



General Assembly

January Session, 2009

Raised Bill No. 1035

LCO No. 3842

03842_____PD_

Referred to Committee on Planning and Development

Introduced by:
(PD)

**AN ACT CONCERNING EQUAL ACCESS TO OPPORTUNITIES FOR
SUBCONTRACTORS.**

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

1 Section 1. Section 4b-91 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2009*):

3 (a) Every contract for the construction, reconstruction, alteration,
4 remodeling, repair or demolition of any public building or any other
5 public work by the state except a public highway or bridge project or
6 any other construction project administered by the Department of
7 Transportation, which is estimated to cost more than five hundred
8 thousand dollars, except a contract awarded by the Commissioner of
9 Public Works for (1) a community court project, as defined in
10 subsection (j) of section 4b-55, (2) the downtown Hartford higher
11 education center project, as defined in subsection (l) of section 4b-55,
12 (3) a correctional facility project, as defined in subsection (m) of section
13 4b-55, (4) a juvenile detention center project, as defined in subsection
14 (n) of section 4b-55, or (5) a student residential facility for the
15 Connecticut State University System that is a priority higher education
16 facility project, as defined in subsection (f) of section 4b-55, shall be

17 awarded to the lowest responsible and qualified general bidder who is
18 prequalified pursuant to section 4a-100 on the basis of competitive bids
19 in accordance with the procedures set forth in this chapter, after the
20 Commissioner of Public Works or, in the case of a contract for the
21 construction of or work on a building under the supervision and
22 control of the Joint Committee on Legislative Management of the
23 General Assembly, the joint committee or, in the case of a contract for
24 the construction of or work on a building under the supervision and
25 control of one of the constituent units of the state system of higher
26 education, the constituent unit, has invited such bids by
27 advertisements inserted at least once in one or more newspapers
28 having a circulation in each county in the state. The Commissioner of
29 Public Works, the joint committee or the constituent unit, as the case
30 may be, shall indicate the prequalification classification required for
31 the contract in such advertisement. As used in this section,
32 "prequalification classification" means the prequalification
33 classifications established by the Commissioner of Administrative
34 Services pursuant to section 4a-100.

35 (b) The Commissioner of Public Works, the joint committee or the
36 constituent unit, as the case may be, shall determine the manner of
37 submission and the conditions and requirements of such bids, and the
38 time within which the bids shall be submitted, consistent with the
39 provisions of sections 4b-91 to 4b-96, inclusive. Such award shall be
40 made not later than ninety days after the opening of such bids. If the
41 general bidder selected as the general contractor fails to perform the
42 general contractor's agreement to execute a contract in accordance with
43 the terms of the general contractor's general bid and furnish a
44 performance bond and also a labor and materials or payment bond to
45 the amount specified in the general bid form, an award shall be made
46 to the next lowest responsible and qualified general bidder. No
47 employee of the Department of Public Works, the joint committee or a
48 constituent unit with decision-making authority concerning the award
49 of a contract and no public official, as defined in section 1-79, may
50 communicate with any bidder prior to the award of the contract if the

51 communication results in the bidder receiving information about the
52 contract that is not available to other bidders, except that if the lowest
53 responsible and qualified bidder's price submitted is in excess of funds
54 available to make an award, the Commissioner of Public Works, the
55 Joint Committee on Legislative Management or the constituent unit, as
56 the case may be, may negotiate with such bidder and award the
57 contract on the basis of the funds available, without change in the
58 contract specifications, plans and other requirements. If the award of a
59 contract on said basis is refused by such bidder, the Commissioner of
60 Public Works, the Joint Committee on Legislative Management or the
61 constituent unit, as the case may be, may negotiate with other
62 contractors who submitted bids in ascending order of bid prices
63 without change in the contract, specifications, plans and other
64 requirements. In the event of negotiation with general bidders as
65 provided in this section, the general bidder involved may negotiate
66 with subcontractors on the same basis, provided such general bidder
67 shall negotiate only with subcontractors named on such general
68 bidder's general bid form.

69 (c) No person may bid on a contract or perform work pursuant to a
70 contract for the construction, reconstruction, alteration, remodeling,
71 repair or demolition of any public building for work by the state or a
72 municipality, which is estimated to cost more than five hundred
73 thousand dollars and is paid for, in whole or in part, with state funds,
74 unless the person is prequalified in accordance with section 4a-100.

