



# Connecticut Construction Industries Association, Inc.

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**Senate Bill 1063, An Act Concerning State Contracting and the Prequalification  
Program Administered by the Department of Administrative Services  
Government Administration and Elections Committee  
February 5, 2007**

**CCIA Position: Support with amendments**

The Connecticut Construction Industries Association, Inc. (CCIA) represents nearly 400 members drawn from all sectors of the commercial construction industry. CCIA's membership includes firms and organizations that construct, supply, plan and design projects throughout Connecticut. CCIA continues to support contracting reform in Connecticut. However, at times, it is necessary to review well-intended reform measures to ensure they are not easily abused in unintended ways for improper purposes.

CCIA appreciates this opportunity to submit this testimony on the Government Administration and Elections Committee's recent proposed changes to the state prequalification statutes for contractors and substantial subcontractors on state projects. Similarly, we have been pleased to participate in the contracting reform over the past several years.

While the construction industry has a well-deserved reputation of being comprised of highly ethical firms that provide a critical service to the public interest, we acknowledge that on rare occasions there may be firms that betray the integrity of the whole. It may be appropriate for these firms to be suspended or disqualified from state-funded work—but only if the administrative procedures protect the rights of a firm with due process under the law.

Given the very important nature of this matter for the construction industry, CCIA presents this testimony on the industry's concerns and other ramifications the legislature should consider in fashioning these proposed modifications to the existing prequalification and bidding procedures.

The basis of due process is that the accused is innocent until proven guilty. We encourage the legislature to maintain whatever due process safeguards are possible with the suspension and prequalification process. Under sections 2 and 3 of Senate Bill 1063, a contractor can be suspended without the opportunity to respond, and a contract may be terminated on evidence that has not been tested. We believe that due process is not served if a contractor is excluded from contracting on state projects before having an opportunity to present its side of the case.



Suspension and contract termination are serious forms of punishment that cannot be taken lightly. Either is tantamount to a death sentence for a contracting firm, since its business plan may be built around opportunities to bid on and perform state contracts. For this reason, even a temporary interruption in a firm's participation in this market can cost innocent employees their jobs and adversely affect the local economy. This likelihood underscores the need for the administrative process to be fair and deliberative.

Suspension and disqualification of substantial subcontractors, who are also subject to SB 1063, carry additional implications. These firms may be significant—or in some cases sole—providers of construction services and materials in a given geographic area. Their exclusion from performing work or providing supplies to prime contractors would generally decrease availability and increase prices. This could drive up costs and delay the completion of projects.

CCIA does not cite these economic effects to provide a rationale for forgoing suspension and disqualification even when there are firms truly deserving of this remedy. Rather, these effects illustrate the serious and wide-ranging consequences of suspending and disqualifying contractors at any tier, many of which transcend the firm in question, and show the potential dangers of overzealousness. As such, we strongly urge the committee—and the legislature—to consider the need for a fair and deliberative administrative process as it approaches any revisions to the state prequalification statutes.

In the attached document, CCIA offers proposed changes to sections 2 and 3 of SB 1063. The proposed amendment to Conn. Gen. Stat. §4a-100(j) follows the suspension procedures of the U.S. Department of Transportation. A copy of a relevant section of the Code of Federal Regulations is also attached for your review. In short, federal law provides a suspended contractor an opportunity to respond to the suspension notice and, if the suspending official finds an issue of fact in dispute, it permits the official to hold a hearing on the issue in question. Additionally, in subsection (k)(1), we also recommend changing the word “indicating” to “establishing” fraud to ensure the accuracy of information that can be used as a basis for terminating a contract.

In federal contracting, the decision to suspend is based on “present responsibility” and mitigating factors and remedial measures play an important role in the decision making process. CCIA's suggestions would allow an objective evaluation of a contractor's present responsibility, and would provide the opportunity, if appropriate, for the state to enter into compliance agreements with contractors to avoid suspension or termination, to protect the public trust and avoid the negative economic affects of a suspension or contract termination.

