other affected party.

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For the purpose of this section, "for cause" means: (1) A violation of section 1-84, 1-86e or 4a-100 of the general statutes, as amended by this act, (2) wanton or reckless disregard of any state contracting and procurement process by any person substantially involved in such contract or state contracting agency, or (3) notification from the Attorney General to the state contracting agency that an investigation pursuant to section 4-61dd of the 2006 supplement to the general statutes indicates that the process by which such contract was awarded was compromised by fraud, collusion or other serious ethical improprieties.

Sec. 7. (NEW) (*Effective October 1, 2008*) (a) After reasonable notice, a hearing and consultation with the relevant state contracting agency and the Attorney General, the State Contracting Standards Board may disqualify any contractor, for a period of up to five years, from bidding on, applying for, or participating as a subcontractor under, contracts with the state. Such disqualification shall be upon the vote of two-thirds of the members of the board present and voting for that purpose. Such hearing shall be conducted in accordance with chapter 54 of the general statutes. The board shall issue a written decision not later than ninety days after the conclusion of such hearing and state in the decision the reasons for the action taken and, if the contractor is being disqualified, the period of such disqualification. The existence of a cause for disqualification, as described in subsection (b) of this section, may not be the sole factor to be considered by the board in determining whether the contractor shall be disqualified. In determining whether to disqualify a contractor, the board shall consider the seriousness of the contractor's acts or omissions and any mitigating factors. The board shall send the decision to the contractor by certified mail, return receipt requested. The written decision shall be a final decision for purposes of sections 4-180 and 4-183 of the general statutes.

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(b) Causes for such disqualification shall include the following:

(1) Conviction of, or entry of a plea of guilty or nolo contendere or admission to, the commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(2) Conviction of, or entry of a plea of guilty or nolo contendere or admission to, the violation of any state or federal law for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which affects responsibility as a state contractor;

(3) Conviction of, or entry of a plea of guilty or nolo contendere or admission to, a violation of any state or federal antitrust, collusion or conspiracy law arising out of the submission of bids or proposals on a public or private contract or subcontract;

(4) Accumulation of two or more suspensions pursuant to section 8 of this act within a twenty-four-month period;

(5) A wilful failure to perform in accordance with the terms of one or more contracts;

(6) A wilful violation of a statutory or regulatory provision or requirement applicable to a contract;

(7) A wilful or egregious violation of the ethical standards set forth in sections 1-84, 1-86e or 4a-100 of the general statutes, as amended by this act; or

(8) Any other cause the board determines to be so serious and compelling as to affect responsibility as a state contractor, including, but not limited to: (A) Disqualification by another state for cause, (B)

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the fraudulent, criminal or seriously improper conduct of any officer, director, shareholder or employee of such contractor, provided such conduct occurred in connection with the individual's performance of duties for or on behalf of such contractor and such contractor knew or had reason to know of such conduct, or (C) the existence of an informal or formal business relationship with a contractor who has been disqualified from bidding on state contracts.

(c) Upon written request by the affected state contractor, the State Contracting Standards Board may reduce the period or extent of disqualification for a contractor if documentation supporting any of the following reasons for modification is provided to the board by the contractor:

- (1) Newly discovered material evidence;
- (2) Reversal of the conviction upon which the disqualification was based;
- (3) Bona fide change in ownership or management; or
- (4) Elimination of other causes for which the disqualification was imposed.

Sec. 8. (NEW) (*Effective October 1, 2008*) (a) After reasonable notice and a hearing, conducted in accordance with the provisions of chapter 54 of the general statutes, a state contracting agency may suspend any contractor for a period of not more than six months from bidding on, applying for or performing work as a subcontractor under, contracts with the agency. The commissioner or director of any such state contracting agency shall issue a written decision not later than ninety days after the conclusion of such hearing and state in the decision the reasons for the action taken and, if the contractor is being suspended, the period of such suspension. The existence of a cause for suspension, as described in subsection (b) of this section, may not be the sole factor

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to be considered by the agency in determining whether the contractor shall be suspended. In determining whether to suspend a contractor, the state contracting agency shall consider the seriousness of the contractor's acts or omissions and any mitigating factors. The commissioner or director of the state contracting agency shall send such decision to the contractor by certified mail, return receipt requested. Such decision shall be a final decision for purposes of sections 4-180 and 4-183 of the general statutes.

(b) Causes for such suspension shall include the following:

(1) Failure without good cause to perform in accordance with specifications or within the time limits provided in the contract;

(2) A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for suspension;

(3) Any cause the state contracting agency determines to be so serious and compelling as to affect the responsibility of a state contractor, including suspension by another state contracting agency for cause; or

(4) A violation of the ethical standards set forth in sections 1-84, 1-86e and 4a-100 of the general statutes, as amended by this act.

