



Senate

General Assembly

File No. 467

February Session, 2010

Substitute Senate Bill No. 473

Senate, April 12, 2010

The Committee on Government Administration and Elections reported through SEN. SLOSSBERG of the 14th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING STATE CONTRACTING, A PILOT PROGRAM AND THE PREQUALIFICATION OF CONTRACTORS.

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

1 Section 1. (NEW) (*Effective from passage*) For any contract entered
2 into between a state agency and a private service provider after July 1,
3 2010, when the state agency reduces the funding amount under the
4 contract by three per cent or more during any fiscal year, the private
5 service provider may adjust its budget expenditures in an amount
6 equal to the funding reduction without the agency's approval.

7 Sec. 2. Subsection (b) of section 4a-82 of the general statutes is
8 repealed and the following is substituted in lieu thereof (*Effective from*
9 *passage*):

10 (b) The Commissioner of Administrative Services shall establish a
11 pilot program, for a term of [four] seven years, to create and expand
12 janitorial work job opportunities for persons with a disability and

13 persons with a disadvantage. Such pilot program shall consist of four
14 identified projects for janitorial work. The program shall create a
15 minimum of sixty full-time jobs or sixty full-time equivalents at
16 standard wages for persons with disabilities and persons with
17 disadvantages and have a total market value for all janitorial contracts
18 awarded under the program of at least three million dollars. In
19 establishing such pilot program, the Commissioner of Administrative
20 Services may consult with the Commissioner of Social Services and the
21 Labor Commissioner.

22 Sec. 3. Subsection (i) of section 4a-100 of the 2010 supplement to the
23 general statutes is repealed and the following is substituted in lieu
24 thereof (*Effective October 1, 2010*):

25 (i) The commissioner may [not issue or renew] deny a
26 prequalification certificate to any contractor or substantial
27 subcontractor (1) who is disqualified pursuant to section 31-57c or 31-
28 57d, [or] (2) who has a principal or key personnel who, within the past
29 five years, has a conviction or has entered a plea of guilty or nolo
30 contendere for or has admitted to commission of an act or omission
31 that reasonably could have resulted in disqualification pursuant to any
32 provision of subdivisions (1) to (3), inclusive, of subsection (d) of
33 section 31-57c or subdivisions (1) to (3), inclusive, of subsection (d) of
34 section 31-57d, as determined by the commissioner, or (3) who, within
35 the past three years, has received four or more unsatisfactory written
36 evaluations.

37 Sec. 4. Subsection (o) of section 4a-100 of the 2010 supplement to the
38 general statutes is repealed and the following is substituted in lieu
39 thereof (*Effective October 1, 2010*):

40 (o) Any contractor or substantial subcontractor aggrieved by the
41 commissioner's final determination concerning a preliminary
42 determination, a denial of certification, a reduction in prequalification
43 classification or aggregate work capacity rating or a revocation [or
44 nonrenewal] of certification may appeal to the Superior Court in
45 accordance with section 4-183.

46 Sec. 5. Subsection (e) of section 4a-101 of the 2010 supplement to the
47 general statutes is repealed and the following is substituted in lieu
48 thereof (*Effective October 1, 2010*):

49 (e) No person, public agency, employee of a public agency or
50 certifying official of a public agency shall be held liable to any
51 contractor, substantial subcontractor or subcontractor for any loss or
52 injury sustained by such contractor, substantial subcontractor or
53 subcontractor as the result of the completion of an evaluation form, as
54 required by this section or by section 4a-100, as amended by this act,
55 unless such person, agency, employee or official is found by a court of
56 competent jurisdiction to have acted in a wilful, wanton or reckless
57 manner.