CCIA's proposed changes are attached to this testimony. We appreciate this opportunity to testify on these important matters and look forward to continuing to serve as a further resource on behalf of the construction industry as contracting reform progresses in Connecticut. If you have any questions, please do not hesitate to contact Matthew Hallisey or Don Shubert at 860-529-6855.

**AN ACT CONCERNING STATE CONTRACTING AND THE PREQUALIFICATION PROGRAM ADMINISTERED BY THE DEPARTMENT OF ADMINISTRATIVE SERVICES.**

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

Section 1. Subsection (a) of section 4a-63 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) The Commissioner of Administrative Services may disqualify any person, firm or corporation, for up to [two] five years, from bidding on contracts with the Department of Administrative Services, pursuant to section 4a-57, for supplies, materials, equipment and contractual services required by any state agency, for one or more causes set forth under subsection (c) of this section. The commissioner may initiate a disqualification proceeding after consulting with the purchasing agency, if any, and the Attorney General and shall provide notice and an opportunity to be heard to the person, firm or corporation which is the subject of the proceeding. The commissioner shall issue a written decision within ninety days of the last date of such hearing and state in the decision the reasons for the action taken and, if the person, firm or corporation is being disqualified, the period of such disqualification. The commissioner shall send the decision to such person, firm or corporation by certified mail, return receipt requested. The written decision shall be a final decision for the purposes of sections 4-180 and 4-183.

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

(a) As used in this section: (1) "Prequalification" means prequalification issued by the Commissioner of Administrative Services to bid on a contract or perform work pursuant to a contract for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building [or any other public work for work] by the state or a municipality; [, except a public highway or bridge project;] (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) "contract" means an agreement for work for the state or a municipality that is estimated to cost more than five hundred thousand dollars and is funded, in whole or in part, by state funds; and (7) "public building" means a structure, paid for in whole or in part with state funds, with a roof and exterior walls or fire walls, and includes, but is not limited to, sewage treatment plants, water treatment plants, sewer or drainage systems, pump houses and other utility systems.

(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:

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

(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 on the projects;

(4) 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) 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) 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) 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 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 is qualified to perform and the aggregate work capacity ratings shall be used to establish the maximum amount of work a contractor is capable of undertaking.

(g) (1) The applicant shall indicate the prequalification 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 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 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 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 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 or renew a prequalification certificate to any contractor (1) who is disqualified pursuant to section 31-57c or 31-57d, or (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 prequalification or reduce the contractor'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. Prior to the initiation of such hearing or during the course of such hearing, the commissioner may suspend a contractor's prequalification certificate if the commissioner determines that there is probable cause to believe that such contractor engaged in conduct that significantly undermines the skill, ability or integrity of such contractor. Any such suspension shall not exceed a period of three months and shall be accompanied by a written decision of the commissioner that sets forth the reasons for and duration of such suspension. The commissioner shall send notification of any such suspension to such contractor by certified mail, return receipt requested. **WITHIN 30 DAYS AFTER RECEIPT OF THE NOTICE, THE CONTRACTOR HAS THE RIGHT TO RESPOND IN PERSON, IN WRITING, OR BOTH. IN CASES THAT ARE NOT BASED ON AN INDICTMENT, CONVICTION, OR CIVIL JUDGMENT, AND WHERE THE SUSPENDING OFFICIAL DETERMINES THAT THE RESPONSE HAS RAISED A GENUINE DISPUTE OVER FACTS MATERIAL TO THE SUSPENSION, THE CONTRACTOR HAS THE RIGHT TO A SEPARATE FACT-FINDING PROCEEDING AT WHICH IT MAY PRESENT WITNESSES, DOCUMENTS, AND OTHER EVIDENCE AS TO THE MATERIAL FACTS THAT THE SUSPENDING OFFICIAL HAS IDENTIFIED AS BEING IN DISPUTE.**

(k) (1) Any substantial evidence ~~indicating~~ ESTABLISHING fraud in obtaining or maintaining prequalification or any materially false statement in the application, [or any] update statement or update bid 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 and the chair of the construction management oversight committee at The University of Connecticut not later than thirty days after discovering such false statement or receiving such notice.