(c) The state contracting agency may grant an exception permitting a suspended contractor to participate in a particular contract or subcontract upon a written determination by the commissioner or director of the state contracting agency that there is good cause for such exception and that such exception is in the best interest of the state.

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Sec. 9. (NEW) (*Effective October 1, 2008*) (a) Any bidder on a state contract may contest the solicitation or award of a contract to the commissioner of the state agency that awarded such contract. Such contest shall be submitted, in writing, not later than fourteen days after such bidder knew or should have known of the facts giving rise to such contest and shall be limited to the procedural elements of the solicitation or award process, or claims of an unauthorized or unwarranted, noncompetitive selection process.

(b) The commissioner or director of such state contracting agency, or the commissioner's or director's designee, shall have the authority to settle and resolve any such contest.

(c) In the event such contest is not resolved by mutual agreement, the commissioner or director of a state contracting agency, or the commissioner's or director's designee, shall issue a decision, in writing, not later than thirty days after receipt of any such contest. Such decision shall:

(1) Describe the procedure used by such agency in soliciting and awarding such contract;

(2) Indicate such agency's finding as to the merits of such bidder's contest; and

(3) Inform such bidder of the right to review, as provided in section 10 of this act.

(d) A copy of such decision shall be provided to such bidder.

Sec. 10. (NEW) (*Effective October 1, 2008*) (a) Any bidder may appeal a decision issued by the commissioner or director of a state contracting agency, or the commissioner's or director's designee, pursuant to subsection (c) of section 9 of this act to the State Contracting Standards Board.

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(b) Any such request for review shall be filed with the board not later than fourteen days after such bidder's receipt of a decision issued pursuant to subsection (c) of section 9 of this act. Such bidder shall set forth the facts supporting its claim in sufficient detail for the State Contracting Standards Board to determine whether the procedural elements of the solicitation or award failed to comply with the code or whether an unauthorized or unwarranted, noncompetitive selection process was utilized.

(c) Any appeal filed pursuant to subsection (b) of this section shall not be deemed to prohibit the award or execution of any such contested contract.

(d) The State Contracting Standards Board shall create a three-member appeals review subcommittee, which shall review any request filed pursuant to subsection (b) of this section and decide whether such solicitation or award was in compliance with the code, and whether allegations of an unauthorized or unwarranted, noncompetitive selection process have been demonstrated. A unanimous vote of such subcommittee shall be dispositive of any such appeal. A split vote of such subcommittee shall result in a review of the appeal by the full membership of the board which, by a vote of two-thirds of its members present and voting for such purpose, shall decide whether the solicitation or award of such contract was in compliance with the code and whether allegations of an unauthorized or unwarranted, noncompetitive selection process have been demonstrated.

(e) Such appeals review subcommittee shall issue a written decision or take other appropriate action on each appeal not later than ninety days after the filing of such appeal. A written copy of any such decision shall be provided to such bidder.

(f) In the event of an appeal review by the full board, the board shall issue a written decision or take other appropriate action on such

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appeal not later than ninety days after receipt of the appeal from the appeals review subcommittee. A written copy of any such decision shall be provided to such bidder.

(g) In the event that the appeals review subcommittee or the board determines that a procedural violation occurred, or that allegations of an unauthorized or unwarranted, noncompetitive selection process have been demonstrated, the board shall direct the state contracting agency to take corrective action not later than thirty days after the date of the subcommittee's or board's decision, as applicable.

(h) In the event such appeal is found to be frivolous by the appeals review subcommittee or the full board, such frivolous appeal may serve as a basis for disqualification pursuant to section 7 of this act.

(i) Any three members of the board may request a full board review of any contract deliberation or award process of a state contracting agency.

(j) A decision issued by the board or appeals review subcommittee under this section shall be final and not subject to appeal under sections 4-180 and 4-183 of the general statutes.

Sec. 11. (NEW) (*Effective October 1, 2008*) There is established a Contracting Standards Advisory Council, which shall consist of nine state contracting agency representatives designated by the Governor, including at least one representative from each of the following: The Department of Administrative Services, the Department of Transportation and the Department of Public Works. The advisory council shall meet at least once a year to discuss problems with procurement processes and to make recommendations for improvements to the State Contracting Standards Board. The advisory council may conduct studies, research and analyses and make reports and recommendations with respect to subjects or matters within the

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jurisdiction of the State Contracting Standards Board.

Sec. 12. (NEW) (*Effective January 1, 2007*) (a) On and after October 1, 2008, the powers, duties, obligations and other governmental functions of the State Properties Review Board, established under subsection (a) of section 4b-3 of the general statutes, shall transfer to the State Contracting Standards Board, established under section 2 of this act. The powers, duties, obligations and other governmental functions of the State Properties Review Board, shall thereafter vest in the State Contracting Standards Board, in accordance with the provisions of sections 4-38d and 4-39 of the general statutes.