58 Sec. 6. Subsection (a) of section 4a-100 of the 2010 supplement to the
59 general statutes is repealed and the following is substituted in lieu
60 thereof (*Effective October 1, 2010*):

61 (a) As used in this section: (1) "Prequalification" means
62 prequalification issued by the Commissioner of Administrative
63 Services to bid on a contract or perform work pursuant to a contract
64 for the construction, reconstruction, alteration, remodeling, repair or
65 demolition of any public building or any other public work by the state
66 or a municipality, [except] including a public highway or bridge
67 project or any other construction project administered by the
68 Department of Transportation, [or] except to perform work under such
69 a contract as a substantial subcontractor; (2) "subcontractor" means a
70 person who performs work with a value in excess of twenty-five
71 thousand dollars for a contractor pursuant to a contract for work for
72 the state or a municipality which is estimated to cost more than five
73 hundred thousand dollars; (3) "principals and key personnel" includes
74 officers, directors, shareholders, members, partners and managerial
75 employees; (4) "aggregate work capacity rating" means the maximum
76 amount of work an applicant is capable of undertaking for any and all
77 projects; (5) "single project limit" means the highest estimated cost of a
78 single project that an applicant is capable of undertaking; (6) "contract"

79 means an agreement for work for the state or a municipality that is
80 estimated to cost more than five hundred thousand dollars and is
81 funded, in whole or in part, by state funds; and (7) "substantial
82 subcontractor" means a person who performs work with a value in
83 excess of five hundred thousand dollars for a contractor pursuant to a
84 contract for work for the state or a municipality which is estimated to
85 cost more than five hundred thousand dollars.

86 Sec. 7. Subsection (l) of section 4a-100 of the 2010 supplement to the
87 general statutes is repealed and the following is substituted in lieu
88 thereof (*Effective October 1, 2010*):

89 (l) The commissioner shall provide written notice of any revocation,
90 disqualification, reduction in classification or capacity rating or
91 reinstated prequalification to the Commissioner of Public Works, the
92 Commissioner of Transportation, the Commissioner of Consumer
93 Protection and the President of The University of Connecticut not later
94 than thirty days after any final determination.

95 Sec. 8. Section 4b-91 of the 2010 supplement to the general statutes is
96 repealed and the following is substituted in lieu thereof (*Effective*
97 *October 1, 2010*):

98 (a) Every contract for the construction, reconstruction, alteration,
99 remodeling, repair or demolition of any public building or any other
100 public work by the state [except] including a public highway or bridge
101 project or any other construction project administered by the
102 Department of Transportation, which is estimated to cost more than
103 five hundred thousand dollars, except a contract awarded by the
104 Commissioner of Public Works for (1) a community court project, as
105 defined in subsection (j) of section 4b-55, (2) the downtown Hartford
106 higher education center project, as defined in subsection (l) of section
107 4b-55, (3) a correctional facility project, as defined in subsection (m) of
108 section 4b-55, (4) a juvenile detention center project, as defined in
109 subsection (n) of section 4b-55, or (5) a student residential facility for
110 the Connecticut State University System that is a priority higher
111 education facility project, as defined in subsection (f) of section 4b-55,

112 shall be awarded to the lowest responsible and qualified general
113 bidder who is prequalified pursuant to section 4a-100, as amended by
114 this act, on the basis of competitive bids in accordance with the
115 procedures set forth in this chapter, after the Commissioner of Public
116 Works or, in the case of a contract for the construction of or work on a
117 building or other public work under the supervision and control of the
118 Joint Committee on Legislative Management of the General Assembly,
119 the joint committee or, in the case of a contract for the construction of
120 or work on a building or other public work under the supervision and
121 control of one of the constituent units of the state system of higher
122 education, the constituent unit or, in the case of a contract for a public
123 highway or bridge project or other construction project administered
124 by the Department of Transportation, the Commissioner of
125 Transportation, has invited such bids by notice posted on the State
126 Contracting Portal. Every contract for the construction, reconstruction,
127 alteration, remodeling, repair or demolition of any public building or
128 any other public work by a public agency that is paid for, in whole or
129 in part, with state funds and that is estimated to cost more than five
130 hundred thousand dollars [, except a public highway or bridge project
131 or any other construction project administered by the Department of
132 Transportation,] shall be awarded to a bidder that is prequalified
133 pursuant to section 4a-100, as amended by this act, after the public
134 agency has invited such bids by notice posted on the State Contracting
135 Portal. The Commissioner of Public Works, the Commissioner of
136 Transportation, the joint committee, the constituent unit or the public
137 agency, as the case may be, shall indicate the prequalification
138 classification required for the contract in such notice. As used in this
139 section, "prequalification classification" means the prequalification
140 classifications established by the Commissioner of Administrative
141 Services pursuant to section 4a-100, as amended by this act. As used in
142 this section, "public agency" means public agency, as defined in section
143 1-200.

