

State Contracting Standards Board

Proposed
STATE OF CONNECTICUT
Consolidated
UNIFORM PROCUREMENT CODE

Adopted by the
State Contracting Standards Board

Pursuant to Executive Order No. 7C

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the Clerks of the House and Senate on or before 15 January 2006**

16 January 2007

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Article 1. Procurement Organization and Leadership

Part 1. State Contracting Standards Board

Sec. 1. (NEW) (Effective Upon Passage) State Contracting Standards Board¹.

(a) There is established a State Contracting Standards Board that shall consist of thirteen (13) members appointed as follows: five members shall be appointed by the Governor, two members shall be appointed by the speaker of the House of Representatives, two members shall be appointed by the president pro tempore of the Senate, one member shall be appointed by the majority leader of the Senate, one member shall be appointed by the minority leader of the Senate, one member shall be appointed by the majority leader of the House of Representatives and one member shall be appointed by the minority leader of the House of Representatives².

(b) Each member shall be appointed in accordance with the provisions of section 4-7 of the general statutes and have demonstrated sufficient knowledge by education, training or experience in several of the following enumerated areas: (1) Procurement; (2) contract negotiation, selection and drafting; (3) contract risk assessment; (4) competitive bidding and proposal procedures and real estate transactions; (5) business insurance and bonding; (6) ethics in public contracting; (7) federal and state statutes, procurement policies and regulations; (8) outsourcing and privatization analysis; (9) small and minority business enterprise development; (10) engineering and information technologies; and, (11) personnel and labor relations. Such education, training or experience shall have been acquired over not less than a continuous five-year period and shall have been acquired within the ten-year period preceding such appointment. Nothing in this section shall be construed to prohibit an appointing authority from selecting a member of the general public who has demonstrated an interest in governmental ethics and integrity to serve on the board as such appointing authority's appointee.

(c) The chairperson of the board shall be appointed by the members of the board. The terms of the members shall be coterminous with the terms of the appointing authority for each member. If any vacancy occurs on the board, the appointing authorities having the power to make the appointment under the provisions of this subsection shall appoint a person in accordance with the provisions of this subsection.

(d) The State Contracting Standards Board shall be an independent body within the Executive Department.

(e) The chairperson of the board shall be compensated two hundred dollars per diem. Other members of the board shall be compensated two hundred dollars per diem. No person shall serve on the Board who is a full-time

¹ Derived from Sec. 2 of P.A. 06-1.

² Modification of Sec. 2 of P.A. 06-1.

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state or municipal employee and neither a person on the Board nor any spouse, child, stepchild, parent or sibling of such person shall be directly in a position involved in any enterprise that does business with the state³.

(f) The Governor shall appoint an executive director who shall serve as an ex-officio, nonvoting member of the board. The executive director shall be appointed in accordance with the provisions of section 4-7 of the general statutes and may be removed from office for reasonable cause, in accordance with chapter 67 of the general statutes. The board shall, annually, conduct a performance evaluation of such executive director. The executive director shall report to the Chair of the Board and, in consultation with the Chief Procurement Officer, (1) conduct comprehensive planning with respect to the administrative functions of the board; (2) coordinate the budget and personnel activities of the board; (3) cause the administrative organization of the board to be examined with a view to promoting economy and efficiency; (4) act as the external liaison for the board; and, (5) execute such other duties as may be assigned by the Chair of the board. In accordance with established procedures, the executive director may enter into such contractual agreements as may be necessary for the discharge of the director's duties.

(g) The board shall appoint a Chief Procurement Officer for a term not to exceed six years, unless reappointed pursuant to the provisions of this subsection. The Chief Procurement Officer shall be supervised by the Chairperson and annually evaluated by and shall serve at the pleasure of the board.

(1) The Chief Procurement Officer shall be responsible for carrying out the policies of the board including, but not limited to, oversight, investigation, auditing, agency procurement certification and procurement and project management training and enforcement of said policies as well as the application of such policies to the screening and evaluation of current and prospective contractors. In accordance with established procedures, said Chief Procurement Officer may enter into such contractual agreements as may be necessary for the discharge of the duties as set forth in this Act and by the board, including, but not limited to, recommending best practices and providing operational and administrative assistance to state agencies determined, by the board, to be in violation of this act.

(2) In addition to the duties set forth in this Act and by the Board, the Chief Procurement Officer shall (a) oversee state contracting agency compliance with the provisions of the Code; (b) monitor and assess the procurement duties of each Agency Procurement Officer; (c) administer the certification system and monitor the level of agency compliance with the requirements of this Code, including, but not limited to the education and training, performance and qualifications of agency contract officers; (d) review and monitor the procurement processes of each state contracting agency, quasi-public agencies and institutions of higher education; and, (e) serve as Chair of the Contracting Standards

³ Derived from Sec. 1(d) of Executive Order No. 7(c).

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Advisory Council and an ex officio member of the Vendor and Citizen Advisory Panel.

(h) The Board may contract with consultants and professionals on a temporary or project by project basis and may employ secretaries, real estate examiners, contract specialists, forensic fraud examiners, property and procurement specialists, paralegals, attorneys and such other employees as the Board deems to be necessary or appropriate⁴.

(i) The reasonable expenses of the State Contracting Standards Board and its employees shall be paid from the budget of the board upon the approval of the board.

(j) No employee of the State Contracting Standards Board shall hold another state or full-time municipal position, nor shall any such employee or any non-clerical employee or any spouse, child, stepchild, parent or sibling of such employee of the board be directly involved in any enterprise that does business with the state. Each member and employee of the State Contracting Standards Board shall file, with the board and with the Office of State Ethics, a financial statement indicating all sources of business income of such person in excess of one thousand dollars, and the name of any business with which such member or employee is associated, as defined in subsection (b) of section 1-79 of the 2006 supplement to the general statutes. Such statement shall be a public record. Financial statements for the preceding calendar year shall be filed with the commission, as required by law, if such employee or member held such a position during the preceding calendar year.

(k) Any violation of the provisions of subsection (j) of this section shall constitute a violation of part I of chapter 10 of the general statutes and may be the subject of a complaint and investigation filed and conducted in accordance with the provisions of section 1-82 of the general statutes.

(l) The board shall adopt such rules as it deems necessary for the conduct of its internal affairs, in accordance with section 4-167 of the general statutes, including, but not limited to, rules of procedure for any appeal taken pursuant to section 117 of this act and any review undertaken pursuant to section 10 of this act.

(m) Seven members of the board shall constitute a quorum which shall be required for the transaction of business by the board.

Sec. 2. (NEW) (Effective Upon Passage) Centralization of Procurement Policy⁵.

(a) Except as otherwise provided in the general statutes, all rights, powers, duties, and authority relating to the procurement policies of the state, now vested in, or exercised by, any state contracting agency under the several statutes relating thereto are hereby transferred to the board, as follows:

⁴ Derived from Sec. 1(f) of Executive Order No. 7(c).

⁵ Derived from Sec. 2-301 of ABA Code.

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(1) acquisition of supplies, services, and construction, and the management, control, warehousing, sale, and disposal of supplies, services, and construction;

(2) involving any state contracting and procurement processes, including, but not limited to, leasing and property transfers, purchasing or leasing of supplies, materials or equipment, consultant or consultant services, purchase of service agreements or privatization contracts as defined in this act; and,

(3) relating to contracts for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building⁶.

(b) Upon request by the board, each state contracting agency, including quasi public agencies and institutions of higher education, engaged in procurement shall provide the board, in a timely manner, with such procurement information as the board deems necessary. The board shall have access to all information, files and records related to any state contracting agency in furtherance of this purpose. Nothing in this section shall be construed to require the board's disclosure of documents that are exempt from disclosure pursuant to chapter 14 of the general statutes or that may be protected from disclosure under claim of an attorney-client privilege⁷.

(c) Nothing in this section shall be construed to require the application of uniform procurement code procedures when such procurement involves the expenditure of federal assistance or contract funds and federal law provides applicable procurement procedures to the extent such procedures are inconsistent with the uniform procurement code⁸.

Sec. 3. (NEW) (Effective Upon Passage) Authority and Duties of the State Contracting Standards Board⁹.

Except as otherwise provided in the general statutes, the board shall have the following authority and responsibilities:

(a) Recommend the repeal of repetitive, conflicting or obsolete statutes concerning state procurement;

(b) Review and approve proposed legislation and regulations prior to promulgation, as well as, institute policies, consistent with this act, governing the procurement, management, control, and disposal of any and all supplies, services, and construction to be procured by the state, including, but not limited to¹⁰:

⁶ Derived from Sec. 3 (2) and (3) of P.A. 06-1.

⁷ Derived from Sec. 3(d) of P.A. 06-1.

⁸ Derived from Sec. 3(a) of P.A. 06-1.

⁹ Derived from Sec. 4 of P.A. 06-1. However, Sec. 4(7) is deleted.

¹⁰ Derived from Sec. 2-102 of the ABA.

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- (1) conditions and procedures for delegations of procurement authority;
 - (2) pre-qualification, suspension, debarment, and reinstatement of prospective bidders and contractors;
 - (3) small purchase procedures;
 - (4) conditions and procedures for the procurement of perishables and items for resale;
 - (5) conditions and procedures for the use of source selection methods authorized by this Code;
 - (6) conditions and procedures for the use of emergency procurements;
 - (7) conditions and procedures for the selection of contractors by processes or methods that restrict full and open competition;
 - (8) the opening or rejection of bids and offers, and waiver of informalities in bids and offers;
 - (9) confidentiality of technical data and trade secrets submitted by actual or prospective bidders or proposers;
 - (10) partial, progressive, and multiple awards;
 - (11) supervision of storerooms and inventories, including determination of appropriate stock levels and the management, transfer, sale, or other disposal of publicly-owned supplies;
 - (12) definitions and classes of contractual services and procedures for acquiring them;
 - (13) regulations providing for conducting cost and price analysis;
 - (14) use of payment and performance bonds;
 - (15) guidelines for use of cost principles in negotiations, adjustments, and settlements;
 - (16) identification of procurement best practices;
- (c) adopt regulations and policies to carry out the provisions of the Code, in order to facilitate consistent application of the law and require the implementation of procurement best practices. Any regulation promulgated by the State Contracting Standards Board under the authority of this act shall supersede a conflicting regulation of a state contracting agency, as determined by the board.

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(d) develop, acquire, implement, provide oversight and management of information systems for state procurement including, but not limited to data element and design and the state contracting portal, as set forth in section 14 of this act;

(e) develop, publish and maintain the uniform procurement code for all state contracting agencies;

(f) assist state contracting agencies in complying with the code by providing guidance, models, advice and practical assistance to state contracting agency staff relating to: (1) Buying the best service at the best price, (2) properly selecting contractors, and (3) drafting contracts that achieve state goals and protect taxpayers' interest;

(g) coordinate the Agency Procurement Officers of each state contracting agency and the contracting officers thereunder.

(1) The head of each state contracting agency shall appoint a senior official as the Agency Procurement Officer. Said Officer shall serve as the liaison between the agency and the Chief Procurement Officer on all matters relating to the agency's procurement activity; including, but not limited to implementation and compliance with the provisions of this act and any policies or regulations adopted by the Board, coordination of the training and education of agency procurement employees in accordance with sections 1(g)(2) and 4 of this act and serving on the Contract Standards Advisory Council as established in section 7 of this act.

(2) The Agency Procurement Officer shall be responsible for assuring that contractors are properly screened prior to the award of a contract, evaluating contractor performance during and at the conclusion of a contract, submitting said written evaluations to a central data repository to be designated by the Board and creating a project management plan for the agency with annual reports pertaining to projects within the agency.

(h) review and certify, on or after July 1, 2008, that a state contracting agency's procurement processes are in compliance with the code by:

(1) establishing procurement and project management education and training criteria and certifying (i) the Agency Procurement Officer; and, (ii) the contracting officers either identified by the Agency Procurement Officer or by job classification. All employees so designated under this provision shall be required to maintain the certification in good standing at all times while performing procurement functions¹¹.

(2) approving an ethics training course, including, but not limited to, state employees involved in procurement and for state contractors and substantial subcontractors who are prequalified pursuant to the provisions

¹¹ Replaces Sec. 4(6) of P.A. 06-1.

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of section 84 of this act of the general statutes, as amended by this act. Such ethics training course may be developed and provided by the Office of State Ethics or by any person, firm or corporation provided such course is approved by the State Contracting Standards Board¹²;

(i) Recertify each state contracting agency's procurement processes, at least, triennially, and providing agencies with notice of any certification deficiency and exercising authority as provided under section 6(a) of this act if a determination of noncompliance is made;

(j) Define the contract data reporting requirements to the Board for state agencies concerning information on: (1) The number and type of state contracts currently in effect state-wide; (2) the term and dollar value of such contracts; (3) a list of client agencies; (4) a description of services purchased under such contracts; (5) contractor names; (6) an evaluation of contractor performance, including, but not limited to records pertaining to the suspension or disqualification of contractors, and assuring such information is available on the state contracting portal; and, (7) a list of contracts and contractors awarded without full and open competition stating the reasons for and identifying the approving authority; and,

(k) Provide the Governor and the joint standing committee of the General Assembly having cognizance of matters relating to government administration and elections with recommendations concerning the uniform procurement code.

Sec. 4. (NEW) (Effective Upon Passage) Procurement and Project Management Training Program.

(a) The Board, with the advice and assistance of the Commissioner of Administrative Services, shall develop a standardized state procurement and project management education and training program. Such education and training program shall develop education, training and professional development opportunities for public officials and persons charged with procurement responsibilities. The program will educate those involved in the procurement process in general business acumen and on proper purchasing procedures as established in the uniform procurement code, with an emphasis on ethics, fairness, consistency and project management. Participation in the program shall be required of any supervisory and non-supervisory state employees engaged in buying, purchasing, renting, leasing or otherwise acquiring any supplies, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contracts and all phases of contract administration.

(b) The program shall include, but shall not be limited to (1) training and education concerning federal, state and municipal procurement processes, including the state procurement code and principals of project management; (2)

¹² Derived from Sec. 4(10) of P.A. 06-1.

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training and education courses developed in cooperation with the Office of State Ethics, the Freedom of Information Commission, the Office of Elections Enforcement, the Commission on Human Rights and Opportunities, the Office of the Attorney General and any other state agency the Board determines is necessary in carrying out the purposes of this act; (3) providing technical assistance to state contracting agencies, quasi-publics, constituent units of the state system of higher education and municipalities for implementing the procurement code, regulations, policies and standards developed by the Board; (4) offer training to current and prospective contractors and vendors and others seeking to do business with the state; and (5) training and education of state employees in the area of best procurement practices in state purchasing with the goal of achieving the level of acumen necessary to achieve the objectives of this act.