(b) On or before October 1, 2008, the State Contracting Standards Board shall establish a three-member subcommittee of the board to be known as the state properties review subcommittee to perform the duties described under subsection (a) of this section. The subcommittee shall perform the duties established under subsection (a) of this section in accordance with the rules and procedures established by the board pursuant to subsection (i) of section 2 of this act. The State Contracting Standards Board shall constitute a successor department to the State Properties Review Board in accordance with the provisions of sections 4-38d and 4-39 of the general statutes.

Sec. 13. Subsection (i) of section 4b-91 of the 2006 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(i) [In the event that the] The General Assembly [approves] may approve legislation authorizing an exception to the competitive bidding process for a project, provided such legislation is approved, in whole, by a two-thirds vote of the members of each house of the General Assembly. If rejected, the legislation proposing an exception for such project shall not be valid and shall not be implemented. The legislation shall be deemed rejected if the General Assembly fails to

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vote to approve or reject the legislation (1) prior to the adjournment of the regular session of the General Assembly during which the legislation is filed, (2) prior to the adjournment of the next regular session of the General Assembly following the date on which the legislation is filed if the General Assembly is not in regular session on such date, or (3) prior to the adjournment of a special session convened before the next regular session of the General Assembly for the purpose of considering the legislation if the General Assembly is not in regular session on the date on which the legislation is filed. However, if the legislation is filed less than thirty days before the end of a regular session, the General Assembly may vote to approve or reject the legislation (A) not later than thirty days after the first day of a special session convened before the next regular session of the General Assembly for the purpose of considering the legislation, or (B) not later than thirty days after the first day of the next regular session of the General Assembly. In the event that the General Assembly approves legislation authorizing an exception to the competitive bidding process for a project, the State Properties Review Board shall complete a review of the contract for such project and approve or disapprove such contract no later than thirty days after the Commissioner of Public Works submits such contract to the board. Such review shall be conducted in accordance with the provisions of section 4b-3. On and after October 1, 2008, such review shall be conducted by the subcommittee of the State Contracting Standards Board established under subsection (b) of section 12 of this act. In the event that such review does not occur within the thirty-day period prescribed by this subsection, such contract shall be deemed to be approved.

Sec. 14. (NEW) (*Effective from passage*) (a) From the effective date of this section, until the passage and signing into law of a procurement code as described in section 3 of this act, no state agency, as defined in section 4a-50 of the general statutes, quasi-public agency, as defined in section 1-120 of the general statutes, judicial department or constituent

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unit of higher education, may enter into a privatization contract other than an emergency procurement as defined in section 1 of this act, unless each of the following conditions have been met:

(1) Such contract is cost effective and fiscally prudent taking into consideration comparative costs including all direct and indirect costs to the state and the impact of such privatization contract on the public health and safety and the residents of Connecticut who use the services that are the subject of the privatization contract.

(2) Such state agency, as defined in section 4a-50 of the general statutes, quasi-public agency, as defined in section 1-120 of the general statutes, judicial department or constituent unit of higher education has complied with the provisions of subsection (b) of this section.

(3) Prior to any state agency's, as defined in section 4a-50 of the general statutes, quasi-public agency's, as defined in section 1-120 of the general statutes, judicial department or constituent unit of higher education's solicitation of bids for a privatization contract, such state agency, as defined in section 4a-50 of the general statutes, quasi-public agency, as defined in section 1-120 of the general statutes, judicial department or constituent unit of higher education shall prepare an analysis of the costs and benefits to the agency, department or constituent unit of higher education, as applicable of (A) privatizing services, and (B) continuing to provide such services using state employees of the state agency, quasi-public agency judicial department or constituent unit of higher education. Such analysis shall include, but not be limited to: (i) An examination of all direct and indirect costs to the state, including health insurance, pension costs of state employees, unemployment compensation costs of state employees terminated as a result of the privatization contract, gain or loss of income tax and sales tax revenue to the state, and (ii) an examination of the effect of such proposed privatization on the quality of service, the public health and safety and residents of the state who may utilize such privatized

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service. In determining the cost of privatizing services, pursuant to this subsection, the state agency, quasi-public agency judicial department or constituent unit of higher education, as applicable, shall calculate labor costs for each employee position at a rate no less than the middle range salary of a state employee job class substantially similar to such employee position, or the average salary of employees who would be displaced by the proposed privatization, whichever is higher and shall assume comparable benefit costs. Additionally, the state agency, quasi-public agency judicial department or constituent unit of higher education, as applicable, shall include in such cost analysis any costs or penalties the state may incur if such contract is terminated by the state prior to the termination date contained in such contract. Each state agency, quasi-public agency judicial department or constituent unit of higher education, as applicable, shall transmit such analysis to the Secretary of the State who shall maintain copies of each such proposed contract and analysis as public records and to the Auditors of Public Accounts who may review and comment on such analysis.