144 (b) The Commissioner of Public Works, the Commissioner of
145 Transportation, the joint committee or the constituent unit, as the case
146 may be, shall determine the manner of submission and the conditions

147 and requirements of such bids, and the time within which the bids
148 shall be submitted, consistent with the provisions of sections 4b-91 to
149 4b-96, inclusive, as amended by this act. Such award shall be made not
150 later than ninety days after the opening of such bids. If the general
151 bidder selected as the general contractor fails to perform the general
152 contractor's agreement to execute a contract in accordance with the
153 terms of the general contractor's general bid and furnish a performance
154 bond and also a labor and materials or payment bond to the amount
155 specified in the general bid form, an award shall be made to the next
156 lowest responsible and qualified general bidder. No employee of the
157 Department of Public Works, the Department of Transportation, the
158 joint committee or a constituent unit with decision-making authority
159 concerning the award of a contract and no public official, as defined in
160 section 1-79, may communicate with any bidder prior to the award of
161 the contract if the communication results in the bidder receiving
162 information about the contract that is not available to other bidders,
163 except that if the lowest responsible and qualified bidder's price
164 submitted is in excess of funds available to make an award, the
165 Commissioner of Public Works, the Commissioner of Transportation,
166 the Joint Committee on Legislative Management or the constituent
167 unit, as the case may be, may negotiate with such bidder and award
168 the contract on the basis of the funds available, without change in the
169 contract specifications, plans and other requirements. If the award of a
170 contract on said basis is refused by such bidder, the Commissioner of
171 Public Works, the Commissioner of Transportation, the Joint
172 Committee on Legislative Management or the constituent unit, as the
173 case may be, may negotiate with other contractors who submitted bids
174 in ascending order of bid prices without change in the contract,
175 specifications, plans and other requirements. In the event of
176 negotiation with general bidders as provided in this section, the
177 general bidder involved may negotiate with subcontractors on the
178 same basis, provided such general bidder shall negotiate only with
179 subcontractors named on such general bidder's general bid form.

180 (c) No person may bid on a contract or perform work pursuant to a
181 contract that is subject to the provisions of subsection (a) of this section

182 unless the person is prequalified in accordance with section 4a-100, as
183 amended by this act.

184 (d) Each bid submitted for a contract described in subsection (c) of
185 this section shall include an update bid statement in such form as the
186 Commissioner of Administrative Services prescribes and, if required
187 by the public agency soliciting such bid, a copy of the prequalification
188 certificate issued by the Commissioner of Administrative Services. The
189 form for such update bid statement shall provide space for information
190 regarding all projects completed by the bidder since the date the
191 bidder's prequalification certificate was issued or renewed, all projects
192 the bidder currently has under contract, including the percentage of
193 work on such projects not completed, the names and qualifications of
194 the personnel who will have supervisory responsibility for the
195 performance of the contract, any significant changes in the bidder's
196 financial position or corporate structure since the date the certificate
197 was issued or renewed, any change in the contractor's qualification
198 status as determined by the provisions of subdivision (6) of subsection
199 (c) of section 4a-100 and such other relevant information as the
200 Commissioner of Administrative Services prescribes. Any bid
201 submitted without a copy of the prequalification certificate, if required
202 by the public agency soliciting such bid, and an update bid statement
203 shall be deemed invalid. Any public agency that accepts a bid
204 submitted without a copy of such prequalification certificate, if
205 required by such public agency soliciting such bid, and an update bid
206 statement may become ineligible for the receipt of funds related to
207 such bid.

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

216 (f) Any person who receives information from a state employee or
217 public official that is not available to the general public concerning any
218 construction, reconstruction, alteration, remodeling, repair or
219 demolition project on a public building or any other public work prior
220 to the date that a notice for bids on the project is posted shall be
221 disqualified from bidding on the project.