75 (d) Each bid submitted for a contract described in subsection (c) of
76 this section shall include a copy of a prequalification certificate issued
77 by the Commissioner of Administrative Services. The bid shall also be
78 accompanied by an update bid statement in such form as the
79 Commissioner of Administrative Services prescribes. The form for
80 such update bid statement shall provide space for information
81 regarding all projects completed by the bidder since the date the
82 bidder's prequalification certificate was issued or renewed, all projects
83 the bidder currently has under contract, including the percentage of

84 work on such projects not completed, the names and qualifications of
85 the personnel who will have supervisory responsibility for the
86 performance of the contract, any significant changes in the bidder's
87 financial position or corporate structure since the date the certificate
88 was issued or renewed, any change in the contractor's qualification
89 status as determined by the provisions of subdivision (6) of subsection
90 (c) of section 4a-100 and such other relevant information as the
91 Commissioner of Administrative Services prescribes. Any bid
92 submitted without a copy of the prequalification certificate and an
93 update bid statement shall be invalid. Any public agency that accepts a
94 bid submitted without a copy of such prequalification certificate and
95 an update bid statement, as required by this section, may become
96 ineligible for the receipt of funds related to such bid.

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

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

111 (g) Notwithstanding the provisions of this chapter regarding
112 competitive bidding procedures, the commissioner may select and
113 interview at least three responsible and qualified general contractors
114 who are prequalified pursuant to section 4a-100 and submit the three
115 selected contractors to the construction services award panels process

116 described in section 4b-100a and any regulation adopted by the
117 commissioner. The commissioner may negotiate with the successful
118 bidder a contract which is both fair and reasonable to the state for a
119 community court project, as defined in subsection (j) of section 4b-55,
120 the downtown Hartford higher education center project, as defined in
121 subsection (l) of section 4b-55, a correctional facility project, as defined
122 in subsection (m) of section 4b-55, a juvenile detention center project,
123 as defined in subsection (n) of section 4b-55, or a student residential
124 facility for the Connecticut State University System that is a priority
125 higher education facility project, as defined in subsection (f) of section
126 4b-55. The Commissioner of Public Works, prior to entering any such
127 contract or performing any work on such project, shall submit such
128 contract to the State Properties Review Board for review and approval
129 or disapproval by the board, pursuant to subsection (i) of this section.
130 Any general contractor awarded a contract pursuant to this subsection
131 shall be subject to the same requirements concerning the furnishing of
132 bonds as a contractor awarded a contract pursuant to subsection (b) of
133 this section.

134 (h) Any agency that seeks to have a project awarded without being
135 subject to competitive bidding procedures shall certify to the joint
136 committee of the General Assembly having cognizance of matters
137 relating to government administration and elections that the project is
138 of such an emergency nature that an exception to the competitive
139 bidding procedures of this section is required. Such certification shall
140 include input from all affected agencies, detail the need for the
141 exception and include any relevant documentation.

142 (i) In the event that the General Assembly approves legislation
143 authorizing an exception to the competitive bidding process for a
144 project, the State Properties Review Board shall complete a review of
145 the contract for such project and approve or disapprove such contract
146 no later than thirty days after the Commissioner of Public Works
147 submits such contract to the board. Such review shall be conducted in
148 accordance with the provisions of section 4b-3. In the event that such

149 review does not occur within the thirty-day period prescribed by this
150 subsection, such contract shall be deemed to be approved.

151 [(j) On and after October 1, 2007, no person whose subcontract
152 exceeds five hundred thousand dollars in value may perform work as
153 a subcontractor on a project for the construction, reconstruction,
154 alteration, remodeling, repair or demolition of any public building for
155 work by the state or a municipality, which project is estimated to cost
156 more than five hundred thousand dollars and is paid for, in whole or
157 in part, with state funds, unless the person is prequalified in
158 accordance with section 4a-100. The provisions of this subsection shall
159 not apply to a project described in subdivision (2) of subsection (a) of
160 this section.]