(4) At least sixty days prior to publishing any notice soliciting bids for a privatization contract, a state agency, quasi-public agency judicial department or constituent unit of higher education, as applicable, shall notify each collective bargaining organization representing employees of the agency judicial department or constituent unit of higher education, as applicable of such planned solicitation. After consulting with the potentially affected bargaining units, if any, the agency judicial department or constituent unit of higher education, as applicable, shall provide adequate resources for the purpose of encouraging and assisting present agency judicial department or constituent unit of higher education employees to organize and submit a bid to provide the services that are the subject of the privatization contract. In determining what resources are adequate for this purpose, the agency judicial department or constituent unit of higher education, as applicable, shall refer to an existing collective bargaining agreement

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of a similar employee organization whose members perform the subject services, if available, which agreement provides similar resources in the same or other agencies, department or constituent units of higher education. If no such collective bargaining agreement exists, the agency, department or constituent unit of higher education, as applicable, shall refer to any existing collective bargaining agreements providing such resources, and shall provide such resources at the minimum level of assistance provided in such agreements. The state agency, judicial department or constituent unit of higher education, as applicable, shall also provide to the state employees its analysis and any report of the Auditors of Public Accounts prepared in accordance with this act. The agency, judicial department or constituent unit of higher education, as applicable, shall consider any such employee bid on the same basis as all other bids. An employee bid may be made as a joint venture with other persons.

(b) The state agency, as defined in section 4a-50 of the general statutes, quasi-public agency, as defined in section 1-120 of the general statutes, judicial department or constituent unit of higher education soliciting bids for a privatization contract shall require the bidders to include the following information in their bid submission:

(1) The wage rate or annual salary for each employee or, if not known, each position covered by the privatization contract;

(2) An agreement by the bidder or contractor to offer available employee positions pursuant to the contract to qualified regular employees of the state agency, quasi-public agency, judicial department or constituent unit of higher education whose state employment is terminated because of the privatization contract and who satisfy the hiring criteria of the contractor;

(3) An agreement by the bidder or the contractor to refrain from engaging in discriminatory employment practices, as defined in

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section 46a-51 of the general statutes, and to take affirmative steps to provide such equal opportunity for all such persons;

(4) A report on the length of continuous employment of current employees of the contractor by job classification, without providing individually identifiable information on such employees and information detailing the relevant prior experience of current employees within each job classification. If the positions identified by the bidder are newly created positions, the bid shall identify the minimum requirements for prospective applicants for each such position;

(5) The annual rate of employee turnover;

(6) Any legal or administrative proceedings pending or concluded adversely against the applicant or any of the applicant's principals or key personnel within the past five years that relate to the procurement or performance of any public or private construction contract, employee safety and health, labor relations or other employment requirements and whether the applicant is aware of any investigation pending against the applicant or any principal or key personnel. Such information shall specify the date of the complaint, citation, court finding or administrative finding, the enforcement agency, rule, law or regulation involved and any additional information the contractor elects to submit;

(7) Any collective bargaining agreements or personnel policies covering the employees that will provide services to the state; and

(8) Any political contributions made by the bidder or any employee of the bidder who participated substantially in the preparation of the bid, to any elected officer of the state or member of the General Assembly during the four years prior to the due date of the bid. For purposes of this section, "participated substantially" means

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participation that was direct, extensive and substantive, not peripheral, clerical or ministerial.

(c) Any state agency, as defined in section 4a-50 of the general statutes, quasi-public agency, as defined in section 1-120 of the general statutes, judicial department or constituent unit of higher education selecting a bidder for a privatization contract shall develop a contract that is acceptable to the bidder and the state agency, quasi-public agency, judicial department or constituent unit of higher education provided such contract shall include the following terms:

(1) Where any applicable collective bargaining agreement allows layoffs as a result of privatization, the contractor shall be required to offer available employee positions pursuant to the contract to qualified regular employees of the agency, judicial department or constituent unit of higher education whose state employment is terminated because of the privatization contract and who satisfy the hiring criteria of the contractor;

(2) The contractor shall be prohibited from engaging in discriminatory employment practices, as defined in section 46a-51 of the general statutes, and shall take affirmative steps to provide such equal opportunity for all such persons;

(3) The contractor shall be required to submit to performance audits of such contract by the Auditors of Public Accounts on a periodic basis, as determined by the Auditors of Public Accounts;

(4) The contractor shall pay a minimum wage rate no lower than the established wage under this act; and

(5) Such contract shall not become effective until the contractor and state agency, quasi-public agency, judicial department or constituent unit of higher education have complied with the provisions of this section.