222 (g) Notwithstanding the provisions of this chapter regarding
223 competitive bidding procedures, the commissioner may select and
224 interview at least three responsible and qualified general contractors
225 who are prequalified pursuant to section 4a-100, as amended by this
226 act, and submit the three selected contractors to the construction
227 services award panels process described in section 4b-100a and any
228 regulation adopted by the commissioner. The commissioner may
229 negotiate with the successful bidder a contract which is both fair and
230 reasonable to the state for a community court project, as defined in
231 subsection (j) of section 4b-55, the downtown Hartford higher
232 education center project, as defined in subsection (l) of section 4b-55, a
233 correctional facility project, as defined in subsection (m) of section 4b-
234 55, a juvenile detention center project, as defined in subsection (n) of
235 section 4b-55, or a student residential facility for the Connecticut State
236 University System that is a priority higher education facility project, as
237 defined in subsection (f) of section 4b-55. The Commissioner of Public
238 Works, prior to entering any such contract or performing any work on
239 such project, shall submit such contract to the State Properties Review
240 Board for review and approval or disapproval by the board, pursuant
241 to subsection (i) of this section. Any general contractor awarded a
242 contract pursuant to this subsection shall be subject to the same
243 requirements concerning the furnishing of bonds as a contractor
244 awarded a contract pursuant to subsection (b) of this section.

245 (h) Any agency that seeks to have a project awarded without being
246 subject to competitive bidding procedures shall certify to the joint
247 committee of the General Assembly having cognizance of matters
248 relating to government administration and elections that the project is
249 of such an emergency nature that an exception to the competitive

250 bidding procedures of this section is required. Such certification shall
251 include input from all affected agencies, detail the need for the
252 exception and include any relevant documentation.

253 (i) In the event that the General Assembly approves legislation
254 authorizing an exception to the competitive bidding process for a
255 project, the State Properties Review Board shall complete a review of
256 the contract for such project and approve or disapprove such contract
257 no later than thirty days after the Commissioner of Public Works
258 submits such contract to the board. Such review shall be conducted in
259 accordance with the provisions of section 4b-3. In the event that such
260 review does not occur within the thirty-day period prescribed by this
261 subsection, such contract shall be deemed to be approved.

262 (j) On and after October 5, 2009, no person whose subcontract
263 exceeds five hundred thousand dollars in value may perform work as
264 a subcontractor on a project for the construction, reconstruction,
265 alteration, remodeling, repair or demolition of any public building or
266 any other public work by the state or a municipality, [except a public
267 highway or bridge project or any other construction project
268 administered by the Department of Transportation,] which project is
269 estimated to cost more than five hundred thousand dollars and is paid
270 for, in whole or in part, with state funds, unless the person is
271 prequalified in accordance with section 4a-100, as amended by this act.
272 The provisions of this subsection shall not apply to a project described
273 in subdivision (2) of subsection (a) of this section.

274 Sec. 9. Section 13a-95 of the general statutes is repealed and the
275 following is substituted in lieu thereof (*Effective October 1, 2010*):

276 The commissioner may, at any time, call for bids to construct, alter,
277 reconstruct, improve, relocate, widen or change the grade of sections
278 of state highways or bridges. All bids shall be submitted on forms
279 provided by the commissioner and shall comply with the rules and
280 regulations provided in the bid specifications. The commissioner shall
281 state the amount of the bond which shall accompany each bid and
282 shall name the place where bids shall be received and the time and

283 place for opening the same. Each bid shall be accompanied by a surety
284 company bond satisfactory to the commissioner and in such sum as
285 the commissioner determines, and shall be so conditioned that, if the
286 contract is awarded to the bidder, such bidder shall, when required by
287 the commissioner, execute an agreement in writing, to be prepared by
288 said commissioner, with such bond as shall be acceptable to the
289 commissioner, conditioned as provided in section 49-41. The
290 commissioner may reject any and all bids if, in the commissioner's
291 opinion, cause exists therefor; but otherwise the commissioner shall
292 award the contract to the lowest bidder deemed to be responsible,
293 provided such bidder is prequalified pursuant to section 4a-100, as
294 amended by this act. The successful bidder shall give evidence
295 satisfactory to said commissioner of such bidder's ability to perform
296 the contract. When such contract is executed by the commissioner and
297 the successful bidder, a copy of the contract, with an estimate of the
298 cost of the work, shall be immediately filed with the commissioner.