(2) The commissioner shall deny or 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 or update bid statement, has been convicted of a crime related to the procurement or performance of any public or private construction contract or, within the past five years, [or] has otherwise engaged in fraud in obtaining or maintaining prequalification. Any revocation made pursuant to this subsection shall be made only after an opportunity for a hearing. 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. The commissioner shall not prequalify a person whose prequalification has been revoked pursuant to this subdivision until the expiration of said two or five-year 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 and the chairperson of the construction management oversight committee at The University of Connecticut not later than thirty days after any final determination.

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

(n) The commissioner shall establish an update statement for use by bidders for purposes of renewing or upgrading a prequalification certificate and an update bid statement 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.

Sec. 3. Section 4a-100 of the general statutes, as amended by section 22 of public act 06-134, is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(a) As used in this section: (1) "Prequalification" means prequalification issued by the Commissioner of Administrative Services to bid on a contract or perform work pursuant to a contract for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building [or any other public work for work] by the state or a municipality [, except a public highway or bridge project,] 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; (5) "single project limit" means the highest estimated cost of a single project that an applicant is capable of undertaking; [and] (6) "contract" means an agreement for work for the state or a municipality that is estimated to cost more than five hundred thousand dollars and is funded, in whole or in part, by state funds; (7) "public building" means a structure, paid for in whole or in part with state funds, with a roof and exterior walls or fire walls, and includes, but is not limited to, sewage treatment plants, water treatment plants, sewer or drainage systems, pump houses and other utility systems; and (8) "substantial subcontractor" means a person who performs work with a 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:

T9	Aggregate Work Capacity Rating	Fee
T10	\$5,000,000.00 or less	\$600.00
T11	\$5,000,000.01 - \$8,000,000.00	\$750.00
T12	\$8,000,000.01 - \$10,000,000.00	\$850.00
T13	\$10,000,000.01 - \$15,000,000.00	\$1,000.00
T14	\$15,000,000.01 - \$20,000,000.00	\$1,500.00
T15	\$20,000,000.01 - \$40,000,000.00	\$2,000.00
T16	\$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) 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;

(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;

(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

(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 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, [for a period of not less than the past three 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 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 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.

(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 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 or renew a prequalification certificate to any contractor or substantial subcontractor (1) who is disqualified pursuant to section 31-57c or 31-57d, or (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. Prior to the initiation of such hearing or during the course of such hearing, the commissioner may suspend a contractor's prequalification certificate if the commissioner determines that there is probable cause to believe that such contractor engaged in conduct that significantly undermines the skill, ability or integrity of such contractor. Any such suspension shall not exceed a period of three months and shall be accompanied by a written decision of the commissioner that sets forth the reasons for

and duration of such suspension. The commissioner shall send notification of any such suspension to such contractor by certified mail, return receipt requested. **WITHIN 30 DAYS AFTER RECEIPT OF THE NOTICE, THE CONTRACTOR HAS THE RIGHT TO RESPOND IN PERSON, IN WRITING, OR BOTH. IN CASES THAT ARE NOT BASED ON AN INDICTMENT, CONVICTION, OR CIVIL JUDGMENT, AND WHERE THE SUSPENDING OFFICIAL DETERMINES THAT THE RESPONSE HAS RAISED A GENUINE DISPUTE OVER FACTS MATERIAL TO THE SUSPENSION, THE CONTRACTOR HAS THE RIGHT TO A SEPARATE FACT-FINDING PROCEEDING AT WHICH IT MAY PRESENT WITNESSES, DOCUMENTS, AND OTHER EVIDENCE AS TO THE MATERIAL FACTS THAT THE SUSPENDING OFFICIAL HAS IDENTIFIED AS BEING IN DISPUTE.**

(k) (1) Any substantial evidence ~~indicating~~ ESTABLISHING fraud in obtaining or maintaining prequalification or any materially false statement in the application [or any] update statement or update bid 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 and the chair of the construction management oversight committee at The University of Connecticut not later than thirty days after discovering such false statement or receiving such notice.