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(d) Upon signing such contract, the state agency, quasi-public agency, judicial department or constituent unit of higher education shall submit such contract to the Secretary of the State who shall maintain such contract as a public document. Concomitantly, the state agency, quasi-public agency, judicial department or constituent unit of higher education shall submit to the Secretary of the State the following information:

(1) A certification that the state agency, quasi-public agency, judicial department or constituent unit of higher education has complied with all the requirements of the state agency, quasi-public agency, judicial department or constituent unit of higher education contained in the provisions of this section;

(2) The state agency, quasi-public agency, judicial department or constituent unit of higher education analysis prepared in accordance with this section and a report by the state agency, quasi-public agency, judicial department or constituent unit of higher education explaining any changes in such analysis and report as a result of the terms of the proposed privatization contract;

(3) A state agency, quasi-public agency, judicial department or constituent unit of higher education analysis of the quality of the services to be provided by the designated bidder and whether such services are equal to or exceed the quality of services that are provided by regular agency, judicial department or constituent unit of higher education employees;

(4) A certification by the designated bidder that the bidder and its supervisory employees, while in the employ of the designated bidder, have no adjudicated record of repeated wilful noncompliance with any relevant federal or state regulatory law including, but not limited to, laws concerning labor relations, occupational safety and health, nondiscrimination and affirmative action, environmental protection

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and conflicts of interest; and

(5) A description of why the proposed privatization contract is in the public interest.

(e) Nothing in this section shall be construed to prohibit a privatization contract with a nonprofit agency and until January 1, 2009, the renewal, modification, extension or rebidding of a privatization agreement in effect on or before the effective date of this section shall not be covered by this section.

(f) Any employees, or collective bargaining agent of any employee adversely affected by any proposed privatization contract may file a motion for an order to show cause in the superior court for the judicial district of Hartford claiming that such contract fails to comply with the substantive or procedural requirements of this act. A ruling on any such motion may: (1) Deny the motion, if the court finds that all procedural and substantive provisions of this act have been complied with; (2) grant the motion if the court finds that the proposed contract would substantively violate the provisions of this act; or (3) stay the effective date of the contract until any procedural or substantive defect found by the court has been corrected.

(g) No funds paid to any contractor as a result of any privatization contract may be used for purposes of lobbying, as defined in section 1-91 of the 2006 supplement to the general statutes.

Sec. 15. Subsection (a) of section 1-92 of the 2006 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) The Citizen's Ethics Advisory Board shall adopt regulations in accordance with chapter 54 to carry out the purposes of this part. Such regulations shall not be deemed to govern the conduct of any judge trial referee in the performance of such judge trial referee's duties

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pursuant to this chapter. Not later than January 1, 1992, the board shall adopt regulations which further clarify the meaning of the terms "directly and personally received" and "major life event", as used in subsection (e) of section 1-79, as amended, and subsection (g) of section 1-91, as amended. The commission shall adopt regulations that further clarify the meaning of the term "directly or indirectly involved in any enterprise", as used in section 2 of this act.

Sec. 16. (NEW) (*Effective January 1, 2007*) (a) On or before January 1, 2008, the Judicial Branch shall prepare a procurement code applicable to its contracting expenditures, including, but not limited to, expenditures: (1) Involving its contracting and procurement processes, including, but not limited to, purchasing or leasing of supplies, materials or equipment, consultant or consultant services, personal service agreements or purchase of service agreements, and (2) relating to contracts for the renovation, alteration or repair of any Judicial Branch facility in accordance with section 4b-1 of the general statutes.

(b) The procurement code described in subsection (a) of this section shall be designed to: (1) Establish uniform contracting standards and practices; (2) simplify and clarify contracting standards and procurement policies and practices, including, but not limited to, procedures for competitive sealed bids, competitive sealed proposals, small purchases, sole source procurements, emergency procurements and special procurements; (3) ensure the fair and equitable treatment of all businesses and persons who deal with the procurement system; (4) include a process to maximize the use of small contractors and minority business enterprises, as defined in section 4a-60g of the general statutes; (5) provide increased economy in procurement activities and maximize purchasing value to the fullest extent possible; (6) ensure that the procurement of supplies, materials, equipment, services, real property and construction is obtained in a cost-effective and responsive manner; (7) include a process to ensure contractor and

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Judicial Department accountability; and (8) provide a process for competitive sealed bids, competitive sealed proposals, small purchases, sole source procurements, emergency procurements, special procurements, best value selection, qualification based selection and the conditions for their use.