161 Sec. 2. Section 49-41 of the general statutes is repealed and the
162 following is substituted in lieu thereof (*Effective from passage*):

163 (a) Each contract exceeding one hundred thousand dollars in
164 amount for the construction, alteration or repair of any public building
165 or public work of the state or a municipality shall include a provision
166 that the person to perform the contract shall furnish to the state or
167 municipality on or before the award date, a bond in the amount of the
168 contract which shall be binding upon the award of the contract to that
169 person, with a surety or sureties satisfactory to the officer awarding
170 the contract, for the protection of persons supplying labor or materials
171 in the prosecution of the work provided for in the contract for the use
172 of each such person, provided no such bond shall be required to be
173 furnished (1) in relation to any general bid in which the total estimated
174 cost of labor and materials under the contract with respect to which
175 such general bid is submitted is less than one hundred thousand
176 dollars, (2) in relation to any sub-bid in which (A) the total estimated
177 cost of labor and materials under the contract with respect to which
178 such sub-bid is submitted is less than one hundred thousand dollars,
179 or (B) when the person awarded the contract for the general bid has
180 furnished a bond under this subsection, or (3) in relation to any general

181 bid or sub-bid submitted by a consultant, as defined in section 4b-55.
182 Any such bond furnished shall have as principal the name of the
183 person awarded the contract.

184 (b) Nothing in this section or sections 49-41a to 49-43, inclusive,
185 shall be construed to limit the authority of any contracting officer to
186 require a performance bond or other security in addition to the bond
187 referred to in subsection (a) of this section, except that no such officer
188 shall require a performance bond in relation to any general bid in
189 which the total estimated cost of labor and materials under the contract
190 with respect to which such general bid is submitted is less than
191 twenty-five thousand dollars or in relation to any sub-bid in which the
192 total estimated cost of labor and materials under the contract with
193 respect to which such sub-bid is submitted is less than fifty thousand
194 dollars.

195 (c) No contract for the construction, alteration or repair of any
196 public building or public work of the state or a municipality that
197 requires a person to supply the state or municipality with a bond may
198 include a provision that requires the person to obtain the bond from a
199 specific surety, agent, broker or producer. No contracting officer may
200 require that a bond be obtained from a specific surety, agent, broker or
201 producer.

202 (d) In the event that any political subdivision of the state enters into
203 a contract described in subsection (a) of this section and fails to obtain
204 delivery from the contractor of the bond required by this section, any
205 person who has not been paid by the contractor for labor or materials
206 supplied in the performance of work under the contract shall have the
207 same legal right of action against such political subdivision of the state
208 as such person would have had against a surety under the provisions
209 of section 49-42. Nothing in this section shall be construed to extend
210 liability to the state for any person's right to payment or constitute a
211 waiver of the state's sovereign immunity.

212 (e) (1) As used in this subsection, "owner-controlled insurance

213 program" means an insurance procurement program under which a
214 principal provides and consolidates insurance coverage for one or
215 more contractors on one or more construction projects.

216 (2) No contract for the construction, alteration or repair of any
217 public building or public work of the state or a municipality may
218 include a provision that allows or requires the state or municipality to
219 maintain an owner-controlled insurance program, except for (A) a
220 project approved pursuant to section 10a-109e, or (B) one or more
221 municipal projects totaling one hundred million dollars or more (i)
222 under the supervision of one construction manager, or (ii) located
223 within the boundaries of a municipality if under the supervision of
224 more than one construction manager.

225 (3) Each contract or policy of insurance issued under an owner-
226 controlled insurance program pursuant to this subsection shall provide
227 that:

228 (A) Coverage for work performed and materials furnished shall
229 continue from the completion of the work until the date all causes of
230 action are barred under any applicable statute of limitations.

231 (B) Any notice of a change in coverage under the contract or policy
232 or of a cancellation or refusal to renew the coverage under the contract
233 or policy shall be provided to the principal and all contractors covered
234 under the program.

235 (C) The effective date of a (i) change in coverage under the contract
236 or policy shall be at least thirty days after the date the principal and
237 contractors receive the notice of change in coverage as required under
238 subparagraph (B) of this subdivision, and (ii) cancellation or refusal to
239 renew shall be at least sixty days after the principal and contractors
240 receive the notice of change in coverage as required under
241 subparagraph (B) of this subdivision.

242 (4) Each principal or contractor shall disclose in the project plans or

243 specifications at the time the principal or contractor is soliciting bids
244 for the construction project that the project will be covered by an
245 owner-controlled insurance program.