(2) The commissioner shall deny or 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 or update bid statement, has been convicted of a crime related to the procurement or performance of any public or private construction contract or, within the past five years, [or] has otherwise engaged in fraud in obtaining or maintaining prequalification. Any revocation made pursuant to this subsection shall be made only after an opportunity for a hearing. 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. The commissioner shall not prequalify a person whose prequalification has been revoked pursuant to this subdivision until the expiration of said 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 and the chairperson of the construction management oversight committee at The University of Connecticut not later than thirty days after any final determination.

(m) The provisions of this section and section 4a-101 shall not apply to subcontractors who are not substantial 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 an update bid statement 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) The commissioner shall adopt regulations, in accordance with chapter 54, to establish a schedule of application fees for substantial contractors.]

Sec. 4. Subsection (c) of section 4a-101 of the general statutes, as amended by section 23 of public act 06-134, is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(c) As used in this section, "public agency" means a public agency, as defined in section 1-200, "contract" means an agreement for work for the state or a municipality that is estimated to cost more than five hundred thousand dollars and is funded, in whole or in part, by state funds, "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] and "substantial subcontractor" means a substantial subcontractor, as defined in section 4a-100, as amended by this act.

Sec. 5. Section 4b-91 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) Every contract for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building for work by the state, which is estimated to cost more than five hundred thousand dollars, except a contract awarded by the Commissioner of Public Works for (1) a community court project, as defined in subsection (j) of section 4b-55, (2) the downtown Hartford higher education center project, as defined in subsection (l) of section 4b-55, (3) a correctional facility project, as defined in subsection (m) of section 4b-55, (4) a juvenile detention center project, as defined in subsection (n) of section 4b-55, or (5) a student residential facility for the Connecticut State University system that is a priority higher education facility project, as defined in subsection (f) of section 4b-55, shall be awarded to the lowest responsible and qualified general bidder who is prequalified pursuant to section 4a-100, as amended by this act, on the basis of competitive bids in accordance with the procedures set forth in this chapter, after the Commissioner of Public Works or, in the case of a contract for the construction of or work on a building under the supervision and control of the Joint Committee on Legislative

Management of the General Assembly, the joint committee or, in the case of a contract for the construction of or work on a building under the supervision and control of one of the constituent units of the state system of higher education, the constituent unit, has invited such bids by advertisements inserted at least once in one or more newspapers having a circulation in each county in the state. The Commissioner of Public Works, the joint committee or the constituent unit, as the case may be, shall indicate the prequalification classification required for the contract in such advertisement. As used in this section, "prequalification classification" means the prequalification classifications established by the Commissioner of Administrative Services pursuant to section 4a-100, as amended by this act.

(b) The Commissioner of Public Works, the joint committee or the constituent unit, as the case may be, shall determine the manner of submission and the conditions and requirements of such bids, and the time within which the bids shall be submitted, consistent with the provisions of sections 4b-91 to 4b-96, inclusive. Such award shall be made within sixty days after the opening of such bids. If the general bidder selected as the general contractor fails to perform the general contractor's agreement to execute a contract in accordance with the terms of the general contractor's general bid and furnish a performance bond and also a labor and materials or payment bond to the amount specified in the general bid form, an award shall be made to the next lowest responsible and qualified general bidder. No employee of the Department of Public Works, the joint committee or a constituent unit with decision-making authority concerning the award of a contract and no public official, as defined in section 1-79, may communicate with any bidder prior to the award of the contract if the communication results in the bidder receiving information about the contract that is not available to other bidders, except that if the lowest responsible and qualified bidder's price submitted is in excess of funds available to make an award, the Commissioner of Public Works, the Joint Committee on Legislative Management or the constituent unit, as the case may be, may negotiate with such bidder and award the contract on the basis of the funds available, without change in the contract specifications, plans and other requirements. If the award of a contract on said basis is refused by such bidder, the Commissioner of Public Works, the Joint Committee on Legislative Management or the constituent unit, as the case may be, may negotiate with other contractors who submitted bids in ascending order of bid prices without change in the contract, specifications, plans and other requirements. In the event of negotiation with general bidders as provided in this section, the general bidder involved may negotiate with subcontractors on the same basis, provided such general bidder shall negotiate only with subcontractors named on such general bidder's general bid form.