(c) Any employee that completes the program established under this section shall be issued documentation by the board acknowledging such employees' participation in the training and education program. The board shall submit an annual report to the Governor and the General Assembly on the status of the training and education program.

(d) The Board shall adopt regulations, in accordance with the provisions of Chapter 54, relating to the development and implementation of the training and education program established under this section.

Sec. 5. (NEW) (Effective Upon Passage) Audit Authority¹³.

(a) The Board shall conduct audits of state contracting agencies, at least, triennially, to ensure compliance with the uniform procurement code. In conducting such audit, the Board shall have access to all contracting and procurement records, may interview any and all personnel responsible for contracting, contract negotiations or procurement and may enter into an agreement with the State Auditors of Public Accounts to effectuate such audit.

(b) Upon completion of any such audit, the Board shall prepare and issue compliance report for such state contracting agency. Such report shall identify any process or procedure that is inconsistent with the uniform procurement code and indicate those corrective measures the board deems necessary to comply with code requirements. Such report shall be issued and delivered not later than thirty days after completion of such audit and shall be a public record.

Sec. 6. (NEW) (Effective Upon Passage) Enforcement Authority of the Board.

(a) Termination of Contract or Procurement Agreement¹⁴.

For cause, the State Contracting Standards Board may review, terminate or recommend termination of any contract or procurement agreement undertaken

¹³ Derived from Sec. 5 of P.A. 06-1.

¹⁴ Derived from Sec. 6 of P.A. 06-1.

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by any state contracting agency after providing fifteen days notice to the state contracting agency and the applicable contractor, and consulting with the Attorney General. Such termination of a contract or procurement agreement by the board may occur only upon a vote of two-thirds of the members of the board present and voting for that purpose. Such action shall be accompanied by notice to the state contracting agency and any other affected party. For the purpose of this section, "for cause" means:

(1) A violation of sections 1-84 and 1-86e of the general statutes, as amended by this act or section 84 of this act;

(2) wanton or reckless disregard of any state contracting and procurement process by any person substantially involved in such contract or state contracting agency; or,

(3) notification from the Attorney General to the state contracting agency that an investigation pursuant to section 4-61dd of the 2006 supplement to the general statutes indicates that the process by which such contract was awarded was compromised by fraud, collusion or other serious ethical improprieties.

(b) Limitation, Restriction or Termination of Agency Contracting Authority¹⁵. After reasonable notice and hearing, the State Contracting Standards Board may restrict or terminate the authority of any state contracting agency or employee or agent thereof to enter into any contract or procurement agreement if the board, upon a vote of two-thirds of the members of the board present and voting for such purpose, determines that such state contracting agency failed to comply with statutory contracting and procurement requirements, and evidenced a reckless disregard for applicable procedures and policy and such limitation, restriction or termination of authority is in the state's best interest. Such limitation, restriction or termination of authority shall remain in effect until such time as the board determines that such state contracting agency has implemented corrective measures and demonstrated compliance with code requirements.

Sec. 7. (NEW) (Effective Upon Passage) Contracting Standards Advisory Council¹⁶.

There is established a Contracting Standards Advisory Council, which shall consist of representatives from the Office of Policy and Management, Departments of Administrative Services, Transportation, Public Works and Information Technology and representatives of, at least, three additional contracting agencies designated by the Governor. The Chief Procurement Officer shall be a member and serve as Chair. The advisory council shall meet at least four times per year to discuss problems and to make recommendations for improvements of the procurement processes to the State Contracting Standards Board. The advisory council may conduct studies, research and

¹⁵ Derived from Sec. 5(c) of P.A. 06-1.

¹⁶ Derived from Sec. 11 of P.A. 06-1.

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analyses and make reports and recommendations with respect to subjects or matters within the jurisdiction of the State Contracting Standards Board.

Sec. 8. (NEW) (Effective Upon Passage) Vendor and Citizen Advisory Panel.

(a) There shall be a Vendor and Citizen Advisory Panel, comprised of fifteen (15) members appointed, as follows: three members shall be appointed by the Governor, two members shall be appointed by each of the following: the speaker of the House of Representatives, the majority and minority leaders of the House of representatives, the president pro tempore of the Senate and the majority and minority leaders of the Senate. There shall be no more than six vendors with state procurement experience on the panel and the remaining citizen members shall have demonstrated sufficient knowledge by education, training or experience in several of the following enumerated areas: (1) government procurement; (2) contract negotiation, drafting and management; (3) contract risk assessment; (4) preparing requests for proposals, invitations to bid and other procurement solicitations; (5) evaluating proposals, bids and quotations; (6) real property transactions; (7) business insurance and bonding; (8) the state code of ethics; (9) federal and state statutes, policies and regulations; (10) outsourcing and privatization proposal analysis; (11) governmental taxation and finance; and (12) small and minority business enterprise development, known in the State of Connecticut as the set aside program. Such education, training or experience shall have been acquired over not less than a continuous five-year period and shall have been acquired within the ten-year period preceding such appointment. The Chair of the Panel is Chief Procurement Officer, who shall be an ex officio member.

(b) The Panel shall make recommendations to the Board regarding best practices in state procurement processes and project management as well as other issues pertaining to stakeholders in the system.

Sec. 9. (NEW) (Effective Upon Passage) Additional Legislation.

(a) On or before January 1, 2008, the Board shall submit such additional legislation as is necessary to effectuate the provisions of this act in order to permit state contracting agencies, not including quasi-publics and institutions of higher education, to carry out their functions under the Uniform Procurement Code.

(b) On or before January 1, 2009, the Board shall submit such additional legislation as if necessary to apply the provisions of this act to quasi-publics and constituent units of the state system of higher education.

(c) On or before January 1, 2010, the Board shall submit such additional legislation as is necessary to apply the provisions of this act to the municipal procurement processes utilizing state funds.

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Sec. 10.(NEW) (Effective Upon Passage) Functions of the State Properties Review Board¹⁷.

(a) On and after October 1, 2009, the powers, duties, obligations and other governmental functions of the State Properties Review Board, established under subsection (a) of section 4b-3 of the general statutes, shall transfer to the State Contracting Standards Board, established under section 46(d) of this act. The powers, duties, obligations and other governmental functions of the State Properties Review Board, shall thereafter vest in the State Contracting Standards Board, in accordance with the provisions of sections 4-38d and 4-39 of the general statutes.

(b) On or before October 1, 2009, the State Contracting Standards Board shall establish a three-member subcommittee of the board to be known as the state properties review subcommittee to perform the duties described under subsection (a) of this section. The subcommittee shall perform the duties established under subsection (a) of this section in accordance with the rules and procedures established by the board pursuant to subsection (i) of section 2 of this act. The State Contracting Standards Board shall constitute a successor department to the State Properties Review Board in accordance with the provisions of sections 4-38d and 4-39 of the general statutes.

Sec. 11. (NEW) (Effective Upon Passage) Procurement Policies of the Secretary of the State, Comptroller, Treasurer and Attorney General.

(a) The Board shall be available to provide assistance to the Secretary of the State, Comptroller, Treasurer and Attorney General to develop best procurement practices specific to the constitutional responsibilities of each office and consistent with the provisions of this act.

(b) Each of the above-reference officers shall adopt a code of procurement practices on or before July 1, 2009.

Sec. 12. (NEW) (Effective Upon Passage) Procurement Code for the Legislative and Judicial Branches¹⁸.

(a) On or before January 1, 2009, the Judicial Branch and the Legislative Branch shall prepare a procurement code applicable to contracting expenditures, including, but not limited to, expenditures: (1) involving contracting and procurement processes for purchasing or leasing of supplies, materials or equipment, consultant or consultant services, personal service agreements or purchase of service agreements; and, (2) relating to contracts for the renovation, alteration or repair of any Judicial Branch and the Legislative Branch facility in accordance with section 4b-1 of the general statutes.

(b) The procurement code described in subsection (a) of this section shall be designed to: (1) establish uniform contracting standards and practices;

¹⁷ Sec. 12 of P.A. 06-1.

¹⁸ Derived from Sec. 16 of P.A. 06-1.

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(2) simplify and clarify contracting standards and procurement policies and practices, including, but not limited to, procedures for competitive sealed bids, competitive sealed proposals, small purchases, sole source procurements, emergency procurements and special procurements; (3) ensure the fair and equitable treatment of all businesses and persons who deal with the procurement system; (4) include a process to maximize the use of small contractors and minority business enterprises, as defined in section 189 of this act; (5) provide increased economy in procurement activities and maximize purchasing value to the fullest extent possible; (6) ensure that the procurement of supplies, materials, equipment, services, real property and construction is obtained in a cost-effective and responsive manner; (7) include a process to ensure contractor and Judicial Department accountability; and, (8) provide a process for competitive sealed bids, competitive sealed proposals, small purchases, sole source procurements, emergency procurements, special procurements, best value selection, qualification based selection and the conditions for their use.

(c) On or before February 1, 2009, the Judicial Branch shall submit such procurement code for review and approval to the joint standing committee of the General Assembly having cognizance of matters relating to the Judicial Branch.

(d) On or before February 1, 2009, the Legislative Branch shall submit such procurement code for review and approval to the joint committee on Legislative Management.

Part 2. Commissioner of Administrative Services

Sec. 13. (New and Recodification) (Effective July 1, 2008) Duties of Administrative Services Commissioner re procurement.

The Commissioner of Administrative Services shall have the following general duties and responsibilities with respect to procurement:

(a) The purchase and provision of supplies, materials, equipment and contractual services, as defined in [4a-50] this act, subject to the provisions of the general statutes and the policies as set forth by the State Contracting Standards Board¹⁹;

(b) Purchase, lease or contract for all supplies, materials, equipment and contractual services required by any state agency, except as provided in sections 4-98 and 56 of this act [4a-57]²⁰, subject to the provisions of the general statutes and the policies as set forth by the State Contracting Standards Board;

(c) Enforce standard specifications established in accordance with section 91 of this act [4a-56]²¹;

¹⁹ Recodification and repeal of General Statutes Sec. 4a-2(a)(2) and (3).

²⁰ Recodification and repeal of General Statutes Sec. 4a-51(a)(1).

²¹ Recodification and repeal of General Statutes Sec. 4a-51(a)(2).

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Sec. 14.(NEW) (Effective Upon Passage) State Contracting Portal²².

(a) The Department of Administrative Services shall establish, in consultation with the State Contracting Standards Board, and maintain a single electronic portal available on the World Wide Web and located on the Department of Administrative Services' website (the "State Contracting Portal") for purposes of posting all contracting opportunities with state agencies in the executive branch executive branch, the constituent units of the state system of higher education and quasi-public entities.

(b) The State Contracting Portal shall, among other things, include:

(1) all bids, requests for proposals, and other solicitations regardless of the method of source selection, related materials and all resulting contracts and agreements by state agencies;

(2) a searchable database for locating information;

(3) Personal Services Agreements, Purchase of Service

(4) a State Procurement and Contract Manual or other similar information designated by the Department of Administrative Services as describing approved contracting processes and procedures; and,

(5) prominent features to encourage the active recruitment and participation of small businesses and women and minority owned enterprises in the State contracting process.

(c) All state agencies in the executive branch, the constituent units of the state system higher education and quasi-public entities shall post all bids, requests for proposals and all resulting contracts and agreements on the State Contracting Portal and shall, with the assistance of the Department of Administrative Services and the Department of Information Technology as needed, develop the infrastructure and capability to electronically communicate with the State Contracting Portal.

(d) All state agencies in the executive, the constituent units of the state system higher education and quasi-public entities shall develop written policies and procedures to ensure that information posted to the State Contracting Portal is done in a timely, complete and accurate manner consistent with the highest legal and ethical standards of state government.

(e) The Department of Administrative Services shall periodically report to the Office of the Governor and the State Contracting Standards Board on the progress of all state agencies in the executive branch, the constituent units of the state system higher education and quasi-public entities, in developing the capacity, infrastructure, policies and procedures to electronically communicate with the State Contracting Portal as well as the Department of Administrative

²² Derived from Executive Order No. 3.

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Services' progress toward establishment and maintenance of the State Contracting Portal.

Sec. 15. (Recodification) (Effective July 1, 2008) Regulations²³.

Not later than [January 1, 1995, t] July 1, 2008 The Commissioner of Administrative Services, with the approval of the State Contracting Standards Board, shall adopt regulations for the following purposes:

(a) to authorize any agency to purchase directly specified supplies, materials, equipment and contractual services under prescribed conditions and procedure;

(b) to authorize, in writing, any state agency to purchase, in the open market without filing a requisition or estimate, specified supplies, materials or equipment for immediate delivery to meet emergencies arising from unforeseen causes, including delays by contractors, delays in transportation and an unanticipated volume of work, provided a report of any such purchase, with a record of the competitive quotations upon which it was based and a full account of the circumstances of the emergency, shall be submitted at once to said commissioner by the administrative head of the agency concerned and provided such report shall be entered by him on a record and shall be open to public inspection;

(c) to prescribe the manner in which supplies, materials and equipment shall be purchased, delivered, stored and distributed;

(d) to prescribe the manner of making requisitions and estimates, the future periods which they are to cover, the form in which they shall be submitted and the manner of their authentication;

(e) to prescribe the manner of inspecting all deliveries of supplies, materials and equipment and of making chemical and physical tests of samples submitted with bids or proposals and samples of deliveries to determine whether or not the specifications are being complied with;

(f) to provide for the transfer to or between such state agencies of supplies, materials and equipment which are surplus with one such agency but which may be needed by another or others, and for the disposal by sale of supplies, materials and equipment which are obsolete or unusable;

(g) to prescribe the amount of deposit or bond to be submitted with a bid or a contract and the amount of deposit or bond to be given for the faithful performance of a contract;

(h) to carry out the provisions of this act pertaining to the award of contract [section 4a-59a];

²³ Recodification and repeal of General Statutes, Sec. 4a-52.

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(i) to specify the categories of purchases which are not subject to the competitive bidding requirements of section 56 of this act [4a-57];

(j) to indicate the types of objective criteria that may be used by the commissioner in determining "lowest responsible qualified bidder" for the purposes of awarding a contract as set forth in this act [section 4a-59];

(k) to define the term "minor irregularities" for the purposes of sections 47(II), 58(f)(4) and 69 of this act [4a-59], provided such term shall not include (A) variations in the quality, unit price or date of delivery or completion of supplies, materials, equipment or contractual services or (B) exceptions to programs required under the general statutes;

(l) to provide for any other matters necessary to effect the provisions of this chapter and the regulations promulgated in pursuance thereof;

(m) to establish policies and procedures for use by agencies in preparing specifications which will ensure that such specifications shall not be unreasonably restrictive and shall encourage competition;

(n) to determine when the commissioner or his designee may cancel a procurement;

(o) to establish guidelines governing the use of "brand name or equal" specifications;

(p) to establish procedures by which a bidder or proposer may request reconsideration of an award determination;

(q) to establish guidelines governing the use of remanufactured goods and circumstances under which remanufactured goods must be used by requesting agencies; and

(r) to determine when the commissioner or his designee may amend or reject a bid specification.

