

OFFICE OF LEGISLATIVE RESEARCH  
PUBLIC ACT SUMMARY



PA 11-149—sHB 6598

*Judiciary Committee*

**AN ACT CONCERNING OFFERS OF COMPROMISE IN  
CONSTRUCTION CONTRACT ARBITRATION PROCEEDINGS,  
MEDIATION AND ARBITRATION OF CONSTRUCTION CONTRACTS,  
AND ETHICAL VIOLATIONS CONCERNING BIDDING AND STATE  
CONTRACTS**

**SUMMARY:** This act creates a procedure for parties in an arbitration proceeding related to certain construction contracts to send the opposing party an offer of compromise, offering to settle the underlying claim for a specified amount. It requires a court to add 8% annual interest to an arbitration award, and award reasonable attorney's fees and costs, if the prevailing party's arbitration award is equal to or greater than its offer of compromise which the opposing party did not accept. These procedures are similar to those in existing law for offers of compromise in civil actions.

The act also specifies that the existing prohibition on provisions in commercial construction contracts that require disputes to be adjudicated in another state or according to the laws of another state includes provisions concerning mediation or arbitration, as well as other types of adjudication.

Finally, the act accords contractors, potential contractors, and consultants due process before they are prohibited from bidding on state contracts because of alleged past unethical bidding practices.

EFFECTIVE DATE: October 1, 2011

§ 1 — OFFERS OF COMPROMISE

*Applicable Contracts*

The act's provisions on offers of compromise apply to contracts entered into on or after October 1, 2011 for construction, renovation, or rehabilitation in Connecticut, including improvements to real property associated with such work, or a subcontract for such work, between an owner and contractor, a contractor and subcontractor, or two subcontractors. But these provisions do not apply to (1) contracts with any state or the federal government or (2) contracts or projects that are funded or insured by the U.S. Department of Housing and Urban Development (HUD).

*Offer*

The act provides that, after a party to a construction contract has demanded arbitration under the contract's dispute resolution provision and before the arbitration panel renders a final award, the party may send to the opposing party or his or her attorney a written offer of compromise, offering to settle the

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arbitration claims for a certain amount of money. A party may send such an offer only once.

The act specifies that the offer must be signed by the party or attorney and directed to the opposing party or attorney. It must be sent by certified mail, return receipt requested.

### *Acceptance*

If the party receiving the offer of compromise wishes to accept it, the party must do so within 30 days of being notified of it and before the arbitration panel renders a final award. The acceptance must be in writing, sent by the accepting party or that party's attorney. It must be sent by certified mail, return receipt requested.

If the party receiving the offer, or his or her attorney, does not accept it within this time frame, the offer is considered rejected and cannot be accepted.

### *Interest, Attorney's Fees, and Costs*

After a party to a construction contract applies to confirm, vacate, modify, or correct a final arbitration award, the party to the arbitration who made an unaccepted offer of compromise may file proof of that offer with the court. If the court confirms, modifies, or corrects the arbitration award, and determines from the record that the recovering party was awarded an amount at least equal to the amount in that party's offer of compromise, the court must add 8% annual interest to the award. This interest must be computed from the date the arbitration began, and is in addition to any interest awarded by the arbitrator. The court must also award reasonable attorney's fees and court costs for bringing the court action on the arbitration award, and render judgment accordingly. However, the act does not affect the parties' contractual rights concerning attorney's fees.

## § 2 — PROHIBITION ON CONSTRUCTION CONTRACTS REQUIRING DISPUTES TO BE DECIDED IN ANOTHER STATE

The act specifies that construction contract provisions requiring disputes under the contract to be mediated or arbitrated in another state, or according to another state's laws, are invalid. This prohibition applies to contracts for work at construction sites in Connecticut, regardless of whether the contract was signed here. But it does not apply to:

1. building contracts with any state, a municipality or other political subdivision of this or any state, or the federal government;
2. contracts or projects funded or insured by HUD;
3. contracts between an owner and a contractor for \$25,000 or less, or a subcontract resulting from such a contract; or
4. contracts for buildings intended for residential occupancy containing less than five units (CGS § 42-158i).

## § 3 — ETHICS CODE VIOLATIONS

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### *Due Process for Contractors and Consultants*

The act requires the Office of State Ethics (OSE) to find a violation of the State Code of Ethics before contractors or consultants may be deemed nonresponsible bidders. This means OSE must investigate complaints of wrongdoing, offer respondents the opportunity for a hearing, and make a decision based on the evidence.

Thus, the act requires an OSE finding before state agencies, boards, commissions, institutions, and quasi-public agencies can treat as nonresponsible bidders (and thus ineligible to win a state contract) prequalified contractors, large state construction or procurement contractors, consultants on state contracts, and people seeking those positions for committing the following violations:

1. soliciting from public officials or state employees information that is not available to other bidders for large state construction or procurement contracts, in order to gain a competitive advantage;
2. intentionally, willfully, or recklessly defrauding the state by charging a state agency, board, commission, institution, or quasi-public agency for work not performed or goods not provided;
3. intentionally or willfully violating or attempting to circumvent competitive bidding and ethics laws; or
4. providing or directing someone else to provide information concerning donated goods and services to a state or quasi-public agency, its procurement staff, or a member of a bid selection committee with intent to unduly influence the award of a state contract.

The act also requires an OSE finding before state agencies, boards, commissions, institutions, and quasi-public agencies may treat consultants as nonresponsible bidders if they help negotiate a state contract and then they or the businesses with which they are associated serve as contractors, subcontractors, or consultants on the project, or as consultants to anyone seeking the contract.

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