



House of Representatives

General Assembly

File No. 565

January Session, 2009

Substitute House Bill No. 6295

House of Representatives, April 8, 2009

The Committee on Government Administration and Elections reported through REP. SPALLONE of the 36th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT EXTENDING THE TIME PERIOD FOR DISQUALIFICATION OF CERTAIN STATE CONTRACTORS.

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

1 Section 1. Section 4b-95 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2009*):

3 (a) The awarding authority shall furnish to every person applying
4 therefor a form for general bid.

5 (b) Every general bid submitted for a contract subject to this chapter
6 shall be submitted on a form furnished by the awarding authority. The
7 form provided by the awarding authority shall provide a place for
8 listing the names and prices of subcontractors for the four classes of
9 work specified in subsection (a) of section 4b-93, and for each other
10 class of work included by the awarding authority pursuant to said
11 subsection and state that: (1) The undersigned agrees that if selected as
12 general contractor, he shall, within five days, Saturdays, Sundays and

13 legal holidays excluded, after presentation thereof by the awarding
14 authority, execute a contract in accordance with the terms of the
15 general bid; (2) the undersigned agrees and warrants that he has made
16 good faith efforts to employ minority business enterprises as
17 subcontractors and suppliers of materials under such contract and
18 shall provide the Commission on Human Rights and Opportunities
19 with such information as is requested by the commission concerning
20 his employment practices and procedures as they relate to the
21 provisions of the general statutes governing contract requirements;
22 and (3) the undersigned agrees that each of the subcontractors listed
23 on the bid form will be used for the work indicated at the amount
24 stated, unless a substitution is permitted by the awarding authority.
25 The awarding authority may require in the bid form that the general
26 contractor agree to perform a stated, minimum percentage of work
27 with his own forces.

28 (c) General bids shall be for the complete work as specified and shall
29 include the names of any subcontractors for the four classes of work
30 specified in subsection (a) of section 4b-93, and for each other class of
31 work for which the awarding authority has required a separate section
32 pursuant to said subsection and the dollar amounts of their
33 subcontracts, and the general contractor shall be selected on the basis
34 of such general bids. It shall be presumed that the general bidder
35 intends to perform with its own employees all work in such four
36 classes and such other classes, for which no subcontractor is named.
37 The general bidder's qualifications for performing such work shall be
38 subject to review under section 4b-92. Every general bid which is
39 conditional or obscure, or which contains any addition not called for,
40 shall be invalid; and the awarding authority shall reject every such
41 general bid. The awarding authority shall be authorized to waive
42 minor irregularities which he considers in the best interest of the state,
43 provided the reasons for any such waiver are stated in writing by the
44 awarding authority and made a part of the contract file. No such
45 general bid shall be rejected because of the failure to submit prices for,
46 or information relating to, any item or items for which no specific
47 space is provided in the general bid form furnished by the awarding

48 authority, but this sentence shall not be applicable to any failure to
49 furnish prices or information required by this section to be furnished
50 in the form provided by the awarding authority. General bids shall be
51 publicly opened and read by the awarding authority forthwith. The
52 awarding authority shall not permit substitution of a subcontractor for
53 one named in accordance with the provisions of this section or
54 substitution of a subcontractor for any designated subtrade work bid
55 to be performed by the general contractor's own forces, except for
56 good cause. The term "good cause" includes but is not limited to a
57 subcontractor's or, where appropriate, a general contractor's: (1) Death
58 or physical disability, if the listed subcontractor is an individual; (2)
59 dissolution, if a corporation or partnership; (3) bankruptcy; (4) inability
60 to furnish any performance and payment bond shown on the bid form;
61 (5) inability to obtain, or loss of, a license necessary for the
62 performance of the particular category of work; (6) failure or inability
63 to comply with a requirement of law applicable to contractors,
64 subcontractors, or construction, alteration, or repair projects; (7) failure
65 to perform his agreement to execute a subcontract under section 4b-96.

66 (d) The general bid price shall be the price set forth in the space
67 provided on the general bid form. No general bid shall be rejected (1)
68 because of error in setting forth the name of a subcontractor as long as
69 the subcontractor or subcontractors designated are clearly identifiable,
70 or (2) because the plans and specifications do not accompany the bid or
71 are not submitted with the bid. Failure to correctly state a
72 subcontractor's price shall be cause for rejection of the general bidder's
73 bid.