Sec. 16.(Recodification) (Effective July 1, 2008) Persons not to be interested in contract²⁴.

Neither the Commissioner of Administrative Services, nor any member of his office staff, nor any member of the Standardization Committee nor the executive head of any state agency to whom purchasing authority has been delegated pursuant to section 40 of this act [4a-52a], nor any member of his office staff, nor the chief executive officer of a constituent unit of the state system of higher education or institution within such a constituent unit, nor any member of his office staff, shall be financially interested, or have any personal beneficial interest, either directly or indirectly, in any contract or purchase order for any supplies, materials, equipment or contractual services furnished to or used by any state agency or, in the case of the chief executive officer of such a

²⁴ Recodification and repeal of General Statutes, Sec. 4a-64.

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constituent unit or such an institution or any member of his staff, by any such constituent unit or institution; nor shall such commissioner or member of his staff or member of the Standardization Committee or executive head or member of his staff or chief executive officer of such a constituent unit or institution or any member of his staff accept or receive, directly or indirectly, from any person, firm or corporation to which any contract or purchase order may be awarded by the Department of Administrative Services, any such state agency or any such constituent unit or institution, as the case may be, by rebate, gifts or otherwise, any money, or anything of value whatsoever, or any promise, obligation or contract for future reward or compensation. Any person who violates any provision of this section shall be fined not more than five hundred dollars or imprisoned not more than six months or be both fined and imprisoned.

Sec. 17. (Recodification) (Effective July 1, 2008) Unlawful Purchases²⁵.

When any state contracting agency purchases or contracts for any supplies, materials, equipment or contractual services contrary to the provisions of this chapter or the regulations promulgated in pursuance thereof, such order or contract shall be void and of no effect. The administrative head of such agency shall be personally liable for the costs of such order or contract and, if already paid for out of state funds, the amount thereof may be recovered from such administrative head by the state in a civil action.

Part 3. Chief Information Officer

Sec. 18. (Recodification) (Effective July 1, 2008) Duties of the Chief Information Officer.

The Chief Information Officer shall:

(a) approve or disapprove, in accordance with guidelines established by the Chief Information Officer and, with respect to compliance with procurement policy of the State, approved by the State Contracting Standards Board, each proposed state agency acquisition of hardware or software for an information or telecommunication system, except for (A) hardware or software having a cost of less than twenty thousand dollars or (B) hardware or software having a cost of twenty thousand dollars or more, but less than one hundred thousand dollars, which is for a project that complies with the agency's business systems plan as approved by the Chief Information Officer²⁶; and,

(b) approve or disapprove, in accordance with guidelines established by the Chief Information Officer and, with respect to compliance with procurement policy of the State, approved by the State Contracting Standards Board, all state agency requests or proposed contracts for consultants for information and telecommunication systems²⁷; and,

²⁵ Recodification and repeal of General Statutes, Sec. 4a-65.

²⁶ Recodification and repeal of General Statutes, Sec. 4d-2(c)(4).

²⁷ Recodification and repeal of General Statutes, Sec. 4d-2(c)(5).

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(c) be responsible for purchasing, leasing and contracting for all information system and telecommunication system facilities, equipment and services for state agencies, in accordance with the provisions of section 19 of this act [subsection (a) of section 4d-8], except for the offices of the Governor, Lieutenant Governor, Treasurer, Attorney General, Secretary of the State and Comptroller²⁸.

(d) The Department of Information Technology shall approve or disapprove a state agency request or proposed contract under subdivision (a) or (b) [(4) or (5)] of this subsection [(c) of this section] no later than seven business days after receipt of the request or proposed contract and any necessary supporting information. If the Department of Information Technology does not approve or disapprove the request or proposed contract by the end of such seven-day period, the request or proposed contract shall be deemed to have been approved. The provisions of said subdivision (b) [(5)] shall not apply to telecommunication consultants retained by the Department of Public Utility Control or the Office of Consumer Counsel in connection with telecommunication proceedings of said department²⁹.

Sec. 19. (Recodification) (Effective July 1, 2008) Information and Telecommunications Systems. Purchase, lease. Contracts for, sale and disposal³⁰.

(a) The provisions of this act [title 4a] shall apply to the purchasing, leasing and contracting for information system and telecommunication system facilities, equipment and services by the Chief Information Officer, except that (1) the Chief Information Officer shall have the powers and duties that are assigned by this act [said title 4a] to the Commissioner of Administrative Services and (2) the Chief Information Officer may use competitive negotiation, as defined in section 47(h) of this act [4a-50], to purchase or contract for such facilities, equipment and services after making a written determination, including the reasons therefor, that such action is in the best interest of the state. The Chief Information Officer shall adopt regulations, upon approval of the State Contracting Standards Board, in accordance with the provisions of this act [chapter 54], establishing objective standards for determining when such competitive negotiation may be used instead of competitive bidding, including whether the character of the facilities, equipment or services is more important than their relative cost.

(b)

(1) As used in this subsection, "information technology personal property" includes, but is not limited to, electronic data processing equipment, other equipment necessary for the utilization of information systems, telecommunication equipment or installations, and other equipment necessary for the utilization of telecommunication systems.

²⁸ Recodification and repeal of General Statutes, Sec. 4d-2(c)(6).

²⁹ Recodification and repeal of General Statutes, Sec. 4d-2(d).

³⁰ Recodification and repeal of General Statutes, Sec. 4d-8.

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(2) Notwithstanding any provision of the general statutes to the contrary, the Chief Information Officer may sell, lease or otherwise dispose of information technology personal property. The Chief Information Officer may execute personal service agreements or other contracts with outside vendors for such purposes. If any such information technology personal property was purchased or improved with the proceeds of tax-exempt obligations issued or to be issued by the state, the Chief Information Officer shall notify the State Treasurer and obtain the approval of the State Treasurer, before selling, leasing or disposing of the personal property or executing such an agreement or contract for such purpose. The State Treasurer may disapprove such sale, lease, disposition, agreement or contract only if it would affect the tax-exempt status of such obligations and could not be modified to maintain such tax-exempt status.

Sec. 20. (Recodification) (Effective July 1, 2008) Contracts, subcontracts, amendments to include State Comptroller's specifications³¹.

Each contract, subcontract or amendment to a contract or subcontract shall include any specifications established by the State Comptroller to ensure that all policies, procedures, processes and control systems, including hardware, software and protocols, which are established or provided by the contractor or subcontractor, shall be compatible with and support the state's core financial systems, including but not limited to, accounting, payroll, time and attendance, and retirement systems.

Sec. 21. (Recodification) (Effective July 1, 2008) Subcontract award³².

(a) No contractor shall award a subcontract for work under a contract or for work under an amendment to a contract without the approval of the Chief Information Officer or his designee of (1) the selection of the subcontractor and (2) the provisions of the subcontract.

(b) Each such contractor shall file a copy of each executed subcontract or amendment to the subcontract with the Chief Information Officer, who shall maintain the subcontract or amendment as a public record, as defined in section 1-200.

Sec. 22. (Recodification) (Effective July 1, 2008) Ownership Rights and Integrity of Public Records under a Contract, Subcontract or Amendment³³.

(a) No contractor or subcontractor, or employee or agent of a contractor or subcontractor, shall have any ownership rights or interest in (1) any

³¹ Recodification and repeal of General Statutes, Sec. 4d-31.

³² Recodification and repeal of General Statutes, Sec. 4d-32.

³³ Recodification and repeal of General Statutes, Sec. 4d-34.

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public records which the contractor, subcontractor, employee or agent possesses, modifies or creates pursuant to a contract, subcontract or amendment to a contract or subcontract, or (2) any modifications by such contractor, subcontractor, employee or agent to such public records.

(b) No contractor or subcontractor, or employee or agent of a contractor or subcontractor, shall impair the integrity of any public records which the contractor, subcontractor, employee or agent possesses or creates.

(c) Public records which a contractor, subcontractor, or employee or agent of a contractor or subcontractor, possesses, modifies or creates pursuant to a contract, subcontract or amendment to a contract or subcontract shall at all times and for all purposes remain the property of the state.

Sec. 23. (Recodification) (Effective July 1, 2008) Application of Freedom of Information Act to public records provided to contractor or subcontractor³⁴.

(a) Any public record which a state agency provides to a contractor or subcontractor shall remain a public record for the purposes of subsection (a) of section 1-210.

(b) With regard to any public record, the state agency and the contractor or subcontractor shall have a joint and several obligation to comply with the obligations of the state agency under the Freedom of Information Act, as defined in section 1-200, provided the determination of whether or not to disclose a particular record or type of record shall be made by such state agency.

Sec. 24. (Recodification) (Effective July 1, 2008) Nondisclosure of public records by contractor or subcontractor³⁵.

No contractor or subcontractor, or employee or agent of a contractor or subcontractor, shall disclose to the public any public records (1) which it possesses, modifies or creates pursuant to a contract, subcontract or amendment to a contract or subcontract and (2) which the state agency (A) is prohibited from disclosing pursuant to state or federal law in all cases, (B) may disclose pursuant to state or federal law only to certain entities or individuals or under certain conditions or (C) may withhold from disclosure pursuant to state or federal law. No provision of this section shall be construed to prohibit any such contractor from disclosing such public records to any of its subcontractors to carry out the purposes of its subcontract.

Sec. 25. (Recodification) (Effective July 1, 2008) Prohibition on selling, marketing or otherwise profiting from public records³⁶.

³⁴ Recodification and repeal of General Statutes, Sec. 4d-35.

³⁵ Recodification and repeal of General Statutes, Sec. 4d-36.

³⁶ Recodification and repeal of General Statutes, Sec. 4d-37.

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No contractor or subcontractor, or employee or agent of a contractor or subcontractor, shall sell, market or otherwise profit from the disclosure or use of any public records which are in its possession pursuant to a contract, subcontract or amendment to a contract or subcontract, except as authorized in the contract, subcontract or amendment.

Sec. 26. (Recodification) (Effective July 1, 2008) Notice to Chief Information Officer of violations³⁷.

Any contractor or subcontractor, or employee or agent of a contractor or subcontractor, which learns of any violation of the provisions of sections 24 or 25 of this act [4d-36 or 4d-37] shall, no later than seven calendar days after learning of such violation, notify the Chief Information Officer of such violation.

Sec. 27. (Recodification) (Effective July 1, 2008) Remedies and penalties for violations³⁸.

(a) If any person violates any provision of sections 24, 25 or 26 of this act [4d-36, 4d-37 or 4d-38], the Attorney General may bring an action against such person in the superior court for the judicial district of Hartford seeking (1) damages on behalf of the state for such violation, (2) restitution for damages suffered by any person as a result of the violation or (3) imposition and recovery of a civil penalty of not more than fifty thousand dollars for the violation.

(b) In addition to the remedies under subsection (a) of this section, any person aggrieved by a violation of any provision of sections 24, 25 or 26 of this act [4d-36, 4d-37 or 4d-38] may bring an action in Superior Court to recover any damages suffered as a result of such violation.

(c) In any action brought under subsection (a) or (b) of this section, the court may (1) order disgorgement of any profits or other benefits derived as a result of a violation of any provision of section 24, 25 or 26 of this act [4d-36, 4d-37 or 4d-38], (2) award punitive damages, costs or reasonable attorneys fees, or (3) order injunctive or other equitable relief. Proof of public interest or public injury shall not be required in any action brought under subsection (a) or (b) of this section. No action may be brought under subsection (a) or (b) of this section more than three years after the occurrence of such violation.

(d) Any person who knowingly and willfully violates any provision of section 24, 25 or 26 of this act [4d-36, 4d-37 or 4d-38] shall, for each such violation, be fined not more than five thousand dollars or imprisoned not less than one year nor more than five years, or be both fined and imprisoned.

³⁷ Recodification and repeal of General Statutes, Sec. 4d-38.

³⁸ Recodification and repeal of General Statutes, Sec. 4d-39.

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Sec. 28. (Recodification) (Effective July 1, 2008) General Assembly access to state agency records under contracts, subcontracts and amendments thereto³⁹.

Each contract, subcontract or amendment to a contract or subcontract shall include provisions ensuring that the Joint Committee on Legislative Management and each nonpartisan office of the General Assembly shall continue to have access to state agency records that is not less than the access that said committee and such offices have on July 1, 1997.

Sec. 29.(Recodification) (Effective July 1, 2008) Interagency agreement between Joint Committee on Legislative Management and Chief Information Officer⁴⁰.

The Joint Committee on Legislative Management and the Chief Information Officer may, by interagency agreement, provide for the General Assembly (1) to receive information system and telecommunication system facilities, equipment and services pursuant to contracts, subcontracts or amendments to contracts or subcontracts and (2) to interconnect with state agency information systems and telecommunication systems.

Sec. 30.(Recodification) (Effective July 1, 2008) Interagency agreement between Chief Court Administrator and Chief Information Officer⁴¹.

The Chief Court Administrator and the Chief Information Officer may, by interagency agreement, provide for the Judicial Department (1) to receive information system and telecommunication system facilities, equipment and services pursuant to contracts, subcontracts or amendments to contracts or subcontracts and (2) to interconnect with state agency information systems and telecommunication systems.

Sec. 31.((Recodification) (Effective July 1, 2008)) Interagency agreements between constitutional officers and Chief Information Officer⁴².

The Office of the Governor, Lieutenant Governor, Treasurer, Attorney General, Secretary of the State or Comptroller and the Chief Information Officer may, by interagency agreement, provide for such office (1) to receive information system and telecommunication system facilities, equipment and services pursuant to contracts, subcontracts or amendments to contracts or subcontracts and (2) to interconnect with other state agency information systems and telecommunication systems.

³⁹ Recodification and repeal of General Statutes, Sec. 4d-40.

⁴⁰ Recodification and repeal of General Statutes, Sec. 4d-41.

⁴¹ Recodification and repeal of General Statutes, Sec. 4d-42.

⁴² Recodification and repeal of General Statutes, Sec. 4d-43.