299 Sec. 10. Section 13b-20n of the general statutes is repealed and the
300 following is substituted in lieu thereof (*Effective October 1, 2010*):

301 With respect to any contract for the construction, reconstruction,
302 alteration, remodeling, repair or demolition of any public building
303 under the supervision and control of the Commissioner of
304 Transportation which contract is estimated to cost more than five
305 hundred thousand dollars and is not subject to section 4b-51, the
306 Commissioner of Transportation shall award the contract to the lowest
307 responsible and qualified bidder, as defined in section 4b-92, in
308 accordance with regulations which the commissioner shall adopt, in
309 accordance with chapter 54 and who has been prequalified pursuant to
310 section 4a-100, as amended by this act. Such regulations shall establish,
311 at a minimum: (1) Standards for the advertisement of opportunities to
312 bid, (2) objective criteria for evaluating the qualifications of bidders, (3)
313 the procedures for evaluating bids after the prequalification status of a
314 bidder has been verified, and (4) award panels for the purpose of
315 screening submitted proposals, interviewing bidders and making
316 recommendations to the commissioner. Any contract that is subject to

317 section 4b-51 shall be awarded by the Commissioner of Public Works
 318 in accordance with chapter 60.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section
Sec. 2	<i>from passage</i>	4a-82(b)
Sec. 3	<i>October 1, 2010</i>	4a-100(i)
Sec. 4	<i>October 1, 2010</i>	4a-100(o)
Sec. 5	<i>October 1, 2010</i>	4a-101(e)
Sec. 6	<i>October 1, 2010</i>	4a-100(a)
Sec. 7	<i>October 1, 2010</i>	4a-100(l)
Sec. 8	<i>October 1, 2010</i>	4b-91
Sec. 9	<i>October 1, 2010</i>	13a-95
Sec. 10	<i>October 1, 2010</i>	13b-20n

GAE *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 11 \$	FY 12 \$
Department of Transportation	TF - See Below	See Below	See Below
Department of Revenue Services	GF - Revenue Gain	See Below	See Below
Dept. of Administrative Services	GF - Cost	See Below	See Below
State Comptroller - Fringe Benefits ¹	GF - Cost	See Below	See Below
Various State Agencies	GF - Savings	See Below	See Below

Note: TF=Transportation Fund; GF=General Fund

Municipal Impact: None

Explanation

Section 1 of the bill allows private providers of state services to make certain adjustments to their budgets without prior approval of the contracting state agency when contract reductions are imposed by the state agency. As this change only effects the budgets of the private providers, there is no direct fiscal impact to the state.

Section 2 of the bill would extend the janitorial work pilot program for an additional three years and thereby prohibit the Department of Administrative Services from going out to bid on a number of janitorial contracts. Currently, pilot program rates are mid-range in comparison to prices from non-pilot janitorial contracts. Therefore, it cannot be determined whether this bill results in a cost or a savings to the state.

¹ The estimated non-pension fringe benefit rate as a percentage of payroll is 26.66% which includes health insurance, social security, Medicare, life insurance, and unemployment compensation. Fringe benefit costs for new positions do not include pension costs as new positions will not impact the state's pension contribution until FY 12 after the next scheduled actuarial valuation.

Sections 3 - 5 of the bill permit the commissioner of the Department of Administrative Services to deny a prequalification certificate to any contractor receiving three or more unsatisfactory evaluations in the past three years and does not result in a fiscal impact to the state.²

Sections 6 - 10 of the bill require the Department of Transportation (DOT) to use prequalified contractors from the Department of Administrative Services (DAS) Contractor Prequalification program. The Department of Transportation currently is exempted from the DAS program and uses its own program to qualify its contractors. It is anticipated that the consolidation into one prequalification program will increase revenue to the General Fund; however it is possible that federal funding may be lost and costs will be incurred by DAS in order to cover expansion of their prequalification program.