(c) On or before February 1, 2008, the Judicial Branch shall submit such procurement code for review and approval to the joint standing committee of the General Assembly having cognizance of matters relating to the Judicial Branch.

(d) Notwithstanding the provisions of subsections (a) and (b) of this section, the Judicial Branch shall be subject to the requirements of section 14 of this act.

Sec. 17. Section 4a-100 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2007*):

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

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value in excess of five hundred thousand dollars for a contractor pursuant to a contract for work for the state or a municipality which is estimated to cost more than five hundred thousand dollars.

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

(2) The application fee shall be as follows:

Aggregate Work Capacity Rating	Fee
\$5,000,000.00 or less	\$600.00
\$5,000,000.01 - \$8,000,000.00	\$750.00
\$8,000,000.01 - \$10,000,000.00	\$850.00
\$10,000,000.01 - \$15,000,000.00	\$1,000.00
\$15,000,000.01 - \$20,000,000.00	\$1,500.00
\$20,000,000.01 - \$40,000,000.00	\$2,000.00
\$40,000,000.01 or more	\$2,500.00

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

(1) The applicant's form of organization;

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

[(3) The applicant's experience on public and private construction projects over the past five years, or on the applicant's ten most recently-completed projects and the names of any subcontractors used

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on the projects;]

[(4)] (3) Any legal or administrative proceedings pending or concluded adversely against the applicant or any of the applicant's principals or key personnel within the past five years which relate to the procurement or performance of any public or private construction contract and whether the applicant is aware of any investigation pending against the applicant or any principal or key personnel;

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

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

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

(d) The applicant shall include a statement of financial condition prepared by a certified public accountant which includes information concerning the applicant's assets and liabilities, plant and equipment, bank and credit references, bonding company and maximum bonding

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capacity, and other information as the commissioner deems relevant to an evaluation of the applicant's financial capacity and responsibility.

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

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

(g) (1) The applicant shall indicate the prequalification

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classifications, aggregate work capacity ratings and single project limits that are sought. The commissioner may issue a certificate of prequalification to any applicant who meets the requirements of this section. Such certificate shall be effective for one year from the date issued and shall indicate the contractor's or substantial subcontractor's prequalification classifications, aggregate work capacity ratings and single project limits. The commissioner may cause the initial certificate of prequalification to be effective for a period not to exceed two years and may require the applicant to remit payment of the application fee, as set forth in subsection (b) of this section, for the first twelve months of certification as well as a prorated application fee, as described in subdivision (3) of this subsection, for any additional period of certification beyond the first twelve months.

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

(3) The commissioner may renew a prequalification certificate upon receipt of a completed update statement, any other material the commissioner requires and a nonrefundable fee in an amount [equal to] not less than one-half of the application fee for the applicable aggregate work capacity rating as set forth in subsection (b) of this section. [, except that in no event shall such fee be less than six hundred dollars.]

(h) Not later than sixty days after receiving a completed application, the commissioner shall mail or send by electronic mail a notice to the applicant concerning the commissioner's preliminary determination regarding the conditions of the prequalification certification, a denial of certification, a reduction in the level of certification sought or nonrenewal of certification. Any applicant aggrieved by the

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commissioner's preliminary determination may request copies of the information upon which the commissioner relied in making the preliminary determination, provided such request is made not later than ten days after the date the notice was mailed or sent by electronic mail to the applicant. Not later than twenty days after the date the notice was mailed or sent by electronic mail, the applicant may submit additional information to the commissioner with a request for reconsideration. The commissioner shall issue a final determination regarding the application not later than ninety days after the date the commissioner mailed or sent by electronic mail the notice of the preliminary determination, which ninety-day period may be extended for an additional period not to exceed ninety days if (1) the commissioner gives written notice to the applicant that the commissioner requires additional time, and (2) such notice is mailed or sent by electronic mail during the initial ninety-day period.

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

(j) The commissioner may revoke a contractor's or substantial subcontractor's prequalification or reduce the contractor's or substantial subcontractor's prequalification classification or aggregate work capacity ratings, after an opportunity for a hearing, if the commissioner receives additional information that supports such revocation or reduction or if such contractor is suspended from

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bidding on a state contract pursuant to the provisions of section 8 of this act.