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Sec. 32.(Recodification) (Effective July 1, 2008) Continuity of systems in event of expiration or termination of contract, amendment or subcontract or default of contractor or subcontractor⁴³.

Each contract, subcontract or amendment to a contract or subcontract shall include provisions ensuring continuity of state agency information system and telecommunication system facilities, equipment and services, in the event that work under such contract, subcontract or amendment is transferred back to the state or transferred to a different contractor, upon the expiration or termination of the contract, subcontract or amendment or upon the default of the contractor or subcontractor. Such provisions shall include, but not be limited to, (1) procedures for the orderly transfer to the state of (A) such facilities and equipment, (B) all software created or modified pursuant to the contract, subcontract or amendment, and (C) all public records, as defined in this act [section 4d-33], which the contractor or subcontractor possesses or creates pursuant to such contract, subcontract or amendment, and (2) procedures for granting former state employees who were hired by such contractor or subcontractor the opportunity for reemployment with the state.

Sec. 33.(Recodification) (Effective July 1, 2008) Review of contracts and amendments entered into pursuant to Department of Administrative Services requests for proposals⁴⁴.

(a) No contracts or amendments to contracts for information system or telecommunication system facilities, equipment or services, which are entered into by any state agency (1) pursuant to the request for proposal issued by the Department of Administrative Services dated February 21, 1997, or (2) in the event such request for proposal is withdrawn, suspended or superseded, pursuant to any similar request for proposal issued by the Department of Administrative Services or the Department of Information Technology, shall be effective except as provided in this section and sections 34 and 35 of this act [4d-46 and 4d-47].

(b) Upon the execution of any such contract or amendment, and upon the execution of any subsequent contract or amendment, the state agency shall promptly file the contract or amendment with the State Auditors.

(c) Not later than seventy-five days after any such contract or amendment is filed with the State Auditors, such auditors (1) shall conduct an independent evaluation of the contract or amendment to determine whether the provisions of the contract or amendment serve the best interests of the state, including, but not limited to, (A) efficiency, (B) economy, (C) contractor qualifications, including, but not limited to, capacity for performance and accountability, and (D) effective delivery of services, and (2) shall submit a report on their findings and conclusions, and the contract or amendment, to the General Assembly, through the clerks of the House of Representatives and the Senate. The State Auditors may, at any time before or after receipt of any such contract

⁴³ Recodification and repeal of General Statutes, Sec. 4d-44.

⁴⁴ Recodification and repeal of General Statutes, Sec. 4d-45.

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or amendment, execute contracts with independent consultants for assistance in conducting such evaluation and preparing such report.

(d) Upon receipt of a report and a contract or amendment from the State Auditors under subsection (c) of this section, the speaker of the House of Representatives and the president pro tempore of the Senate shall refer the report and contract or amendment to the joint standing committees of the General Assembly having cognizance of matters relating to appropriations and the budgets of state agencies and government administration, for their review. Such contract or amendment shall take effect forty-five days after the State Auditors submit the report and contract or amendment to the General Assembly unless the General Assembly rejects such contract or amendment as a whole by a three-fifths vote of either house.

Sec. 34.(Recodification) (Effective July 1, 2008) Disqualification of potential contractors and subcontractors which participate in Department of Administrative Services requests for proposals process⁴⁵.

(a) No business entity or individual shall be awarded a contract or amendment to a contract which is subject to the provisions of section 33 of this act [4d-45], if the business entity or individual directly or indirectly participates in any of the following activities on behalf of the state concerning such contract or amendment or any other contract or amendment to a contract for state agency information system or telecommunication system facilities, equipment or services:

- (1) Preparation of the request for information or request for proposals;
- (2) development of bid specifications or proposal requirements,
- (3) evaluation of bids or proposals, or
- (4) negotiations with potential contractors.

(b) No business entity or individual who is awarded any such contract or amendment may award a subcontract for any work under such contract or amendment to any business entity or individual who has participated in any of such activities listed in subsection (a) of this section.

Sec. 35.(Recodification) (Effective July 1, 2008) Hiring of state employees by contractors and subcontractors⁴⁶.

With respect to any state employee whose position is eliminated or who is laid off as a result of any contract or amendment to a contract which is subject to the provisions of this chapter and subsection (e) of section 1-205, subsection (c) of section 1-211, subsection (b) of section 1-212, section 4-5, 4a-50, sections

⁴⁵ Recodification and repeal of General Statutes, Sec. 4d-46.

⁴⁶ Recodification and repeal of General Statutes, Sec. 4d-47.

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13(b) and (c) of this act [4a-51], subsection (b) of section 56 [4a-57], subsection (a) of section 10a-151b, subsection (a) of section 19a-110 or subsection (b) of section 32-6i, or any subcontract for work under such contract or amendment, (1) the contractor shall hire the employee, upon application by the employee, unless the employee is hired by a subcontractor of the contractor, or (2) the employee may transfer to any vacant position in state service for which such employee is qualified, to the extent allowed under the provisions of existing collectively bargained agreements and the general statutes. If the contractor or any such subcontractor hires any such state employee and does not provide the employee with fringe benefits which are equivalent to, or greater than, the fringe benefits that the employee would have received in state service, the state shall, for two years after the employee terminates from state service, provide to the employee either (A) the same benefits that such employee received from the state, or (B) compensation in an amount which represents the difference in the value of the fringe benefits that such employee received when in state service and the fringe benefits that such employee receives from the contractor or subcontractor.

Sec. 36.((Recodification) (Effective July 1, 2008)) Disqualification of potential contractors and subcontractors for past nonperformance⁴⁷.

No contract or subcontract for state agency information system or telecommunication system facilities, equipment or services may be awarded to any business entity or individual pursuant to this chapter or subsection (e) of section 1-205, subsection (c) of section 1-211, subsection (b) of section 1-212, section 4-5, subsection (a) of section 10a-151b, subsection (a) of section 19a-110 or subsection (b) of section 32-6i if such business entity or individual previously had a contract with the state or a state agency to provide information system or telecommunication system facilities, equipment or services and such prior contract was finally terminated by the state or a state agency within the previous five years for the reason that such business entity or individual failed to perform or otherwise breached a material obligation of the contract related to information system or telecommunication system facilities, equipment or services. If the termination of any such previous contract is contested in an arbitration or judicial proceeding, the termination shall not be final until the conclusion of such arbitration or judicial proceeding. If the fact-finder determines, or a settlement stipulates, that the contractor failed to perform or otherwise breached a material obligation of the contract related to information system or telecommunication system facilities, equipment or services, any award of a contract pursuant to said chapter or sections during the pendency of such arbitration or proceeding shall be rescinded and the bar provided in this section shall apply to such business entity or individual.

Part 4. Commissioner of Public Works

Sec. 37.((Recodification) (Effective July 1, 2008)) Duties of the Commissioner of Public Works Pertaining to Procurement⁴⁸.

⁴⁷ Recodification and repeal of General Statutes, Sec. 4d-48.

⁴⁸ Recodification and repeal of General Statutes, Sec. 4b-1(a)(2) and (5).

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In addition to those powers set forth in sections 4b-1, the Commissioner of Public Works shall (1) select consultant firms in accordance with the provisions of sections 132 to 135 of this act [4b-56 to 4b-59], inclusive, to assist in the development of plans and specifications when in the commissioner's judgment such assistance is desirable; and (2) be responsible for the purchase, sale, lease, sublease and acquisition of property and space to house state agencies and, subject to the provisions of section 4b-21, the sale or exchange of any land or interest in land belonging to the state.

Part 5. Commissioner of Transportation

Sec. 38.(Recodification) (Effective July 1, 2008) Duties of the Commissioner of Transportation Pertaining to Procurement of Transportation Services⁴⁹.

(a) The commissioner shall have power, in order to aid or promote the operation, whether temporary or permanent, of any transportation service operating to, from or in the state, to contract in the name of the state with any person, including but not limited to any common carrier, any transit district formed under chapter 103a or any special act, or any political subdivision or entity, or with the United States or any other state, or any agency, instrumentality, subdivision, department or officer thereof, for purposes of initiating, continuing, developing, providing or improving any such transportation service.

(1) Such contracts may include provision for arbitration of disputed issues.

(2) The commissioner, in order to aid or promote the operation of any transportation service operating outside the state, may contract in the name of the state with any person, including, but not limited to, any common carrier, or with the United States or any other state, or any agency, instrumentality, subdivision, department or officer thereof, for purposes of providing any transportation service in the event such assistance is required in the case of an emergency or a special event. The state, acting by and through the commissioner, may, by itself or in concert with others, provide all or a portion of any such service, share in the costs of or provide funds for such service, or furnish equipment or facilities for use in such service upon such terms and conditions as the commissioner may deem necessary or advisable, and any such contracts may include, without limitation thereto, arrangements under which the state shall so provide service, share costs, provide funds or furnish equipment or facilities.

(3) To these ends, the commissioner may in the name of the state acquire or obtain the use of facilities and equipment employed in providing any such service by gift, purchase, lease or other arrangements and may own and operate any such facilities and equipment and establish, charge and collect such fares and other charges or arrange for

⁴⁹ Recodification and repeal of General Statutes, Sec. 13b-34.

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such collection for the use or services thereof as he may deem necessary, convenient or desirable.

(4) The commissioner may also acquire title in fee simple to, or any lesser estate, interest or right in, any rights-of-way, properties or facilities, including properties used on or before October 1, 1969, for rail or other forms of transportation services. The commissioner may hold such properties for future use by the state and may enter into agreements for interim use of such properties for other purposes.

(5) Any person contracting with the state pursuant to this section for the provision of any transportation service shall not be considered an arm or agent of the state. Any damages caused by the operation of such transportation service by such person may be recovered in a civil action brought against such person in the superior court and such person may not assert the defense of sovereign immunity in such action.

(b) The commissioner shall, in the name of the state, have power to apply for and to receive and accept grants of property, money and services and other assistance offered or made available by any person, any transit district or political subdivision or entity, or any other agency, governmental or private, including the United States or any of its agencies and instrumentalities, which he may use to meet capital or operating expenses and for any other purpose in furtherance of his powers and duties under this section of the act and sections 13b-35[4] to 13b-36, inclusive, and 13b-38, and to negotiate for and contract regarding the same upon such terms and conditions as he may deem necessary or advisable.

(c) When necessary or desirable in the performance of his powers and duties under this section and sections 13b-36[5] to 13b-38, inclusive, the commissioner shall, in the name of the state, have power

(1) to hire, lease, acquire and dispose of property to the extent necessary to carry out his powers and duties hereunder and

(2) to contract to perform services for any person, any transit district or other political subdivision or entity, or with any other agency, governmental or private, and to accept compensation or reimbursement therefor.

(d) The commissioner may be assisted in the performance of his powers and duties under this section by the Connecticut Transportation Authority, and may delegate specific powers and duties to it. The commissioner shall perform his powers and duties in compliance with the provisions of this Act and shall utilize the services of the State Contracting Standards Board with regard thereto.

(e) The commissioner shall have the power to aid and assist transit districts pursuant to section 13b-38.

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(f) [(h)] The commissioner, in the name of the state, shall have the power to enter into leases with respect to transportation equipment and facilities for the purpose of obtaining payments based on the tax benefits associated with the ownership or leasing of such equipment and facilities. In connection with any such lease, the commissioner, in the name of the state, shall have the power to sell, repurchase and sublease any such equipment or facilities, to place deposits or investments with financial institutions to defease rental or repurchase obligations and to enter into related agreements with parties selected by and on terms deemed reasonable by the commissioner in accordance with the provisions of this act. All net payments received by the state pursuant to any such lease or related agreement shall be credited to the Special Transportation Fund, the Infrastructure Improvement Fund, the Department of Transportation operating accounts, or to the Department of Transportation as required pursuant to United States Department of Transportation approval of the lease⁵⁰.

(1) Any such lease or related agreement may include provisions for the state, as lessee, to indemnify and hold harmless the lessors or other parties to any such lease or related agreement.

(2) Any such lease or related agreement may provide for the state to purchase insurance or surety bonds or to obtain letters of credit from financial institutions when deemed in the best interests of the state by the commissioner.

(3) Any such lessor or other party to any such related agreement may bring a civil action to recover damages arising directly from and subject to any such lease or related agreement. No such action shall be brought except within one year from the date the right of action accrues. Any such civil action shall be brought in the superior court for the judicial district of Hartford. The jurisdiction conferred upon the Superior Court by this section includes any set-off, claim or demand whatever on the part of the state against any plaintiff commencing an action under this section. Such action shall be tried to the court without a jury. All legal defenses except governmental immunity shall be reserved to the state.

(4) Any such lease or related agreement shall be subject to the approval of the Attorney General.

(g) [(i)] If the commissioner deems it to be in the best interest of the state, the commissioner may include in any contract with the National Railroad Passenger Corporation pursuant to subsection (a) of this section, provisions for the state to indemnify and hold harmless said corporation, and for such purpose to provide for the state to purchase insurance with a deductible clause, surety bonds or to obtain letters of credit from financial institutions. Said corporation may bring a civil action based on the contract to recover damages arising directly from and subject to any such contract. Notwithstanding the provisions of section 52-576, no such action shall be brought except within one year from the date the right of action accrues. Any such civil action shall be brought in the superior court

⁵⁰ Former sub-sections (f) repealed by P.A. 84-254, S. 61, 62 and (g) repealed by P.A. 81-421, S. 8, 9.

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for the judicial district of Hartford. The jurisdiction conferred on the Superior Court by this section includes any set-off, claim or demand on the part of the state against the said corporation commencing such action. Such action shall be tried to the court without a jury. All legal defenses except governmental immunity shall be reserved to the state.

Sec. 39.(Recodification) (Effective July 1, 2008) Powers and Duties of the Commissioner of Transportation Pertaining to Highway, Bridge and Structure Procurement⁵¹.

Subject to the limitations referred to in section 13a-32, the commissioner is authorized:

(a) to plan, design, lay out, construct, reconstruct, relocate, improve, maintain and operate the project, and reconstruct and relocate existing highways, sections of highways, bridges or structures and incorporate or use the same, whether or not so reconstructed or relocated or otherwise changed or improved, as parts of the project, and, to that end, to do and perform with respect to the project any act or thing which is mentioned or referred to in subsection (a) of section 13a-239;

(b) to retain and employ consultants and assistants on a contract or other basis for rendering professional, legal, fiscal, engineering, technical or other assistance and advice, subject to the provisions of this act;

(c) to limit ingress to or egress from, and establish regulations for the use of, the project; and

(d) to do all things necessary or convenient to carry out the purposes and duties and exercise the powers expressly given in sections 13a-32 to 13a-35, inclusive, 13a-127, 13a-160 and 13a-239 to 13a-246, inclusive. Except as otherwise stated in section 13a-32, nothing contained in sections 13a-33, 13a-34, 13a-35, 13a-127, 13a-160 and 13a-239 to 13a-246, inclusive, shall be construed to limit or restrict, with respect to the project, any power, right or authority of the commissioner existing under or pursuant to any other law.