(c) [On and after October 1, 2004, no] No person may bid on a contract or perform work pursuant to a contract 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.

(d) [On and after October 1, 2004, each] 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 bid statement in such form as the Commissioner of Administrative Services prescribes. The form for such update bid statement shall provide space for information regarding all projects completed by the bidder since the date the bidder's prequalification certificate was issued or renewed, all 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, as amended by this act, 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 bid statement shall be invalid. Any public agency that accepts a bid submitted without a copy of such prequalification certificate and an update bid statement, as required by this section, shall be ineligible for the receipt of funds related to such bid.

(e) Any person who bids on a contract described in subsection (c) of this section shall certify under penalty of false statement at the conclusion of the bidding process that the information in the bid is true, that there has been no substantial change in the bidder's financial position or corporate structure since the bidder's most recent prequalification certificate was issued or renewed, other than those changes noted in the update bid statement, and that the bid was made without fraud or collusion with any person.

(f) Any person who receives information from a state employee or public official that is not available to the general public concerning any construction, reconstruction, alteration, remodeling, repair or demolition project on a public building prior to the date that an advertisement for bids on the project is published shall be disqualified from bidding on the project.

(g) Notwithstanding the provisions of this chapter regarding competitive bidding procedures, the commissioner may select and interview at least three responsible and qualified general contractors who are prequalified pursuant to section 4a-100, as amended by this act, and submit the three selected contractors to the construction services award panels process described in section 4b-100a and any regulation adopted by the commissioner. The commissioner may negotiate with the successful bidder a contract which is both fair and reasonable to the state for a community court project, as defined in subsection (j) of section 4b-55, the downtown Hartford higher education center project, as defined in subsection (l) of section 4b-55, a correctional facility project, as defined in subsection (m) of section 4b-55, a juvenile detention center project, as defined in subsection (n) of section 4b-55, or a student residential facility for the Connecticut State University system that is a priority higher education facility project, as defined in subsection (f) of section 4b-55. The Commissioner of Public Works, prior to entering any such contract or performing any work on such project, shall submit such contract to the State

Properties Review Board for review and approval or disapproval by the board, pursuant to subsection (i) of this section. Any general contractor awarded a contract pursuant to this subsection shall be subject to the same requirements concerning the furnishing of bonds as a contractor awarded a contract pursuant to subsection (b) of this section.

(h) [On and after October 1, 2004, any] Any agency that seeks to have a project awarded without being subject to competitive bidding procedures shall certify to the joint committee of the General Assembly having cognizance of matters relating to government administration and elections that the project is of such an emergency nature that an exception to the competitive bidding procedures of this section is required. Such certification shall include input from all affected agencies, detail the need for the exception and include any relevant documentation.

(i) 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. 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. 6. Section 4b-92 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

As used in this chapter and except as otherwise provided, the words "lowest responsible and qualified bidder" shall mean the bidder who is prequalified pursuant to section 4a-100, as amended by this act, and whose bid is the lowest of those bidders possessing the skill, ability and integrity necessary to faithful performance of the work based on objective criteria considering past performance and information contained in the update bid statement submitted pursuant to section 4b-91, as amended by this act. Essential information in regard to such qualifications shall be submitted with the bid in such form as the awarding authority may require by specification in the bid documents and on the bid form. Every general bid shall be accompanied by a bid bond or a certified check in an amount which shall be ten per cent of the bid, provided no such bid bond or certified check shall be required in relation to any general bid in which the total estimated cost of labor and materials under the contract with respect to which such general bid is submitted is less than fifty thousand dollars. Failure to execute a contract awarded as specified and bid shall result in the forfeiture of such bid bond or certified check. In considering past performance the awarding authority shall evaluate the skill, ability and integrity of bidders in terms of the bidders' fulfillment of contract obligations and of the bidders' experience or lack of experience with projects of the nature and scope of the project for which the bids are submitted.