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

(2) The commissioner shall revoke the prequalification of any person, after an opportunity for hearing, if the commissioner finds that the person has included any materially false statement in such application or update statement, has been convicted of a crime related to the procurement or performance of any public or private construction contract has been disqualified by the State Contracting Standards Board from bidding on state contracts pursuant to section 7 of this act or, within the past five years or has otherwise engaged in fraud in obtaining or maintaining prequalification. Any person whose prequalification has been revoked pursuant to this subsection shall be disqualified for a period of two years after which the person may reapply for prequalification, except that a person whose prequalification has been revoked on the basis of conviction of a crime or engaging in fraud shall be disqualified for a period of five years after which the person may reapply for prequalification and a person whose prequalification has been revoked on the basis of disqualification by the State Contracting Standards Board shall be disqualified for the same length of time as the disqualification period imposed by the State Contracting Standards Board pursuant to section

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7 of this act. The commissioner shall not prequalify a person whose prequalification has been revoked pursuant to this subdivision until the expiration of said [two or] two-year, five-year, or other applicable disqualification period and the commissioner is satisfied that the matters that gave rise to the revocation have been eliminated or remedied.

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

(m) The provisions of this section and section 4a-101, as amended by this act, shall not apply to subcontractors.

(n) The commissioner shall establish an update statement for use by bidders and substantial subcontractors for purposes of renewing or upgrading a prequalification certificate and for purposes of submitting a bid pursuant to section 4b-91, as amended by this act.

(o) Any applicant aggrieved by the commissioner's final determination concerning a preliminary determination, a denial of certification, a reduction in prequalification classification or aggregate work capacity rating or a revocation or nonrenewal of certification may appeal to the Superior Court in accordance with section 4-183.

(p) Not later than one hundred twenty days after becoming prequalified, any contractor or substantial subcontractor prequalified under the provisions of this section shall participate in an ethics training course approved by the State Contracting Standards Board pursuant to section 4 of this act.

(q) The commissioner shall adopt regulations, in accordance with chapter 54, to establish a schedule of application fees for substantial

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subcontractors.

Sec. 18. Section 4a-101 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2007*):

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

(b) Each public agency shall compile evaluation information during the performance of the contract and complete and submit the evaluation form to the commissioner after completion of a building project under the agency's control if the building project is funded, in whole or in part, by state funds. Such evaluation information shall be available to any public agency for purposes of assessing the responsibility of the contractor during a bid selection and evaluation process. The designated official from such agency shall certify that the information contained in the evaluation form represents, to the best of

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the certifying official's knowledge, a true and accurate analysis of the contractor's performance record on the contract. The commissioner shall include the evaluation in the contractor's prequalification file. The official shall mail a copy of the completed evaluation form to the contractor. Any contractor who wishes to contest any information contained in the evaluation form may submit a written response to the commissioner not later than thirty days after the date the form was mailed as indicated by the postmark on the envelope. Such response shall set forth any additional information concerning the building project or the oversight of the contract by the public agency that may be relevant in the evaluation of the contractor's performance on the project. The commissioner shall include any such response in the contractor's prequalification file.

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

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

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

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

(g) Notwithstanding the provisions of subsection (a) of this section, any political subdivision of the state, when evaluating the performance of a contractor's subcontractors or substantial subcontractors, to the extent known, may rely on an evaluation of such subcontractors or substantial subcontractors that is conducted by the contractor.

Sec. 19. Section 4b-91 of the 2006 supplement to the general statutes is amended by adding subsection (j) as follows (*Effective January 1, 2007*):

(NEW) (j) On and after January 1, 2007, no person whose subcontract exceeds five hundred thousand dollars in value may perform work as a subcontractor, except for a project described in subdivision (2) of subsection (a) of this section, for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building for work by the state or a municipality, which is estimated to cost more than five hundred thousand dollars and is paid for, in whole or in part, with state funds, unless the person is prequalified in accordance with section 4a-100, as amended by this act.

Sec. 20. (NEW) (*Effective January 1, 2007*) (a) This section shall be known as the "Anthony J. Tercyak Act".

(b) The Department of Administrative Services shall require any publicly traded corporation that seeks to do business with the state to certify in an affidavit that such company is not a company that: (1)

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Conducted business in the United States, (2) was previously incorporated within the United States' territorial limits, (3) reincorporated outside the United States' territorial limits on or after July 1, 2005, and (4) as a result of such reincorporation outside the United States' territorial limits, has received a reduction in federal or Connecticut tax liability.

(c) The state may not enter into any contract with any publicly traded company that does not deny such reincorporation in a sworn affidavit, except that the Attorney General may waive such prohibition if the services sought by the state are not available from a company that is incorporated in the United States or if waiver of such prohibition is in the best interest of the state.