Part 6. Chief Executive of Constituent Units of the State System of Higher Education

Sec. 40.(Recodification) (Effective July 1, 2008) Duties of the Chief Executives of Constituent Units of the State System of Higher Education. Delegation of Purchasing Authority to State Agencies⁵².

(a) Notwithstanding the provisions of sections 13(b) and (c) or 15 of this act [4a-51 or 4a-52], the chief executive officer of each constituent unit of the state system of higher education or, in the case of the Connecticut State University system, the chief executive officer of a state university, is authorized to

⁵¹ Recodification and repeal of General Statutes, Sec. 13a-33.

⁵² Recodification and repeal of General Statutes, Sec. 4a-52a(a) and (e).

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purchase supplies, materials, equipment, contractual services, as defined in section 47(p) of this act [4a-50], execute personal service agreements as defined in section 47(qq) of this act [4-212], lease personal property in accordance with section 10a-151b, and undertake printing, publishing and microfilming for such constituent unit or institution. The provisions of sections 4-212 to 4-219, inclusive, and section 9 of public act 93-336* shall not apply to personal service agreements executed pursuant to this section.

(b) [(e)] Notwithstanding the provisions of sections 13(b) and (c) and 15 of this act [4a-51 or 4a-52], the Commissioner of Administrative Services may delegate authority to any state agency to purchase supplies, materials, equipment and contractual services, consistent with section 97 of this act [4a-67c], if the commissioner determines, in writing, that (1) such delegation would reduce state purchasing costs or result in more efficient state purchasing and (2) the agency has employees with experience and expertise in state purchasing statutes, regulations and procedures. In determining which agencies to delegate such purchasing authority to, the commissioner shall give preference to agencies which have exceeded the set-aside requirements of section 179 of this act [4a-60g]. An agency to which such authority is delegated shall comply with all such statutes, regulations and procedures and shall submit annual reports to the Commissioner of Administrative Services on its purchase orders, in a format prescribed by the commissioner. The Commissioner of Administrative Services or his designee shall periodically review each such delegation of purchasing authority and may revoke or modify a delegation upon determining that the agency has violated any provision of the delegation or that there is evidence of insufficient competition in the competitive bidding or competitive negotiation process. Not later than October 1, 1996, and annually thereafter, the commissioner shall submit a report to the joint standing committee of the General Assembly having cognizance of matters relating to government administration, which shall, for the preceding fiscal year, (A) list the agencies exercising delegated purchasing authority and (B) summarize the types of contracts entered into by such agencies pursuant to such delegated authority and the purchasing efficiencies realized from the delegated authority.

Sec. 41.(Recodification) (Effective July 1, 2008) Circumstances in which constituent units authorized to purchase by negotiation⁵³.

Notwithstanding any provision of the general statutes to the contrary, a constituent unit of the state system of higher education or an institution of the Connecticut State University system, may purchase, by negotiation, supplies, materials, equipment and contractual services, as defined in section 47(p) of this act [4a-50], for the constituent unit or institution, as appropriate, when the supplies, materials, equipment or contractual services (1) are required to implement a grant, contract or financial agreement between the constituent unit or institution, as appropriate, and the donor of funds or other things of value which are given with an obligation for service primarily to the donor by the constituent unit or institution, as appropriate and (2) are specified in such grant, contract or financial agreement.

⁵³ Recodification and repeal of General Statutes, Sec. 4a-52b.

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Sec. 42.(Recodification) (Effective July 1, 2008) Purchase of Equipment, Supplies and Contractual Services by Constituent Units and their Institutions⁵⁴.

(a) Notwithstanding the provisions of chapter 58, and sections 4-98, 4a-4, 4a-5, 4a-6, 4d-2, and 4d-5 to the contrary, a chief executive officer may purchase equipment, supplies and contractual services, execute personal service agreements, as defined in section 4-212, or lease personal property compatible, where relevant, with standards for computer architecture established by the Department of Information Technology, without the approval of the Comptroller, the Commissioner of Administrative Services or the Chief Information Officer, provided the Chief Executive Officer consults with the Chief Information Officer and such purchases are made in accordance with this section and in accordance with policies which are (1) adopted by the board of trustees of the constituent unit after reasonable opportunity for interested persons to present their views, and (2) subject to section 4-175. For purposes of this section, "chief executive officer" means the chief executive officer of a constituent unit of the state system of higher education or the chief executive officer of an institution within the jurisdiction of such a constituent unit. The provisions of sections 4-212 to 4-219, inclusive, and section 9 of public act 93-336* shall not apply to personal service agreements executed pursuant to this section.

(b) Purchases made pursuant to this section shall be based, when possible, on competitive bids or competitive negotiation. Such chief executive officer shall solicit competitive bids or proposals by sending notice to prospective suppliers and by posting notice on a public bulletin board in his office. Such notice shall contain a notice of state contract requirements pursuant to section of this act [4a-60]. Each bid or proposal shall be kept sealed until opened publicly at the time stated in the notice soliciting such bid or proposal. Sealed bids or proposals shall include bids or proposals sealed within an envelope or maintained within a safe and secure electronic environment until such time as they are publicly opened. If the amount of the expenditure is estimated to exceed fifty thousand dollars, competitive bids or proposals shall be solicited by public notice inserted at least once in two or more publications, at least one of which shall be a major daily newspaper published in the state, and shall be posted on the Internet, and at least five calendar days before the final date of submitting bids or proposals. All purchases fifty thousand dollars or less in amount shall be made in the open market, but shall, when possible, be based on at least three competitive quotations. If desired by the constituent unit, competitive quotations may include quotations submitted to the constituent unit within a safe and secure electronic environment. The constituent unit shall not refuse to consider a bid, proposal or quotation because it is not submitted electronically.

(c) Notwithstanding the provisions of subsection (b) of this section to the contrary, competitive bidding or competitive negotiation is not required in the case of minor purchases of ten thousand dollars or less in amount or in the case of emergency purchases. Whenever an emergency exists by reason of extraordinary conditions or contingencies that could not reasonably be foreseen and guarded against, or because of unusual trade or market conditions, the chief

⁵⁴ Recodification and repeal of General Statutes, Sec. 10a-151b.

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executive officer may, if it is for the best interest of the state, make purchases without competitive bidding. A statement of all emergency purchases made under the provisions of this subsection shall be set forth in the annual report of the chief executive officer.

(d) Nothing in this section shall exempt a constituent unit or chief executive officer from complying with the provisions of sections 175 and 183 [4a-60 and 4a-61].

(e) No person, firm or corporation disqualified [pursuant to section 4a-52a, or by the Commissioner of Administrative Services] pursuant to section 114 [4a-63] from bidding on contracts [with the Department of Administrative Services] may bid pursuant to this section.

(f) A chief executive officer who enters into a contract under this section which fails to meet the requirements of this section shall be personally liable for the costs of such contract and such contract shall be void and of no effect. Any amount paid under such contract may be recovered from such chief executive officer by the state in a civil action.

(g) Nothing in this section shall be construed to prevent a chief executive officer from participating in a contract for the purchase of equipment, supplies or services with the Department of Administrative Services pursuant to chapter 58.

(h) Nothing in this section shall be construed to prevent a constituent unit from entering into a corporate sponsorship agreement which contains provisions for the barter of goods and services, provided such agreement is entered into in accordance with policies and procedures governing such agreements pursuant to subsection (a) of this section.

(i) For the period from July 1, 2002, to June 30, 2006, inclusive, any funds or revenues collected from ticket sales by the contractor hired by Western Connecticut State University to operate and manage its O'Neill Center, shall not be deemed to be state funds for the purposes of sections 4-32 and 4-33 and may be deposited in the contractor's account for a period of time not to exceed forty days, during which time the contractor shall pay all expenses related to the event for which the tickets were sold and make an accounting of the portion of the funds to be remitted to the university, and then remit such funds to the university pursuant to the terms of the contract. Upon receipt of such funds, the university shall deposit such funds in accordance with the provisions of sections 4-32 and 4-33.

(j) Notwithstanding the provisions of subsections (a) and (b) of this section, a chief executive officer may not extend a contract with a value of fifty thousand dollars or more per year to perform janitorial, building maintenance, security or food and beverage services unless: (1) Such contract is in effect on May 1, 2005; (2) such extension is for a period of one year from the date such contract would otherwise expire; and (3) any such extension includes any applicable increase in the standard wage and the payroll burden to administer the standard wage, as established by the Labor Department.

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Part 7. Commissioner of Corrections

Sec. 43. (Recodification) (Effective July 1, 2008) Contracts for labor or services; public institutions⁵⁵.

No contract or agreement shall be made for the labor or services of inmates of any correctional or other state institution in the manufacture of goods or any portion of such manufacture, or for the product of such labor or services, except after public notice, by advertising in at least three daily papers having a circulation in different sections of the state, calling for sealed proposals or bids for such labor, or the product thereof, and such proposal or bid, received in accordance with such notice, as is by its terms most advantageous to the state shall be accepted by the authorities in charge of the disposal of such labor, or the product thereof, and such contract or agreement shall be made in accordance with the terms of such notice and such proposal or bid, in accordance with the provisions of this act. No such contract or agreement shall be made for any period exceeding four years. The provisions of this section shall not apply to section 18-88.

⁵⁵ Recodification and repeal of General Statutes, Sec. 18-89.

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Article 2. Commencement of the Procurement Process

Part 8. Purposes and Objectives of the Uniform Procurement Code

Sec. 44. (NEW) (Effective July 1, 2008) Purposes. Rules of Construction.

(a) Interpretation. This Chapter shall be construed and applied to promote the underlying purposes and objectives pertaining to the Uniform Procurement Code, as set forth in the statutes and herein.

(b) Purposes and Objectives Regarding the Uniform Procurement Code⁵⁶. The underlying purposes and objectives of this Chapter are to:

(1) Establish uniform contracting standards and practices among the various state contracting agencies in order to foster effective broad-based competitive values and protocols;

(2) Simplify and clarify the state's laws governing contracting standards and the state's procurement policies and practices, including, but not limited to, procedures for competitive sealed bids, competitive sealed proposals, special procurements, best value selection, qualification-based selection and the conditions for their use;

(3) Permit the continued development of the best Procurement practices by the state and to provide for increased public confidence in the procedures followed in public Procurement by the state by providing safeguards for the maintenance of a procurement system of quality and integrity;

(4) Ensure the fair and equitable treatment of all businesses and persons who deal with the procurement system of the state;

(5) Include a process to maximize the use of small contractors and minority business enterprises, as defined in section 4a-60g of the general statutes;

(6) Ensure that the procurement of supplies, materials, equipment, services, real property and construction required by any is obtained in a cost-effective and responsive manner;

(7) Provide increased economy in State procurement activities and to maximize, to the fullest extent practicable, the purchasing value of public funds expended by the State, taking into account, where applicable, performance and cost of Contracts and Purchase Orders;

(8) Preserve and maintain the existing contracting, procurement, disqualification and termination authority and discretion of any state

⁵⁶ Derived from Sec. 3 of P.A. 06-1(b) which finds its origins in Sec. 1-101 of ABA.

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contracting agency when such contracting and procurement procedures represent best practices;

(9) Include a process to improve contractor and state contracting agency accountability; and,

(10) Establish standards for leases and lease-purchase agreements and for the purchase and sale of real estate.

Sec. 45. (NEW) (Effective July 1, 2008) Requirement of Good Faith⁵⁷.

This Code requires all parties involved in the negotiation, performance, or administration of state contracts to act in good faith.

Sec. 46. (NEW) (Effective July 1, 2008) Application of this Code⁵⁸.

(a) General Application. This Code applies to contracts solicited or entered into after the effective date of this act.

(b) Application to State Procurement. Except as otherwise provided in this Act, this Code shall apply to every expenditure of public funds irrespective of their source, involving any state contracting and procurement processes, including, but not limited to, leasing and property transfers, purchasing or leasing of supplies, materials or equipment, consultant or consultant services, personal service agreements, purchase of service agreements or privatization contracts, as set forth in this act; and, relating to contracts for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building.

(c) Nothing in this section shall be construed to require the application of uniform procurement code procedures when such procurement involves the expenditure of federal assistance or contract funds and federal law provides applicable procurement procedures to the extent such procedures are inconsistent with the uniform procurement code.

(d) Notwithstanding the provisions of this act, on or after July 1, 2009 the provisions of this Act shall apply to quasi-publics and the constituent units of the state system of higher education.

(e) Notwithstanding the provisions of this act, on or after January 1, 2010 the provisions of this Act shall apply to municipalities, political subdivisions and municipal district commissions procurement processes that utilize state funds.

(f) All political subdivisions and other local public agencies of this state may adopt all or any part of this Code and its accompanying regulations.

⁵⁷ Derived from Sec. 1-103 of the ABA Model Code.

⁵⁸ Derived from Sec. 1-104 of the ABA Model Code and Sec 3(a) of P.A. 06-1.

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Part 9. Definitions of Terms used in this Act

Sec. 47. (NEW and Recodification) (Effective July 1, 2008)
Definitions⁵⁹.

The words defined in this section shall have the meanings set forth below whenever they appear in this Code, unless the context in which they are used clearly requires a different meaning; or a different definition is prescribed for a particular section or provision.

(a) "Award authority" means an authority granted by the Commissioner to permit State agencies to make direct purchases of the supplies, materials, equipment or contractual services listed from the sources specified without prior approval of the Commissioner⁶⁰.

(b) "Best value selection" means a contract selection process in which the award of a contract is based on a combination of quality, cost and other factors⁶¹.

(c) "Bid" means an offer, submitted in response to an invitation to bid, to furnish supplies, materials, equipment, construction or contractual services to the State under certain prescribed conditions at a stated price⁶².

(d) **[(6)]** "Bidder" means a person, firm or corporation submitting a competitive bid in response to a solicitation pursuant to section 52 of this act⁶³;

(e) "Business" means any individual or sole proprietorship, partnership, firm, corporation, trust, limited liability company, limited liability partnership, joint stock company, joint venture or other legal entity through which business for profit or not for profit is conducted.

(f) "Change Order" means a written order signed by the designated official, assigned by the department head, directing the contractor to make changes which the Changes clause of the contract authorizes the designated officer to order without the consent of the contractor⁶⁴.