74 (e) Any general contractor who violates any provision of this section
75 [shall] may be disqualified from bidding on other contracts that are
76 subject to the provisions of this chapter for a period not to exceed
77 twenty-four months if the violation occurred on or before September
78 30, 2009, and for a period not to exceed five years if the violation
79 occurs on or after October 1, 2009, commencing from the date on which
80 the violation is discovered, for each violation. The awarding authority
81 shall periodically review the general contractor's subcontracts to

82 [insure] ensure compliance with [such provisions] this section, and
83 shall after each such review prepare a written report setting forth its
84 findings and conclusions. The Commissioner of Public Works may
85 initiate a disqualification proceeding only after consulting with the
86 awarding authority, if any, and the Attorney General and shall provide
87 notice and an opportunity for a hearing to the contractor who is the
88 subject of the proceeding. The hearing shall be conducted in
89 accordance with the contested case procedures set forth in chapter 54.
90 The commissioner shall issue a written decision not later than ninety
91 days after the last date of such hearing and state in the decision the
92 reasons for the action taken and, if the contractor is being disqualified,
93 the period of such disqualification. The existence of a cause for
94 disqualification shall not be the sole factor to be considered in
95 determining whether the contractor shall be disqualified. In
96 determining whether to disqualify a contractor, the commissioner shall
97 consider the seriousness of the contractor's acts or omissions and any
98 mitigating factors. The commissioner shall send the decision to the
99 contractor by certified mail, return receipt requested. The written
100 decision shall be a final decision for purposes of sections 4-180 and 4-
101 183. The commissioner may reduce the period or extent of
102 disqualification, upon the contractor's request, supported by
103 documentation, for the following reasons: (1) Newly discovered
104 material evidence; (2) bona fide change in ownership or management;
105 or (3) other reasons the commissioner deems appropriate.

106 Sec. 2. Subsection (c) of section 31-57c of the general statutes is
107 repealed and the following is substituted in lieu thereof (*Effective*
108 *October 1, 2009*):

109 (c) The Commissioner of Public Works may disqualify any
110 contractor [, for up to two years,] from bidding on, applying for, or
111 participating as a subcontractor under, contracts with the state, acting
112 through any of its departments, commissions or other agencies, except
113 the Department of Administrative Services, the Department of
114 Transportation and the constituent units of the state system of higher
115 education, for one or more causes set forth under subsection (d) of this

116 section for up to two years if the basis for such cause occurred on or
117 before September 30, 2009, and for a period not to exceed five years if
118 the basis for such cause occurs on or after October 1, 2009. The
119 commissioner may initiate a disqualification proceeding only after
120 consulting with the contract awarding agency, if any, and the Attorney
121 General and shall provide notice and an opportunity for a hearing to
122 the contractor who is the subject of the proceeding. The hearing shall
123 be conducted in accordance with the contested case procedures set
124 forth in chapter 54. The commissioner shall issue a written decision
125 within ninety days of the last date of such hearing and state in the
126 decision the reasons for the action taken and, if the contractor is being
127 disqualified, the period of such disqualification. The existence of a
128 cause for disqualification shall not be the sole factor to be considered in
129 determining whether the contractor shall be disqualified. In
130 determining whether to disqualify a contractor, the commissioner shall
131 consider the seriousness of the contractor's acts or omissions and any
132 mitigating factors. The commissioner shall send the decision to the
133 contractor by certified mail, return receipt requested. The written
134 decision shall be a final decision for the purposes of sections 4-180 and
135 4-183.