Sec. 21. (NEW) (*Effective July 1, 2006*) (a) As used in this section:

(1) "Fixture" means the assembly that holds a lamp and may include an assembly housing, a mounting bracket or pole socket, a lamp holder, a ballast, a reflector or mirror and a refractor or lens;

(2) "Full cut-off luminaire" means a luminaire that allows no direct light emissions above a horizontal plane through the luminaire's lowest light-emitting part;

(3) "Glare" means direct light emitting from a luminaire that causes reduced vision or momentary blindness;

(4) "Illuminance" means the level of light measured at a surface;

(5) "Lamp" means the component of a luminaire that produces the light;

(6) "Light trespass" means light emitted by a luminaire that shines beyond the boundaries of the property on which the luminaire is located;

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(7) "Lumen" means a unit of measurement of luminous flux;

(8) "Luminaire" means the complete lighting unit, including the lamp and the fixture;

(9) "Permanent outdoor luminaire" means any luminaire or system of luminaires that is outdoors and intended to be used for seven days or longer; and

(10) "State funds" means any bond revenues or any money appropriated or allocated by the General Assembly.

(b) Except as provided in subsection (c) of this section, no state funds shall be used to install or replace a permanent outdoor luminaire for lighting on the grounds of any state building or facility unless (1) the luminaire is designed to maximize energy conservation and to minimize light pollution, glare and light trespass, (2) the luminaire's illuminance is equal to the minimum illuminance adequate for the intended purpose of the lighting, and (3) for a luminaire with a rated output of more than one thousand eight hundred lumens, such luminaire is a full cut-off luminaire.

(c) The provisions of subdivision (3) of subsection (b) of this section shall not apply to luminaires located on the grounds of any correctional institution or facility administered by the Commissioner of Correction, required by federal regulations, required for storm operation activities performed by the Department of Transportation, or in a lighting plan for a Department of Transportation facility where less than twenty-five per cent of the luminaires are to be replaced. The Commissioner of Public Works, or the commissioner's designee, may waive the provisions of subdivision (3) of subsection (b) of this section with respect to luminaires on the grounds of any other state building or facility when, after a request for such a waiver has been made and reviewed, the commissioner or the commissioner's designee

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determines that such a waiver is necessary for the lighting application. Requests for such a waiver shall be made to the commissioner or the commissioner's designee in such form as the commissioner shall prescribe and shall include, without limitation, a description of the lighting plan, a description of the efforts that have been made to comply with the provisions of subdivision (3) of subsection (b) of this section and the reasons such a waiver is necessary. In reviewing a request for such a waiver, the commissioner or the commissioner's designee shall consider design safety, costs and other factors deemed appropriate by the commissioner or the commissioner's designee.

(d) The provisions of this section shall not apply to the installation or replacement of luminaires for which the Secretary of the Office of Policy and Management (1) conducts a life-cycle cost analysis of one or more luminaires that meet the requirements set forth in subsection (b) of this section and one or more luminaires that do not meet such requirements, and (2) certifies that a luminaire which meets such requirements is not cost effective and is not the most appropriate alternative based on the life-cycle cost analysis.

Sec. 22. Subsection (d) of section 13a-143d of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2006*):

(d) [Any] All luminaire in violation of any provision of subsection (b) or (c) of this section operating prior to October 1, [2003] 2004, shall be brought into compliance with the requirements in subsection (b) of this section [no later than October 1, 2005] in accordance with the following schedule: Approximately twenty per cent by October 1, 2006, approximately forty per cent by October 1, 2007, approximately sixty per cent by October 1, 2008, approximately eighty per cent by October 1, 2009, and one hundred per cent by October 1, 2010.

Sec. 23. Subsection (d) of section 4b-91 of the 2006 supplement to the

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general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(d) On and after October 1, 2004, each bid submitted for a contract described in subsection (c) of this section shall include a copy of a prequalification certificate issued by the Commissioner of Administrative Services. The bid shall also be accompanied by an update statement in such form as the Commissioner of Administrative Services prescribes. The form for such update statement shall provide space for information regarding all bonded projects completed by the bidder since the date the bidder's prequalification certificate was issued or renewed, all bonded projects the bidder currently has under contract, including the percentage of work on such projects not completed, the names and qualifications of the personnel who will have supervisory responsibility for the performance of the contract, any significant changes in the bidder's financial position or corporate structure since the date the certificate was issued or renewed, any change in the contractor's qualification status as determined by the provisions of subdivision (6) of subsection (c) of section 4a-100 and such other relevant information as the Commissioner of Administrative Services prescribes. Any bid submitted without a copy of the prequalification certificate and an update statement shall be invalid. Any public agency that accepts a bid submitted without a copy of such prequalification certificate and an update statement, as required by this section, shall be ineligible for the receipt of any state funds disbursed for the purpose of the construction, reconstruction, alteration, remodeling, repair or demolition of any public building or any public works project.

Sec. 24. Subdivision (19) of subsection (d) of section 2c-2b and section 4b-3 of the general statutes are repealed. (*Effective October 1, 2008*)

Vetoed March 16, 2006