(g) **[(4)]** "Competitive bidding" means the submission of prices by persons, firms or corporations competing for a contract to provide supplies,

⁵⁹ Derived from Sec. 1 of P.A. 06-1 and Sec. 1-301 of the ABA Model Code.

⁶⁰ Derived from Sec. Sec. 4a-52-1(h) of the Regulations.

⁶¹ Derived from Sec. 1(3) of P.A. 06-1.

⁶² Recodification and repeal of Sec. 4a-52-1(b) of the Regulations (effective September 1, 1992).

⁶³ Recodification and repeal of General Statutes, Sec. 4a-50(6). Repeals Sec. 4a-52-1(c) of the Regulations.

⁶⁴ Derived from Sec. 1-301(2) of the ABA Model Code.

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materials, equipment or contractual services, under a procedure in which the contracting authority does not negotiate prices, as set forth in this Act⁶⁵;

(h) "Competitive negotiation" means a procedure for contracting for supplies, materials, equipment, contractual services and personal service contractors, in which (A) proposals are solicited from qualified suppliers by a request for proposals, and (B) changes may be negotiated in proposals and prices after being submitted⁶⁶;

(i) "Consultant" means (1) any architect, professional engineer, landscape architect, land surveyor, accountant, interior designer, environmental professional or construction administrator, who is registered or licensed to practice such person's profession in accordance with the applicable provisions of the general statutes, or (2) any planner or any environmental, management or financial specialist⁶⁷;

(j) "Consultant services" shall include those professional services rendered by architects, professional engineers, landscape architects, land surveyors, accountants, interior designers, environmental professionals, construction administrators, planners or environmental, management or financial specialists, as well as incidental services that members of these professions and those in their employ are authorized to perform⁶⁸;

(k) "Construction" means the process of building, altering, repairing, improving, or demolishing any public infrastructure facility, including any public structure, public building, or other public improvements of any kind to State property or other property or space in which the State has an interest. It does not include the routine operation, routine repair, or routine maintenance of any existing public infrastructure facility, including structures, buildings or real property⁶⁹.

(1) Construction Item means Commodities or Services involved in the process of building, designing, altering or repairing a public structure or building, or other improvements to any State property. It does not include routine operation, routine repair or routine maintenance of existing structures, buildings or property.

(l) "Contract" or "State Contract" means an agreement or a combination or series of agreements between a state agency or quasi-public agency and a person, firm or corporation for

(1) a project for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building or public work;

⁶⁵ Recodifies and repeals General Statutes, Sec. 4a-50(4).

⁶⁶ Recodifies and repeals General Statutes, Secs. 4a-50(5) and 4-212(1). Repeals Sec. 4a-52-1(e) of the Regulations.

⁶⁷ Recodification and repeal of General Statutes, Secs. 4b-55(b) and 13b-20b(b).

⁶⁸ Recodification and repeal of General Statutes, Sec. 4b-55(c) and 13b-20b(c).

⁶⁹ Derived from Sec. 1-301(4) of the ABA Model Code.

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(2) services, including, but not limited to, consulting and professional services ("Contractual Services");

(3) the acquiring or disposing of all manner of real and personal property;

(4) goods and services, including but not limited to, using purchase of services contracts and personal service agreements;

(5) transactions involving information technology, state agency information system or telecommunication system facilities, equipment or services, which is awarded pursuant to this act [chapter] or subsection (e) of section 1-205, subsection (c) of section 1-211, subsection (b) of section 1-212, section 4-5, section 42 of this act [subsection (a) of section 10a-151b], subsection (a) of section 19a-110 or subsection (b) of section 32-6i⁷⁰.

(6) a lease; or,

(7) a licensing agreement, and includes all government functions that relate to such activities.

The term "Contract" or "State Contract" shall not include a contract between a state agency or a quasi-public agency and a political subdivision of the state⁷¹. The term "Term Contract" means the agreement reached when the State accepts a bid or proposal to furnish supplies, materials, equipment or contractual services at a stated price for a specific period of time in response to an invitation to bid⁷².

As used in this Act and in sections 46a-56 and 46a-68c to 46a-68k, inclusive, the term "Public works contract"⁷³ means any agreement between any individual, firm or corporation and the state or any political subdivision of the state other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the state, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

(m) "Contract Modification" means any written alteration in Specifications, delivery point, rate of delivery, period of performance, price, quantity or other provisions of any Contract accomplished by mutual action of the parties to the Contract, other than Change Orders, which were previously defined⁷⁴.

(n) "Contract risk assessment" means (A) the identification and evaluation of loss exposures and risks, including, but not limited to, business and

⁷⁰ Recodification and repeal of General Statutes, Sec. 4d-30(1).

⁷¹ Derived from Executive Order 7C; See also, Regulations, Sec. 4a-52-1(f).

⁷² Recodification and repeal of Sec. 4a-52-1(o) of the Regulations.

⁷³ Recodification and repeal of General Statutes, Sec. 46a-68b.

⁷⁴ Derived from Sec. 1-301(6) of the ABA Model Code.

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legal risks associated with the contracting process and the contracted goods and services, and (B) the identification, evaluation and implementation of measures available to minimize potential loss exposures and risks.

(o) "Contractor" means any person or business entity who is awarded, or participating as a sub-contractor under, a contract or an amendment to a contract with the state under the procedure set forth in this act, including, but not limited to, a small contractor, minority business enterprise, organization providing products and services by persons with disabilities, as described in section 68 of this act [17b-656] of the general statutes, and an individual with a disability, as defined in sections 178 and 179 of this act [4a-60g of the general statutes]⁷⁵.

(p) "Contractual Services" or "Services" means (1) the furnishing of labor, time, or effort by a Contractor, not involving the delivery of a specific end product other than reports, which are merely incidental to the required performance; and, (2) [(3) "Contractual services" means] any and all laundry and cleaning service, pest control service, janitorial service, security service, the rental and repair, or maintenance, of equipment, machinery and other state-owned personal property, advertising and photostating, mimeographing, and other service arrangements where the services are provided by persons other than state employees⁷⁶. This term shall include the design, development and implementation of technology, communications or telecommunications systems or the infrastructure pertaining thereto, including hardware and software. Moreover, this term shall include services for which a contractor is conferred a benefit by the state, whether or not compensated by the state. This term shall not include employment agreements, collective bargaining agreements or "Professional Services", as defined herein⁷⁷.

(q) "Cost Reimbursement Contract" means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this act, and a fee, if any.

(r) "Data" means recorded information, regardless of form or characteristic⁷⁸.

(s) "Designee" means a duly authorized representative of a person holding a superior position⁷⁹.

(t) "Design-Bid-Build" means a project delivery method in which the State sequentially awards separate Contracts, the first for Architectural and

⁷⁵ Recodification and repeal of Sec 1(6) of P.A. 06-1 and Sec. 1-301(7) of the ABA Model Code. Repeals and replaces General Statutes, Sec. 4d-30(2). Repeals Sec. 4a-52-1(g) of the Regulations (effective September 1, 1992).

⁷⁶ Recodification and repeal of General Statutes, Sec. 4a-50(3).

⁷⁷ Derived from Sec. 1-301(21) of the ABA Model Code; with the exception of sub-part (2).

⁷⁸ Derived from Sec. 1-301(8) of the ABA Model Code.

⁷⁹ Derived from Sec. 1-301(9) of the ABA Model Code.

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Engineering Services to design the project and the second for Construction of the project according to the design⁸⁰.

(u) "Design-Build" means a project delivery method in which the State enters into a single Contract for design and Construction of an infrastructure facility⁸¹.

(v) "Design Requirements" means the written description of the infrastructure facility or service to be procured under this Part B including: (1) required features, functions, characteristics, qualities, and properties that are required by the State; (2) the anticipated schedule, including start, duration, and completion; (3) estimated budgets (as applicable to the specific Procurement) for design, Construction, operation and maintenance. The design requirements may, but need not, include drawings and other documents illustrating the scale and relationship of the features, functions, and characteristics of the project⁸².

(w) "Electronic" means electrical, digital, magnetic, optical, electromagnetic, or any other similar technology⁸³.

(x) "Emergency procurement" means procurement by a state contracting agency, as defined in sub-section (iii) of this section, quasi-public agency, as defined in section 1-120 of the general statutes, judicial department or constituent unit of higher education that is made necessary by a sudden, unexpected occurrence that poses a clear and imminent danger to public safety or requires immediate action to prevent or mitigate the loss or impairment of life, health, property or essential public services or in response to a court order, settlement agreement or other similar legal judgment⁸⁴.

(y) "Equipment" means personal property of a durable nature that retains its identity throughout its useful life.

(z) "Established Catalogue Price" means the price included in a catalogue, price list, schedule, or other form that⁸⁵:

- (1) is regularly maintained by a manufacturer or contractor;
- (2) is either published or otherwise available for inspection by customers; and
- (3) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

⁸⁰ Derived from Sec. 5-101(2) of the ABA Model Code.

⁸¹ Derived from Sec. 5-101(3) of the ABA Model Code.

⁸² Derived from Sec. 5-101(6) of the ABA Model Code.

⁸³ Derived from Sec. 1-301(10) of the ABA Model Code.

⁸⁴ Derived from Sec. 1(2) of P.A. 06-1.

⁸⁵ Derived from Sec. 3-101(2) of the ABA Model Code.

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(aa) "Excess Supplies" means any supplies other than expendable supplies having a remaining useful life but which are no longer required by the Using Agency in possession of the supplies⁸⁶.

(bb) "Expendable Supplies" means all tangible supplies other than nonexpendable supplies⁸⁷.

(cc) "Firm" means any individual, partnership, corporation, joint venture, association or other legal entity authorized by law to practice the profession of architecture, landscape architecture, engineering, land surveying, accounting, planning or environmental, management or financial specialization⁸⁸;

(dd) "Governmental Body" means any department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment or official of the executive, legislative, or judicial branch of this State⁸⁹.

(ee) "Grant" or "Loan" means the furnishing by the state of assistance, whether financial or otherwise, to any person to support a program authorized by law. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies, services or construction; a contract resulting from such an award is not a grant but a procurement contract⁹⁰.

(ff) "Highest Scoring Bidder in a Multiple Criteria Bid" means the bidder whose bid receives the highest score for a combination of attributes, including, but not limited to, price, skill, ability and integrity necessary for the faithful performance of the work, based on multiple criteria considering quality of product, warranty, life-cycle cost, past performance, financial responsibility and other objective criteria that are established in the bid solicitation for the contract⁹¹.

(gg) "Independent Peer Reviewer Services" are additional Architectural and Engineering Services provided to the State. The function of the independent peer reviewer is to confirm that the key elements of the professional engineering and architectural design provided by the Contractor are in conformance with the applicable standard of care⁹².

(hh) "Infrastructure Facility" means a building; structure; or networks of buildings, structures, pipes, controls, and Equipment that provide transportation, utilities, public education, or public safety Services. Included are government office buildings, public schools; jails; water treatment plants, distribution systems and pumping stations; waste water treatment plant, collections systems, and pumping stations; solid waste disposal plants, incinerators, landfills, and related

⁸⁶ Derived from Sec. 8-101(1) of the ABA Model Code.

⁸⁷ Derived from Sec. 8-101(2) of the ABA Model Code.

⁸⁸ Recodification and repeal of General Statutes, Sec. 13b-20b(d).

⁸⁹ Derived from Sec. 1-301(12) of the ABA Model Code.

⁹⁰ Derived from Sec. 1-301(13) of the ABA Model Code.

⁹¹ Recodification and repeal of General Statutes, Sec. 4a-59(a)(2).

⁹² Derived from Sec. 5-101(7) of the ABA Model Code.

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facilities; public roads and streets; highways; public parking facilities; public transportation systems, terminals, and rolling stock; rail, air and water port structures, terminals and Equipment⁹³.

(ii) "Invitation for Bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids⁹⁴.

(jj) "Lowest Responsible Qualified Bidder" means the bidder whose bid is the lowest of those bidders possessing the skill, ability and integrity necessary to faithful performance of the work based on objective criteria considering past performance and financial responsibility⁹⁵.

(kk) "Materials" means items required to perform a function or used in a manufacturing process, particularly those incorporated into an end product or consumed in its manufacture.

(ll) "Minor irregularities" means informalities that are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible⁹⁶.

(mm) "Multi-Step Competitive Sealed Bidding" means a competitive process calling for separate submissions of proposals or responses following the issuance of a Request for Information, Request for Qualifications or other solicitation prior to the issuance of an Invitation to Bid. The issuance of these solicitations may constitute the first step or steps of a process followed by a call for non-negotiable competitive-price bid. A Request for Qualifications may also be utilized as the first step in the Competitive Sealed Proposal process⁹⁷.

(nn) "Nonexpendable Supplies" means all tangible supplies having an original acquisition cost per unit, as determined, from time to time, by the Commissioner of Administrative Services, and a probable useful life of more than one year⁹⁸.

(oo) "Nonprofit agency" means any organization that is not a for-profit business and provides services contracted for by (A) the state, or (B) a nonstate entity⁹⁹.

(pp) "Operations and Maintenance" means a project delivery method whereby the State enters into a single Contract for the routine operation, routine repair, and routine maintenance of an infrastructure facility¹⁰⁰.

⁹³ Derived from Sec. 5-101(8) of the ABA Model Code.

⁹⁴ Derived from Sec. 3-101(2) of the ABA Model Code. Replaces and repeals Sec. 4a-52-1(i) of the Regulations.

⁹⁵ Recodification and repeal of General Statutes, Sec. 4a-59(a)(1).

⁹⁶ Recodification and repeal of Sec. 4a-52-1(j) of the Regulation.

⁹⁷ Derived from Sec. 3-202(8) of the ABA Model Code.

⁹⁸ Derived from Sec. 8-101(3) of the ABA Model Code.

⁹⁹ Derived from Sec. 1 (14) of P.A. 06-1.

¹⁰⁰ Derived from Sec. 5-101(9) of the ABA Model Code.

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(qq) "Personal service agreement" means a written agreement between the state and an individual for services rendered to the state which are infrequent or unique, which defines the services or end product to be delivered by a personal service contractor to a state agency, excluding any agreement with a personal service contractor that the state accounting manual does not require to be submitted to the Comptroller¹⁰¹. A personal service agreement between a state agency and an individual shall have a term of not more than [one] three years, unless otherwise permitted by the State Contracting Standards Board. Any such personal service agreement may be extended or renewed, for an unlimited term, provided the appropriate collective bargaining representative, the Commissioner of Administrative Services and the joint standing committee of the General Assembly having cognizance of matters relating to labor and public employees are notified of such extension or renewal¹⁰². The term "Personal Services Agreement" may be used interchangeably with "Purchase of Service Agreement" or "Purchase of Service Contract"¹⁰³.

