



STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC WORKS



Testimony of Department of Public Works
To the GAE Committee
March 7, 2011

Senate Bill 1119
Concerning Licensing Agreements, Prequalification Of Bidders, Bid Protests And
Procurement

The Department of Public Works (DPW) thanks the committee for raising this bill which embodies proposals recommended by the agency.

Section 1 of the bill adds licensing agreements to the statute governing the leasing of state-owned land or buildings for municipal or private use. DPW uses licenses to grant temporary access to state property and/or structures for certain purposes. This will clarify that DPW has the right to enter into license agreements regarding state owned property and buildings and that licenses for access to or across state property will be exempt from the general requirement that DPW notify the municipality of such a license. These licenses are different from lease situations about which municipalities are accustomed to being notified in that these licenses are both temporary and restricted and would not be likely to impact the municipality in ways that an occupying lessee might. Licenses do not give rise to tax implications because the third party is not given the right to use or operate an activity on the property. Recent examples of the types of licenses that would be exempted under this proposal include:

- a license to a landscape architect for purpose of allowing surveyors, environmental professionals and other related contractors access to land under Department of Veterans' Affairs custody and control to survey and investigate the property for the new State Veteran's Memorial.
- License to the City of Stamford to allow the Army Corp. of Engineers access to grounds of Wright Technical School in Stamford to carry out restoration activities on Mill Pond River.

Additionally, it covers cases where a neighboring private property owner needs to access state property because of work on the private property such as moving a machine through or staging for construction work.

The goal is to clarify authority and avoid unnecessary work at the state and local level in the future.

Sections 2 and 3 address situations where the prequalification status of contractors changes while they are working on a project. Currently the law prohibits a contractor/subcontractor from performing any work for the state or a municipality unless prequalified by the Department of Administrative Services under section 4a-100, CGS. The law does not provide for exception to this for a contractor or subcontractor whose prequalification is not renewed, revoked or denied while actively engaged in the performance of work.

The bill authorizes the awarding authority (DPW Commissioner or municipality) to act in the best interest of the state or a municipality when a contractor's or subcontractor's prequalification with DAS is not renewed, revoked or denied while that contractor or subcontractor is actively working on a public works project and clarifies that DAS prequalification administration is separate from the authority over public works contract performance. Without allowing the awarding authority to act in the best interest of the state or a municipality, taking all factors into account, removal of the contractor from the project under these circumstances may put the state or a municipality at significant risk for major cost increases and delays.

Section 4 of the bill exempts from consideration as a "lowest responsible and qualified bidder" any prequalified bidder that has received 3 unsatisfactory written evaluations, pursuant to sections 4a-100 (f) or 4a-101, CGS, in the last 7 years.

For projects for which the lowest responsible qualified bidder is to be awarded the contract, DPW must evaluate bidders for each of those qualifying factors (value of bid, responsibility, and qualification). Written performance evaluations of a contractor filed with the Department of Administrative Services assists DPW in determining whether a bidder is responsible and qualified to perform work. Currently it is a judgment call on the part of DPW. The bill would specify that a contractor is not responsible and qualified if the contractor receives 3 unsatisfactory performance appraisals within a 7 year timeframe. This would provide some notice and clarity to all concerned. It should also help ensure that the state and municipalities award contracts only to those contractors with the skill, ability and integrity necessary to the faithful performance of the work. Since construction projects take 18-24 months to complete, a 7 year time frame provides sufficient time for the proper evaluation of the contractor, as well as an opportunity by the contractor to improve performance as necessary.

Section 5 of the bill conforms the language in section 4b-100, concerning bid protest regulations, to terms utilized throughout chapter 59. It thus clarifies that bid protests are brought by general bidders whose financial interests may be affected by violation of sections 4b-91 through 4b-100. In the relevant bidding statutes (sections 4b-91 to 4b-100, CGS), the term "general bidder" is consistently used to distinguish the party submitting and signing off on the bid proposal form as opposed to a subcontractor, named subcontractor, substantial subcontractor contributing a "bid" in connection with

compilation of a bid proposal submittal. This change to the regulation simply specifies that it is the "general bidder", whose financial interests are being affected by a violation of statutes, who has the right to institute a bid protest.

Section 6 of the bill eliminates contracts for interest in real property from the definition of "Procurement" in the statutes governing the State Contracting Standards Board. Real Property lease agreements are entered into because the state does not have adequate and sufficient state-owned space. These leases do not impact state employees or raise privatization concerns in the same way other procurement might, such as privatization options for direct service programming, and should be exempt.

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