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

259 Sec. 3. Section 29-402 of the general statutes is repealed and the
260 following is substituted in lieu thereof (*Effective October 1, 2009*):

261 (a) No person shall engage in the business of demolition of
262 buildings without a certificate of registration obtained from the
263 Department of Public Safety. An applicant for initial registration shall
264 file an application with the Department of Public Safety, furnish
265 evidence of expertise and financial responsibility and pay a fee of three
266 hundred fifty dollars for a class B certificate and seven hundred fifty
267 dollars for a class A certificate. In issuing a certificate under this
268 section the department shall consider the number of years worked by
269 an applicant and shall not use the number of hours worked by an
270 applicant to determine eligibility. Each certificate shall be valid for
271 twelve months from date of issuance and shall be renewable on
272 application of the registrant upon payment of an annual fee of two
273 hundred dollars for a class B certificate and six hundred dollars for a
274 class A certificate. The department may refuse to issue any such

275 certificate for cause, and may revoke or refuse to renew any such
276 certificate for failure to carry out and conform to the provisions of this
277 part or to any regulations adopted hereunder, or for any violation of
278 title 22a. No person shall be refused a certificate or a renewal thereof,
279 and no certificate shall be revoked, without an opportunity for a
280 hearing conducted by the Department of Public Safety.

281 (b) As used in this part, the term "registration" includes the whole or
282 part of any permit which the Department of Public Safety issues under
283 authority of the general statutes and which (1) requires persons to
284 place their names on a list maintained by the department before they
285 can engage in the business of demolition of buildings, (2) does not
286 require a person to demonstrate competence by examination or other
287 means, and (3) may be revoked or suspended by the department for
288 cause.

289 (c) The provisions of this section shall not apply to (1) a person who
290 is engaged in the disassembling, transportation and reconstruction of
291 historic buildings for historical purposes or in the demolition of farm
292 buildings or in the renovation, alteration or reconstruction of a single-
293 family residence, (2) the removal of underground petroleum storage
294 tanks, (3) the burning of a building or structure as part of an organized
295 fire department training exercise, or (4) the demolition of a single-
296 family residence or outbuilding by an owner of such structure if it does
297 not exceed a height of thirty feet, provided (A) the owner shall be
298 present on site while such demolition work is in progress and shall be
299 held personally liable for any injury to individuals or damage to public
300 or private property caused by such demolition, and (B) such
301 demolition shall be permitted only with respect to buildings which
302 have clearance from other structures, roads or highways equal to or
303 greater than the height of the structure subject to demolition. The local
304 building official may require additional clearance when deemed
305 necessary for safety.

306 Sec. 4. (NEW) (*Effective October 1, 2009*) (a) The Commissioner of

307 Transportation shall establish a program of mediation for the
308 resolution of disputes between the Department of Transportation and
309 subcontractors arising from contracts for the design, construction,
310 construction management, repair or alteration of any highway, bridge,
311 building or other public works of the state. As used in this section,
312 "mediation" means the process where the department and a
313 subcontractor meet with an impartial third party to work towards a
314 resolution of the dispute which is satisfactory to all parties in
315 accordance with the generally accepted principles of mediation.

316 (b) A subcontractor may request mediation by filing a statement
317 with the commissioner requesting that the dispute be resolved by
318 mediation.

319 (c) Mediation shall begin on the date the statement is filed under
320 subsection (b) of this section and conclude not more than one hundred
321 eighty days after such filing. Such period may be extended for an
322 additional one hundred eighty days upon mutual agreement of the
323 parties. The mediator may extend the time for mediation after the
324 second period of one hundred eighty days has elapsed. A party may
325 withdraw from mediation at any time after notification to other
326 parties.

327 (d) A party to the mediation or the mediator may request the
328 participation in mediation of any person deemed by the party to be
329 necessary for effective resolution of the issues, including
330 representatives of governmental agencies not a party to the action.

331 (e) Not more than fifteen days after the conclusion of the mediation,
332 the mediators shall file a report with the department and each party
333 describing the proceedings and specifying the issues resolved or that
334 the issues have not been resolved.

335 (f) The report of the mediators shall be binding on the department
336 and the parties.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	4b-91
Sec. 2	<i>from passage</i>	49-41
Sec. 3	<i>October 1, 2009</i>	29-402
Sec. 4	<i>October 1, 2009</i>	New section

Statement of Purpose:

To assure fair opportunities to subcontractors by (1) removing the requirements that subcontractors must prequalify for public bids and provide bonds where the contractor is bonded, (2) providing that experience in determining eligibility for a certificate of registration for demolition work be based on hour of services, and (3) requiring the Department of Transportation to establish a program of mediation for disputes with subcontractors arising from contracts with the department.

[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.]