(rr) "Personal service contractor" means any person, firm or corporation not employed by the state, who is hired by a state agency for a fee to provide services to the agency. The term "personal service contractor" shall not include (A) a person, firm or corporation providing "contractual services", as defined in section 47(p) of this act [4a-50], to the state, (B) a "consultant", as defined in this section [4b-55], (C) a "consultant", as defined in section 160 of this act [13b-20b], providing services to the Department of Transportation, (D) an agency of the federal government, of the state or of a political subdivision of the state, or (E) a person, firm or corporation providing consultant services for information and telecommunications systems authorized under [subdivision (5) of subsection (c) of] section 18(b) of this act [4d-2]¹⁰⁴.

(ss) "Professional Services" means any type of Service to the public that requires that members of a profession rendering such service obtain a license or other legal authorization as a condition precedent to the rendition thereof, limited to the Professional Services of architects, professional engineers, or jointly by architects and professional engineers, landscape architects, certified public accountants and public accountants, land surveyors, attorneys-at-law, psychologists, licensed marital and family therapists, licensed professional counselors and licensed clinical social workers as well as such other Professional Services set forth, now or hereafter, in C.G.S. §33-182a. A Contract for Professional Services may run to individuals or to business entities established:

(1) For the sole and specific purpose of rendering professional services and which has as its owners, members, partners or shareholders only individuals who themselves are licensed or otherwise legally authorized to render the same professional service as the business entity;
or,

¹⁰¹ Recodification and repeal of General Statutes, Sec. 4-212(3).

¹⁰² Recodification and repeal of General Statutes, Sec. 4a-7a.

¹⁰³ This proposal does not include Sec. 1(11) of P.A. 06-1.

¹⁰⁴ Recodification and repeal of General Statutes, Sec. 4-212(2).

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(2) For the sole and specific purpose of rendering professional services by members of two or more of the following professions: psychology, marital and family therapy, social work, nursing, professional counseling and psychiatry and that has as its owners, members, partners or shareholders only individuals who themselves are licensed or otherwise legally authorized to render one of the Professional Services for which the business entity was created.

(tt) "Privatization contract" means an agreement or series of agreements between a state contracting agency and a person or entity, in which such person or entity agrees to provide services valued at one million dollars or more over the life of the contract that are substantially similar to and in lieu of services provided, in whole or in part, by employees of such agency or by employees of another state agency and that results in the layoff of any full time state employee who is a member of a collective bargaining unit. "Privatization contract" does not include the renewal, modification or extension of a contract in effect on or before the effective date of this section¹⁰⁵.

(uu) "Procurement" means contracting for, buying, purchasing, renting, leasing or otherwise acquiring or disposing of, any supplies, services, including but not limited to, contracts for purchase of services and personal service agreements, interest in real property, or construction, and includes all government functions that relate to such activities, including best value selection and qualification based selection¹⁰⁶.

(vv) "Proposal Development Documents" means drawings and other design related documents that are sufficient to fix and describe the size and character of an infrastructure facility as to architectural, structural, mechanical and electrical systems, materials, and such other elements as may be appropriate to the applicable project delivery method¹⁰⁷.

(ww) [(7)] "Proposer" means a person, firm or corporation submitting a proposal in response to a request for proposals or other competitive sealed proposal¹⁰⁸.

(xx) [For purposes of this section and sections 4d-34 to 4d-39, inclusive, "p] "Public record" means a public record, as defined in section 1-200, and also includes any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a contractor or subcontractor for work under a contract, subcontract or amendment to a contract or subcontract, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method¹⁰⁹.

¹⁰⁵ Replaces Sec. 1(8) of P.A. 06-1.

¹⁰⁶ Derived from Sec. 1(1) of P.A. 06-1.

¹⁰⁷ Derived from Sec. 5-101(10) of the ABA Model Code.

¹⁰⁸ Recodification and repeal of General Statutes, Sec. 4a-50(7).

¹⁰⁹ Recodification and repeal of General Statutes, Sec. 4d-33.

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(yy) "Purchase Description" means the words used in a solicitation to describe the supplies, services, or construction to be purchased, and includes specifications attached to, or made a part of the solicitation¹¹⁰.

(zz) "Qualification based selection" means a contract selection process in which the award of a contract is primarily based on an assessment of contractor qualifications and on the negotiation of a fair and reasonable price¹¹¹.

(aaa) "Quasi-public agency" or "Quasi Public" shall have the meaning set forth in section 1-120(1)¹¹².

(bbb) "Regulation" shall have the meaning set forth in section 4-166(13) of the general statutes.

(ccc) "Request for Proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals¹¹³.

(ddd) "Responsible Bidder"¹¹⁴ or "Responsible Proposer"¹¹⁵ means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

(eee) "Signature" shall have the meaning set forth in sections 1-274 and 42a-3-401.

(fff) "Specification" means any description of the physical or functional characteristics, or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery¹¹⁶.

(ggg) "State Contracting Agency" "State Agency"¹¹⁷, or "Agency"¹¹⁸ means any executive branch agency, each state board, commission, department, office, institution or council, including but not limited to constituent units of the state system of higher education; political subdivisions of the state; and, quasi-

¹¹⁰ Derived from Sec. 3-101(4) of the ABA Model Code.

¹¹¹ Derived from Sec. 1(4) of P.A. 06-1.

¹¹² Sec. 1-120. Definitions. "As used in sections 1-120 to 1-123, inclusive: (1) "Quasi-public agency" means the Connecticut Development Authority, Connecticut Innovations, Incorporated, Connecticut Health and Educational Facilities Authority, Connecticut Higher Education Supplemental Loan Authority, Connecticut Housing Finance Authority, Connecticut Housing Authority, Connecticut Resources Recovery Authority, Connecticut Hazardous Waste Management Service, Capital City Economic Development Authority and Connecticut Lottery Corporation."

¹¹³ Derived from Sec. 3-101(5) of the ABA Model Code. Replaces and repeals Regulations, Sec. 4a-52-1(m).

¹¹⁴ Derived from Sec. 3-101(7) of the ABA Model Code.

¹¹⁵ Derived from Sec. 3-101(6) of the ABA Model Code.

¹¹⁶ Derived from Sec. 4-101 of the ABA Model Code.

¹¹⁷ Recodification and repeal of General Statutes, Secs. 4a-50(1) and 4a-60g(a)(1)(2).

¹¹⁸ Derived from Sec. Sec. 4a-52-1(a) of the Regulations.

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publics that receive state funds, that are authorized by law to enter into contracts for goods or services itself or through its head. State contracting agency does not include the Office of the Secretary of the State, the Office of the State Treasurer, the Office of the State Comptroller, the Office of the Attorney General or the judicial or legislative branches of the state¹¹⁹.

(hhh) "Subcontractor" means a subcontractor of a contractor for work under a contract or an amendment to a contract¹²⁰.

(iii) "Supplies" means any and all articles of personal property, including but not limited to equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land¹²¹, furnished to or used by any state agency, including all printing, binding, publication of laws, stationery, forms, and reports¹²². For purposes of Supply Management under this Act "Supplies" means supplies owned by the State¹²³.

(jii) "Surplus Supplies" means any supplies other than expendable supplies no longer having any use to the State. This includes obsolete supplies, scrap materials, and nonexpendable supplies that have completed their useful life cycle¹²⁴.

Part 10. Commencing the Procurement Process

Sec. 48. (NEW) (Effective from Passage) The Requisition¹²⁵.

(a) ***Initiation of the Process: Requisition.*** At the initiation of the purchase of supplies, materials, equipment or contractual services not specifically covered by one of the award authorities or Department of Administrative Services term contract shall be on a purchase requisition form provided by the Commissioner of Administrative Services or upon the completion of a pre-itemized purchase requisition form provided by the Commissioner.

(b) The purchase requisition form originates in the state contracting agency, and must be submitted to the Department of Administrative Services to cover scheduled or unscheduled purchases.

(c) The pre-itemized purchase requisition form is originated in the Department of Administrative Services, and is forwarded to the state contracting [purchasing] agency to record its requirements and to return to the Department of Administrative Services for action on a scheduled time basis. Frequency of delivery or service may be adjusted to meet the internal needs of the agency.

¹¹⁹ Derived from Sec. 1(5) of P.A. 06-1.

¹²⁰ Recodification and repeal of General Statutes, Sec. 4d-30(3).

¹²¹ Derived from Sec. 1-301(24) of the ABA Model Code.

¹²² Recodifies and repeals General Statutes, Sec. 4a-50(2).

¹²³ Derived from Sec. 8-101(4) of the ABA Model Code.

¹²⁴ Derived from Sec. 8-101(5) of the ABA Model Code.

¹²⁵ Recodification and repeal of Sec. 4a-52-3 of the Regulations.

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Sec. 49. (Recodification) (*Effective from Passage*) Appropriations encumbered by purchase order; current and capital expenditures. Delegation to agency¹²⁶.

(a) Except for such emergency purchases as are made by a budgeted agency under regulations adopted by the Commissioner of Administrative Services, no budgeted agency or any agent thereof shall incur any obligation, by order, contract or otherwise, except by the issue of a purchase order or any other documentation approved by the Comptroller, necessary to process the transaction transmitted by the budgeted agency or its agents to the commissioner and the Comptroller, provided the amount to be charged against the appropriation for a budgeted agency in any year for a purchase order for a current expenditure shall be the amount anticipated to be spent in such year. The amount to be charged against the appropriation for any budgeted agency in any year for a capital expenditure, including an installment purchase, shall be the state's total cost for such capital expenditure unless otherwise authorized by the General Assembly or approved by the Finance Advisory Committee. Upon the receipt of any such purchase order or any other documentation approved by the Comptroller necessary to process the transaction, the Comptroller shall immediately charge the same to the specific appropriation of the budgeted agency issuing the same and certify on the face of the purchase order or approve such other documentation that the purchase is approved and recorded, if the proposed purchase is within the applicable specific appropriation and the budgeted agency has unencumbered funds sufficient to defray such expenditure. In transactions requiring purchase orders, the Comptroller shall promptly transmit such certified purchase order to the vendor named in the purchase order.

(b) Notwithstanding the provisions of subsection (a) of this section, the Comptroller may delegate to any budgeted agency the certification and transmission requirements of purchase orders using authorized electronic methods, provided such agency transmits the information contained in such purchase orders to the Comptroller. Upon receipt of any such electronic transmission, the Comptroller shall immediately charge the same to the specific appropriation of the budgeted agency issuing the same and shall electronically certify that the purchase is approved and recorded, if the proposed purchase is within the applicable specific appropriation and the budgeted agency has unencumbered funds sufficient to defray such expenditure. Upon receipt of the Comptroller's certification, the budgeted agency shall transmit the purchase order to the vendor named in the purchase order.

(c) Notwithstanding the provisions of subsection (a) or (b) of this section, the Comptroller may allow budgeted agencies to use purchasing cards for purchases of ten thousand dollars or less. No budgeted agency, or any official, employee or agent of a budgeted agency, shall incur any obligation using such a card, except in accordance with procedures established by the Comptroller.

¹²⁶ Recodification and repeal of General Statutes, Sec. 4-98.

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Sec. 50. (Recodification) (Effective July 1, 2008) Penalty for Exceeding Appropriations; Exceptions¹²⁷.

Whenever any specific appropriation of money has been made by the General Assembly or by any community or corporation as provided in section 7-121, each agent, commissioner or executive officer of the state, except as provided in sections 4-87 and 4-99, or of any town, city, borough or school district, who willfully authorizes or contracts for the expenditure of any money or the creation of any debt for any purpose in excess of the amount specifically appropriated for such purpose by the General Assembly or the community or corporation of which he is agent, commissioner or executive officer, unless such expenditure is made or debt contracted for the necessary repair of roads or bridges, or the necessary support of schools or paupers, in cases arising after the proper appropriation has been exhausted, shall be fined not more than one thousand dollars or imprisoned in a community correctional center not more than one year or both.

Part 11. Payment of Obligations

Sec. 51. (Recodification) (Effective July 1, 2008) Prompt Payment by state departments and agencies¹²⁸.

(a) Except as provided in section 53 of this act [4a-73], each state contracting [department and] agency shall pay interest at a rate equal to the monthly effective yield for the Short Term Investment Fund administered by the Treasurer pursuant to sections 3-27a to 3-27f, inclusive, on amounts due on written contracts for public works, personal services, goods and services, equipment and travel, whenever such department or agency fails to make timely payment.

(b) For the purposes of this section, payment shall be timely if: (1) A check or warrant is mailed or delivered on the date specified for the amount specified in the applicable contract documents, or, if no date is specified, within forty-five days of receipt of a properly completed claim or receipt of goods and services, whichever is later; or (2) for any amount that is required to be withheld under state or federal law, a check or warrant is mailed or delivered in the proper amount on the date the amount may be released under the applicable law.

Sec. 52. (Recodification) (Effective July 1, 2008) Prompt Payment. Exceptions¹²⁹.

(a) Section 51 of this act [4a-71] shall not apply to the following:

- (1) Interagency or intergovernmental transactions;
- (2) amounts payable to employees or prospective employees of state departments or agencies as reimbursement for expenses;

¹²⁷ Recodification and repeal of General Statutes, Sec. **4-100**.

¹²⁸ Recodification and repeal of General Statutes, Sec. **4a-71**.

¹²⁹ Recodification and repeal of General Statutes, Sec. **4a-72**.

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(3) claims subject to a good faith dispute, if before the date of timely payment, notice of the dispute is: (A) Sent by certified mail; (B) personally delivered; or (C) sent in accordance with any procedure in the contract;

(4) contracts entered into before October 1, 1984;

(5) contracts related to highway or road construction, reconstruction or maintenance; or

(6) claims, contracts or projects that are to be paid for exclusively with federal funds.

(b) As used in subdivision (3) of subsection (a) of this section, "good faith dispute" means: (1) A contention by the state that goods delivered or services rendered were: (A) Of less quantity or quality than ordered or specified by contract; (B) faulty; or (C) installed improperly; or (2) any other reason giving cause for the withholding of payment by the state until such dispute is settled.

Sec. 53. (Recodification) (Effective July 1, 2008) Administration of Prompt Payment Provisions¹³⁰.

(a) Any state contracting agency required to pay late payment penalties under section 51 of this act [4a-71] shall pay the penalties from funds designated for administrative costs of the agency receiving the public works, personal services, goods and services, equipment or travel. The penalties shall not be paid from other funds of the state.