Sec. 7. Subdivision (2) of subsection (g) of section 9-612 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(2) On and after December 31, 2006:

(A) No principal of a state contractor or prospective state contractor, with regard to a state contract, bid solicitation or request for proposals with or from a state agency in the executive branch or a quasi-public agency or a holder of a valid prequalification certificate, shall make a contribution to, or solicit contributions on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee;

(B) No principal of a state contractor or prospective state contractor, with regard to a state contract, bid solicitation or request for proposals with or from the General Assembly or a holder of a valid prequalification certificate, shall make a contribution to, or solicit contributions on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of state senator or state representative, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee;

(C) If a principal of a state contractor makes or solicits a contribution prohibited under subparagraph (A) or (B) of this subdivision, the contracting state agency or quasi-public agency may, in the case of a state contract executed on or after December 7, 2005, void the existing contract with said contractor, and no state agency or quasi-public agency shall award the state contractor a state contract or an extension or an amendment to a state contract for one year after the election for which such contribution is made or solicited. Each state contract shall include the provisions of subparagraph (A) or (B) of this subdivision, whichever is applicable, and this subparagraph as conditions of the contract; and

(D) If a principal of a prospective state contractor makes or solicits a contribution prohibited under subparagraph (A) or (B) of this subdivision, no state agency or quasi-public agency shall award the prospective state contractor the contract described in the bid solicitation or request for proposals, or any other state contract for one year after the election for which such contribution is made or solicited. Each state agency and quasi-public agency shall include the provisions of subparagraph (A) or (B) of this subdivision, whichever is applicable, and this subparagraph in each bid solicitation and request for proposals issued by the agency. [ , and the] The Commissioner of Administrative Services shall [include such provisions in each prequalification issued by said commissioner] notify applicants for prequalification about the provisions of subparagraphs (A), (B) and (D) of this subdivision during the prequalification application process. The chief executive officer of each prospective state contractor shall: (i) Inform each individual described in subparagraph (F) of subdivision (1) of this subsection with regard to said prospective state contractor concerning the provisions of subparagraph (A) or (B) of this subdivision, whichever is applicable, and this subparagraph, (ii) certify in a sworn statement that no such individual will make or solicit a contribution in violation of the provisions of subparagraph (A) or (B) of this subdivision, whichever is applicable, and this

subparagraph, and (iii) acknowledge in writing that if any such contribution is made or solicited, the prospective state contractor shall be disqualified from being awarded the contract described in the bid solicitation or request for proposals or being awarded any other state contract for one year after the election for which such contribution is made or solicited.

Sec. 8. Section 49-41 of the general statutes is amended by adding subsection (f) as follows (*Effective from passage*):

(NEW) (f) Whenever a surety bond is required in connection with a contract for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building for work by the state or a municipality, that is estimated to cost more than five hundred thousand dollars and is paid for, in whole or in part, with state funds, the surety contract between the contractor named as principal in the bond and the surety that issues such bond shall contain the following provision: "In the event that the surety assumes the contract or obtains a bid or bids for completion of the contract, the surety shall ensure that the contractor chosen to complete the contract is prequalified pursuant to section 4a-100 of the Connecticut general statutes in the requisite classification and has the aggregate work capacity rating and single project limit necessary to complete the contract".

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	4a-63(a)
Sec. 2	<i>from passage</i>	4a-100
Sec. 3	<i>October 1, 2007</i>	4a-100
Sec. 4	<i>October 1, 2007</i>	4a-101(c)
Sec. 5	<i>from passage</i>	4b-91
Sec. 6	<i>from passage</i>	4b-92
Sec. 7	<i>from passage</i>	9-612(g)(2)
Sec. 8	<i>from passage</i>	49-41

**Statement of Purpose:**

To make certain changes to the prequalification program administered by the Department of Administrative Services and the state's contracting procedures.

***[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.]***  
**PROPOSED CHANGES ARE INDICATED BY BOLD, UNDERLINED, AND ALL CAPS.**

**§ 49 CFR 29.740**

**Code of Federal Regulations**

**TITLE 49--TRANSPORTATION**

**SUBTITLE A--OFFICE OF THE SECRETARY OF TRANSPORTATION**

**49 CFR 29.740 Are suspension proceedings formal?**

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**49 CFR 29.740 Are suspension proceedings formal?**

PART 29--GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart G--Suspension

(a) Suspension proceedings are conducted in a fair and informal manner. The suspending official may use flexible procedures to allow you to present matters in opposition. In so doing, the suspending official is not required to follow formal rules of evidence or procedure in creating an official record upon which the official will base a final suspension decision.