Revenue would be generated since the statutory DAS program charges application fees³ while the DOT program does not. DOT currently has a division to handle its contractor prequalification, primarily funded through federal dollars. It is possible that federal funding could be lost as a result of the bill. DAS would require additional contract specialist positions (starting salary per position approximately \$68,000) to handle its program expansion to include DOT contractors.

Job security provisions through FY 11 apply to all state employee labor units which have agreed to contracts in accordance with the SEBAC 2009 Agreement. This does not preclude the State from restructuring and/or eliminating positions provided those affected are transferred to another comparable job. Union personnel savings in FY 11 can occur from eliminations if those eliminated state employees take state jobs that would otherwise have been filled with individuals new

² Currently, a denial of prequalification or disqualification of a contractor can only occur if the average rating of the contractor's evaluations falls below a minimum performance threshold.

³ CGS 4a-100 establishes the fees for this program, ranging from \$600 to \$2,500 for initial application and 50% upon renewal. The average initial and renewal fee per contractor is approximately \$800.

to state employment; however this is not necessarily the case in regards to federally funded positions. Any net savings would additionally be offset by unemployment compensation benefits costs and accrual payouts.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

Sources: Department of Administrative Services website

OLR Bill Analysis**sSB 473*****AN ACT CONCERNING STATE CONTRACTING, A PILOT PROGRAM AND THE PREQUALIFICATION OF CONTRACTORS.*****SUMMARY:**

This bill gives the Department of Administrative Services (DAS) responsibility for prequalifying contractors and substantial subcontractors seeking state highway and bridge construction contracts and removes this responsibility from the Department of Transportation (DOT) (see COMMENT). The bill also explicitly requires DOT to use the Department of Public Works' (DPW) competitive bidding procedures when awarding contracts. Under current law, unchanged by the bill, DOT, like DPW, must award a contract to the lowest responsible qualified bidder.

The bill also allows the DAS commissioner to deny a prequalification certificate to a contractor or substantial subcontractor who has received four or more unsatisfactory written evaluations in the past three years. It extends the protection against liability for people who complete the evaluations.

Beginning July 1, 2010, the bill permits private providers with state contracts to adjust their budgets when the state reduces their funding by 3% or more in a fiscal year. The provider may, without the agency's approval, adjust the budget by the same amount as the funding reduction.

Lastly, the bill extends the DAS janitorial services pilot program from four to seven years.

EFFECTIVE DATE: October 1, 2010, with the sections concerning budget adjustments and the pilot program effective upon passage.

CONTRACTOR PREQUALIFICATION

This bill gives DAS responsibility for prequalifying contractors seeking state highway and bridge construction contracts (DOT-administered projects) and removes this responsibility from DOT. With certain exceptions, DOT prequalifies contractors seeking DOT-administered projects. The bill codifies DOT's practice by requiring contractors and substantial subcontractors to prequalify.

By law, DAS is responsible for prequalifying contractors that seek state building construction contracts. With certain exceptions, contracts for the construction, reconstruction, alteration, remodeling, repair, or demolition of a public building or other public work that are estimated to cost more than \$500,000 must be awarded through competitive bidding to the lowest responsible prequalified bidder.

AWARDING DOT CONTRACTS

By law, DOT is responsible for awarding state highway and bridge construction contracts to the lowest responsible prequalified bidder. The bill explicitly requires DOT to use DPW's competitive bidding procedures when awarding contracts. These procedures require DOT to:

1. invite project bids by posting notice to the State Contracting Portal;
2. make an award within 90 days of opening the bids; and
3. refrain from communicating with bidders before awarding a contract, with the exception that the department may negotiate with the winning bidder if that bidder's price exceeds funds available for the award. If these negotiations are unsuccessful, the department may negotiate with other contractors in ascending order of bid price.

The DOT commissioner continues to (1) indicate the prequalification classification required for the contract, (2) determine the manner of submission and the conditions and requirements of such bids, and (3)

specify the time within which bids must be submitted on DOT-administered projects.