136 Sec. 3. Subsection (c) of section 31-57d of the general statutes is
137 repealed and the following is substituted in lieu thereof (*Effective*
138 *October 1, 2009*):

139 (c) The Commissioner of Transportation may disqualify any
140 contractor [, for up to two years,] from bidding on, applying for, or
141 participating as a subcontractor under, contracts with the state, acting
142 through the Department of Transportation, for one or more causes set
143 forth under subsection (d) of this section for up to two years if the
144 basis for such cause occurred on or before September 30, 2009, and for
145 a period not to exceed five years if the basis for such cause occurs on or
146 after October 1, 2009. The commissioner may initiate a disqualification
147 proceeding only after consulting with the Attorney General and shall
148 provide notice and an opportunity for a hearing to the contractor who
149 is the subject of the proceeding. The hearing shall be conducted in

150 accordance with the contested case procedures set forth in chapter 54.
151 The commissioner shall issue a written decision within ninety days of
152 the last date of such hearing and state in the decision the reasons for
153 the action taken and, if the contractor is being disqualified, the period
154 of such disqualification. The existence of a cause for disqualification
155 does not require that the contractor be disqualified. In determining
156 whether to disqualify a contractor, the commissioner shall consider the
157 seriousness of the contractor's acts or omissions and any mitigating
158 factors. The commissioner shall send the decision to the contractor by
159 certified mail, return receipt requested. The written decision shall be a
160 final decision for the purposes of sections 4-180 and 4-183.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	4b-95
Sec. 2	<i>October 1, 2009</i>	31-57c(c)
Sec. 3	<i>October 1, 2009</i>	31-57d(c)

GAE *Joint Favorable Subst.*

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

OFA Fiscal Note

State Impact: None

Municipal Impact: None

OLR Bill Analysis

sHB 6295

AN ACT EXTENDING THE TIME PERIOD FOR DISQUALIFICATION OF CERTAIN STATE CONTRACTORS.

SUMMARY:

This bill increases, from two to five years, the maximum period of disqualification that the commissioners of the Department of Public Works (DPW) and the Department of Transportation (DOT) may impose on public works contractors under their respective jurisdictions for certain illegal, unethical, irresponsible, or other acts that occur on and after October 1, 2009. By law, the DPW commissioner's authority extends to contractors of all other state agencies, except the Department of Administrative Services and the constituent units of the higher education system.

The bill also increases, from two to five years, the maximum period of disqualification for public works building construction contractors who violate general bid requirements on and after October 1, 2009. It eliminates the requirement for mandatory disqualification for this violation and instead requires the DPW commissioner to impose a period of disqualification after notice and a hearing. This gives the commissioner the authority to disqualify contractors on contracts under and outside of the department's supervision or control (e.g., contracts under the supervision and control of the Legislative Management Committee or constituent units of higher education).

EFFECTIVE DATE: October 1, 2009

CONTRACTOR DISQUALIFICATION FOR GENERAL BID VIOLATIONS

By law, contractors must submit a general bid on every public works building construction contract. The bid must include the names

of, and prices that will be paid to, subcontractors on the project and a statement that the contractor:

1. if selected, will execute a contract with the listed subcontractors within five business days, excluding holidays;
2. made a good faith effort to employ minority business enterprises as subcontractors and material men; and
3. will use the listed contractors as indicated and pay them the amount indicated, unless the awarding authority permits substitutions.

By law, contractors who violate the general bid law are disqualified for up to two years. The bill increases the maximum disqualification period to five years for violations committed on and after October 1, 2009.

It eliminates mandatory disqualification for general bid requirements and instead permits the DPW commissioner to disqualify after a hearing. The commissioner must consult with the appropriate awarding authority and the attorney general and provide the contractor with notice before initiating the proceedings, which must be conducted as a contested case under the Uniform Administrative Procedures Act.

The bill requires the commissioner to issue a written decision within 90 days after the hearing ends, including her reasons therefore and the period of any disqualification. She must send the decision to the contractor by certified mail, return receipt requested. The decision is a final decision appealable to Superior Court.

When determining whether to disqualify a contractor, the commissioner must consider the seriousness of the violation and any mitigating factors. She may reduce the period or extent of disqualification if the contractor asks and can show (1) newly discovered, material evidence; (2) that there has been a bona fide change in ownership or management; or (3) other reasons the

commissioner deems appropriate.

BACKGROUND

Grounds for Disqualification

The DOT and DPW commissioners may disqualify a contractor from bidding on, applying for, or participating as a subcontractor under state contracts for certain specific causes. These include:

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

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 15 Nay 0 (03/25/2009)