(b) You as a respondent or your representative must submit any documentary evidence you want the suspending official to consider.

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**§ 49 CFR 29.720**

**Code of Federal Regulations**

**TITLE 49--TRANSPORTATION**

**SUBTITLE A--OFFICE OF THE SECRETARY OF TRANSPORTATION**

**49 CFR 29.720 How may I contest a suspension?**

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**49 CFR 29.720 How may I contest a suspension?**

**PART 29--GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

**Subpart G--Suspension**

If you as a respondent wish to contest a suspension, you or your representative must provide the suspending official with information in opposition to the suspension. You may do this orally or in writing, but any information provided orally that you consider important must also be submitted in writing for the official record.

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**§ 49 CFR 29.725**

**Code of Federal Regulations**

**TITLE 49--TRANSPORTATION**

**SUBTITLE A--OFFICE OF THE SECRETARY OF TRANSPORTATION**

**49 CFR 29.725 How much time do I have to contest a suspension?**

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**49 CFR 29.725 How much time do I have to contest a suspension?**

**PART 29--GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

**Subpart G--Suspension**

(a) As a respondent you or your representative must either send, or make arrangements to appear and present, the information and argument to the suspending official within 30 days after you receive the Notice of Suspension.

(b) We consider the notice to be received by you--

(1) When delivered, if we mail the notice to the last known street address, or five days after we send it if the letter is undeliverable;

(2) When sent, if we send the notice by facsimile or five days after we send it if the facsimile is undeliverable; or

(3) When delivered, if we send the notice by e-mail or five days after we send it if the e-mail is undeliverable.

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**§ 49 CFR 29.735**

**Code of Federal Regulations**

**TITLE 49--TRANSPORTATION**

**SUBTITLE A--OFFICE OF THE SECRETARY OF TRANSPORTATION**

**49 CFR 29.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?**

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**49 CFR 29.735 Under what conditions do I get an additional opportunity to challenge the facts on which the suspension is based?**

**PART 29--GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)**

**Subpart G--Suspension**

(a) You as a respondent will not have an additional opportunity to challenge the facts if the suspending official determines that--

(1) Your suspension is based upon an indictment, conviction, civil judgment, or other finding by a Federal, State, or local body for which an opportunity to contest the facts was provided;

(2) Your presentation in opposition contains only general denials to information contained in the Notice of Suspension;

(3) The issues raised in your presentation in opposition to the suspension are not factual in nature, or are not material to the suspending official's initial decision to suspend, or the official's decision whether to continue the suspension; or

(4) On the basis of advice from the Department of Justice, an office of the United States Attorney, a State attorney general's office, or a State or local prosecutor's office, that substantial interests of the government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced by conducting fact-finding.

(b) You will have an opportunity to challenge the facts if the suspending official determines that--

(1) The conditions in paragraph (a) of this section do not exist; and

(2) Your presentation in opposition raises a genuine dispute over facts material to the suspension.

(c) If you have an opportunity to challenge disputed material facts under this section, the suspending official or designee must conduct additional proceedings to resolve those facts.

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**§ 49 CFR 29.745**

**Code of Federal Regulations**

**TITLE 49--TRANSPORTATION**

**SUBTITLE A--OFFICE OF THE SECRETARY OF TRANSPORTATION**

**49 CFR 29.745 How is fact-finding conducted?**

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**49 CFR 29.745 How is fact-finding conducted?**

PART 29--GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Subpart G--Suspension

(a) If fact-finding is conducted--

- (1) You may present witnesses and other evidence, and confront any witness presented; and
- (2) The fact-finder must prepare written findings of fact for the record.

(b) A transcribed record of fact-finding proceedings must be made, unless you as a respondent and the Department of Transportation agree to waive it in advance. If you want a copy of the transcribed record, you may purchase it.

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