The bill also requires the DAS commissioner to notify the DOT commissioner of any revocation, disqualification, reduction in classification or capacity rating or reinstated prequalification of any contractor. Under current law, unchanged by the bill, this notification must be provided to the commissioners of Public Works and Consumer Protection and the president of UConn.

CONTRACTOR EVALUATIONS

By law, public agencies must, after the completion of a contract, evaluate the performance of contractors and, to the extent known, substantial subcontractors and subcontractors. Political subdivisions may rely on the contractor's evaluation of substantial subcontractors and subcontractors.

The bill makes the receipt of four unsatisfactory evaluations within the immediate past three years grounds for the DAS commissioner to deny a prequalification certificate to a contractor or substantial subcontractor.

The bill protects any person from being held liable for any loss or injury sustained by a contractor, substantial subcontractor, or subcontractor resulting from the evaluation. This means contractors who complete evaluations of substantial subcontractors and subcontractors are protected. Current law protects only public agencies and their employees and certifying officials from losses or injuries sustained by contractors. Under current law, unchanged by the bill, a person completing a written evaluation is not protected from liability if he or she acted willfully, wantonly, or recklessly.

JANITORIAL SERVICES PILOT PROGRAM

This bill extends, from four to seven years, the duration of a DAS pilot program to create and expand janitorial work opportunities for disabled or disadvantaged people. By law, the pilot program must consist of four janitorial work projects in state agencies that together

must (1) create at least 60 full-time jobs or the equivalent at standard wages for the two target groups and (2) have a total market value of at least \$3 million. Target employees include people with disabilities, except blindness, and those with a disadvantage. To qualify for the latter category, an individual must either (1) have income up to 200% of the federal poverty level for a family of four or (2) be eligible for employment services under the federal Workforce Investment Act.

BACKGROUND

Prequalification Comparison

Currently, DAS and DOT manage separate, nonreciprocal prequalification programs. DAS administers the state building construction prequalification program while DOT administers the state's highway and bridge construction prequalification program.

The DAS prequalification program is statutorily mandated (CGS § 4a-100). DOT is not currently statutorily required to prequalify contractors but is required to award a contract to the lowest responsible bidder (CGS § 13a-95). Pursuant to this requirement, DOT has developed its own prequalification program, described in the department's *Construction Contract Bidding and Award Manual*.

DAS and DOT have similar prequalification programs, but there are some differences. For example:

1. DOT solicits information required by federal law from highway and bridge construction contractors that is not required from state building construction contractors;
2. DOT prequalification certificates are valid for 16 months, while most DAS certificates are effective for one year;
3. DOT does not charge an application fee, but DAS charges a graduated fee based on aggregate work capacity;
4. with one exception, only bona fide construction companies are eligible for DOT prequalification, but DAS has no such

requirement;

5. there is a dollar threshold (\$500,000) on state building construction contracts for which contractors must prequalify, but there is no corollary threshold in the DOT prequalification program; and
6. DOT solicits information on the type of construction work for which applicants may prequalify while DAS does not consider the type of construction work for which an applicant may prequalify.

Related Bills

SB 219, favorably reported by the Human Services Committee, permits private providers with state contracts to adjust their budgets when the state reduces their funding by 5% or more, beginning January 1, 2011. SB 357, favorably reported by the Appropriations Committee, has the same provision, but is effective July 1, 2010.

SB 422 and SB 424, both favorably reported by the Government Administration and Elections (GAE) Committee, extend the janitorial services pilot program from four to seven years.

sSB 241, favorably reported by the Labor and GAE committees, allows the DAS commissioner to deny a prequalification certificate if a contractor receives three or more negative evaluations in three years.

COMMENT

Substantial Subcontractor Prequalification

The law requires DAS to prequalify substantial subcontractors (i.e., subcontractors who perform work valued in excess of \$500,000). The bill appears to inadvertently create an exception for substantial subcontractors under the definition of "prequalification" (CGS § 4a-100). Thus, it is unclear who prequalifies them and the process for doing so.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 10 Nay 4 (03/24/2010)