(b) Any amount of an interest penalty which remains unpaid at the end of any thirty-day period shall be added to the principal amount of the debt and, thereafter, interest penalties shall accrue on that amount.

(c) In instances where a claim is filled out incorrectly or where there is any defect or impropriety in a claim submitted, the state contracting [department or] agency shall contact the vendor within ten days. An error on the vendor's claim, if corrected within five business days of his being so contacted and within the payment period as determined pursuant to section 51 of this act [4a-71], shall not result in the vendor being paid after the expiration of the period for timely payment.

Sec. 54. (Recodification) (Effective July 1, 2008) Governmental Exemption from public utility late payment charge¹³¹.

Notwithstanding any regulation or order of the Department of Public Utility Control which permits the imposition of a late payment charge by a public service company on customer bills, the state and any political subdivision thereof: (1)

¹³⁰ Recodification and repeal of General Statutes, Sec. 4a-73.

¹³¹ Recodification and repeal of General Statutes, Sec. 4a-74.

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Shall not be subject to such charge on any bill which accrued on or before June 5, 1975; and (2) shall not be subject to such charge on any bill which accrues after said date, for the first sixty days after the due date of such bill.

Sec. 55. (Recodification) (Effective July 1, 2008) Payment of Obligations. Department of Administrative Services Revolving Fund¹³².

The Comptroller shall prescribe the manner in which claims for supplies, materials, equipment and contractual services purchased or contracted for shall be submitted, examined, approved and paid. There shall continue to be, from the appropriations of the state agencies, a Department of Administrative Services Revolving Fund of such amount as the Commissioner of Administrative Services, with the approval of the Governor, determines to be necessary to defray such current expenses for supplies, materials, equipment and contractual services as will be incurred by the commissioner in anticipation of the future requirements of state agencies or under other conditions necessitating the payment of such expense prior to the determination of the legal or equitable claims to be charged on account of such expenses to the appropriations of such agencies. Claims on account of such expenses shall be paid from said revolving fund. Any such expenses which cannot be specifically allocated to particular state agencies shall be apportioned monthly by the commissioner, with the approval of the Standardization Committee, among the state agencies for which they were incurred in such manner as the commissioner deems equitable. All funds received in payment of such claims shall be credited to said revolving fund.

¹³² Recodification and repeal of General Statutes, Sec. 4a-75.

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Article 3. The Procurement Process: Solicitation and Award

Part 12. Methods of Source Selection

Sec. 56. (NEW and Recodification) (Effective July 1, 2008) Methods of Source Selection¹³³.

All purchases of, and contracts for, supplies, materials, equipment and contractual services, except purchases and contracts made pursuant to the provisions of subsection (b) of this section and public utility services as provided in subsection (e) of this section¹³⁴ shall be awarded by one of the following methods, unless otherwise authorized by law:

- (a) **Competitive Sealed Bidding** as set forth in Sec. 57 of this act.
- (b) **Competitive Sealed Proposals** as set forth in Sec. 58 of this act.
- (c) **Small Purchases** as set forth in Sec. 59 of this act.
- (d) **Sole Source Procurement** as set forth in Sec. 60 of this act.
- (e) **Emergency Procurements** as set forth in Sec. 61 of this act.
- (g) **Waiver of Bid or Proposal Requirement for Extraordinary Conditions** as set forth in Sec. 62 of this act.
- (h) **Waiver Pertaining to the Purchase of Alternative Fuel Vehicles and Certain Public Utility Services**, as set forth in Sec. 63 of this act.
- (i) **Special Procurements**, as set forth in Sec. 64 of this act.

Part 13. The General Rule: Competitive Sealed Bidding or Proposals

Sec. 57. (NEW) (Effective July 1, 2008) Competitive Sealed Bidding.

(a) **Conditions for Use¹³⁵.** Contracts and Purchase Orders, in an amount in excess of fifty thousand dollars¹³⁶, shall be awarded by competitive sealed bidding unless the Commissioner of Administrative Services determines that an alternate method of source selection, as set forth in section 56 of this act and the referenced sections therein of this Chapter, is appropriate.

¹³³ Derived from Sec. 3-201 of the ABA Model Code.

¹³⁴ Recodification and repeal of General Statutes, Sec. 4a-57(a).

¹³⁵ Derived from Sec. 3-202(1) of the ABA Model Code.

¹³⁶ Recodification and repeal of General Statutes, Sec. 4a-57(a).

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(b) Invitation for Bids. An Invitation for Bids shall be issued and shall include a purchase description, and all contractual terms and conditions applicable to the procurement¹³⁷.

(c) Public Notice. Adequate public notice of the Invitation for Bids shall be given by providing notice of the planned purchase in a form and manner that the Commission of Administrative Services determines, in accordance with regulations, will promote competition and maximize public participation, including participation by small contractors, as defined in sections 178 and 179 of this act [4a-60g]¹³⁸.

(1) In the case of an expenditure which is estimated to exceed fifty thousand dollars, such notice shall be inserted, at least five calendar days before the final date of submitting bids, in two or more publications, at least one of which shall be a major daily newspaper published in the state and shall be posted on the Internet.

(2) Each notice of a planned purchase under this subsection shall indicate the following:

(i) the type of goods and services to be purchased and the estimated value of the contract award.

(ii) the state contract requirements concerning nondiscrimination and affirmative action pursuant to section 175 of this act [4a-60] and, when applicable, requirements concerning the awarding of contracts to small contractors, minority business enterprises, individuals with a disability and nonprofit corporations pursuant to sections 178 and 179 of this act [4a-60g]¹³⁹.

(d) Bid Opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation for Bids. The amount of each bid, and such other relevant information as may be specified by regulation, together with the name of each bidder shall be recorded; the record and each bid shall be open to public inspection¹⁴⁰.

(1) Each bid shall be kept sealed or secured until opened publicly at the time stated in the notice soliciting such bid or proposal¹⁴¹.

(e) Bid Acceptance and Bid Evaluation¹⁴². Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Act and the regulations hereunder. The Invitation for Bid may set forth the evaluation criteria to be used. No criteria may be used in a bid evaluation that

¹³⁷ Derived from Sec. 3-202(2) of the ABA Model Code.

¹³⁸ Recodification and repeal of General Statutes, Sec. 4a-57(a) and Sec. 3-202(3) of the ABA Model Code.

¹³⁹ Sub-parts (1) and (2) are recodification and repeal of General Statutes, Sec. 4a-57(a).

¹⁴⁰ Derived from Sec. 3-202(4) of the ABA Model Code.

¹⁴¹ Sub-parts (1) is a recodification and repeal of General Statutes, Sec. 4a-57(a).

¹⁴² Derived from Sec. 3-202(5) of the ABA Model Code.

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are not set forth in the Invitation for Bids. In the event there is no specific evaluation criterion set forth in the Invitation for Bids, evaluation will be based on a determination of the lowest responsible, qualified and responsive bidder as set forth in this Chapter.

(1) Evaluation Criteria. Bids shall be evaluated by the State contracting agency and/or consultants if so designated by the Commissioner of Administrative Services, based on the requirements set forth in the Invitation for Bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose; and,

(2) Objectively Measurable Criteria. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs.

(f) Correction or Withdrawal of Bids; Cancellation of Awards¹⁴³. Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards of contracts or purchase orders based on such bid mistakes, shall be permitted in accordance with Regulations proposed by the Commissioner of Administrative Services. Said Regulations shall take into consideration preservation of the integrity of the competitive sealed bidding process under this chapter.

(1) Prohibited Practices Following Bid Opening. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the State or fair competition shall be permitted.

(2) Written Determination Regarding Cancellation of Awards or Contracts or Purchase Orders. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or cancel awards of contracts or purchase orders based on bid mistakes shall be supported by a written determination made by the Commissioner of Administrative Services.

(g) Award.

(1) Lowest Responsible, Qualified Bidder. The Contract shall be awarded with reasonable promptness by written notice to the lowest responsible, qualified bidder whose bid meets the requirements and evaluation criteria set forth in the invitation for bids¹⁴⁴, taking into consideration the following: the qualities of the articles to be supplied, their conformity with the specifications, their suitability to the requirements of the state government and the delivery terms being taken into consideration and, at the discretion of the Commissioner of Administrative

¹⁴³ Derived from Sec. 3-202(6) of the ABA Model Code.

¹⁴⁴ Derived from Sec. 3-207(7) of the ABA Model Code (first sentence) and Regulations Sec. 4a-52-8(a)(first sentence).

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Services, life-cycle costs and trade-in or resale value of the articles may be considered where it appears to be in the best interest of the state¹⁴⁵.

(i) *Past Performance.* In considering past performance of a bidder for the purpose of determining the "lowest responsible qualified bidder" or the "highest scoring bidder in a multiple criteria bid", the commissioner shall evaluate the skill, ability and integrity of the bidder in terms of the bidder's fulfillment of past contract obligations and the bidder's experience or lack of experience in delivering supplies, materials, equipment or contractual services of the size or amount for which bids have been solicited¹⁴⁶.

(ii) *Recycled Materials or recyclable or remanufactured Materials.* In determining the lowest responsible qualified bidder for the purposes of this section, the commissioner may give a price preference of up to ten per cent for

(A) the purchase of goods made with recycled materials or the purchase of recyclable or remanufactured products if the commissioner determines that such preference would promote recycling or remanufacturing. As used in this subsection, "recyclable" means able to be collected, separated or otherwise recovered from the solid waste stream for reuse, or for use in the manufacture or assembly of another package or product, by means of a recycling program which is reasonably available to at least seventy-five per cent of the state's population, "remanufactured" means restored to its original function and thereby diverted from the solid waste stream by retaining the bulk of components that have been used at least once and by replacing consumable components and "remanufacturing" means any process by which a product is remanufactured;

(B) the purchase of motor vehicles powered by a clean alternative fuel; or

(C) the purchase of motor vehicles powered by fuel other than a clean alternative fuel and conversion equipment to convert such motor vehicles allowing the vehicles to be powered by either the exclusive use of clean alternative fuel or dual use of a clean alternative fuel and a fuel other than a clean alternative fuel. As used in this subsection, "clean alternative fuel" shall mean natural gas or electricity when used as a motor vehicle fuel¹⁴⁷.

¹⁴⁵ Recodification and repeal of General Statutes, Sec. 4a-59(c)(1); See also, Regulations Sec. 4a-52-8(a)(third sentence).

¹⁴⁶ Recodification and repeal of General Statutes, Sec. 4a-59(c)(third sentence).

¹⁴⁷ Recodification and repeal of General Statutes, Sec. 4a-59(c)(fourth and fifth sentences).

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(iii) *State Preference.* All other factors being equal, preference shall be given to supplies, materials and equipment produced, assembled or manufactured in the state and services originating and provided in the state¹⁴⁸.

(2) Construction Project Exception: Permissible Adjustment of the Bid Price. Unless otherwise prohibited by federal or state law, regulation or agency requirement, with respect to construction projects only, the Commissioner of relevant State Contracting Agency, subject to approval by the State Contracting Standards Board, is authorized to negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsible and responsive bidder, in order to bring the bid within the amount of available funds, in the event,

(a) all bids for a construction project exceed available funds as certified by the head of the state contracting agency;

(b) the low responsible and responsive bid does not exceed such funds by more than five (5%) percent; and,

(c) the time or economic considerations preclude resolicitation of work of a reduced scope¹⁴⁹.

(3) If any such bidder refuses to accept, within ten days, a contract awarded to such bidder, such contract may be awarded to the next lowest responsible qualified bidder or the next highest scoring bidder in a multiple criteria bid, whichever is applicable, and so on until such contract is awarded and accepted¹⁵⁰.

(4) A contract valued at one million dollars or more shall be awarded to a bidder other than the lowest responsible qualified bidder or the highest scoring bidder in a multiple criteria bid, whichever is applicable, only with written approval signed by the Commissioner of Administrative Services and by the Comptroller¹⁵¹.

(h) Multi-Step Competitive Sealed Bidding¹⁵². When it is considered impractical to initially issue an invitation for bid, the Commissioner of Administrative Services may issue a Request for Information or request for proposals (requesting technical information) or request for qualifications (requesting the qualifications of bidders) as the first step(s) in the process, to be followed by an Invitation for bids which may be limited to those bidders who have been qualified under the criteria set forth in the first solicitation.

(i) Multiple Criteria Bidding. The Commissioner of Administrative Services may issue a request for information for a multiple criteria bid. The

¹⁴⁸ Recodification and repeal of General Statutes, Sec. 4a-59(c)(sixth sentence).

¹⁴⁹ Derived from Sec. 3-202(7) of the ABA Model Code (second sentence).

¹⁵⁰ Recodification and repeal of General Statutes, Sec. 4a-59(c)(seventh sentence).

¹⁵¹ Recodification and repeal of General Statutes, Sec. 4a-59(c) (eleventh sentence).

¹⁵² Derived from Section 3-202(8) of the ABA Model Code.

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contract shall be awarded to the highest scoring bidder in a multiple criteria bid, in accordance with the criteria set forth in the bid solicitation for the contract¹⁵³.

(1) The Commissioner of Administrative Services shall adopt regulations, in accordance with the provisions of chapter 54, indicating the types of objective criteria that the commissioner may use in determining the highest scoring bidder in a multiple criteria bid under this section. Said commissioner shall submit a report on said date, concerning the status of the adoption of said regulations by the commissioner, to the joint standing committee of the General Assembly having cognizance of matters relating to government administration¹⁵⁴.

Sec. 58. (NEW and Recodification) (Effective July 1, 2006)
Competitive Sealed Proposals.

(a) Conditions for Use.

(1) **Finding by Commissioner.** A contract may be entered into by competitive sealed proposals when the Commissioner of Administrative Services or a designee determines in writing, pursuant to regulations, that the use of competitive sealed bidding is either not practicable or not advantageous to the State.

(2) **Regulations or Policies Pertaining to Impracticable or Disadvantageous Procurements.** The Commissioner of Administrative Services may promulgate regulations, in accordance with Chapter 54, that establish the criteria in determining the when competitive sealed bidding to procure specified types of supplies, services, or construction that is either not practicable or not advantageous to the State.

(3) **“Design Plus” Contracts.** Contracts for the project delivery methods specified in section 125 of this act shall be entered into by competitive sealed proposals, except as otherwise provided in sections 59, 60, 61 and 64 of this act¹⁵⁵.

(b) Requests for Proposals and Other Forms of Solicitation¹⁵⁶. Proposals shall be solicited through a request for proposals. as required by the commissioner of administrative services, a request for information, request for quotation or request for qualifications or other forms of solicitation may be utilized to ascertain information or to establish qualifications for the request for proposals. The solicitations shall also contain, among other things, a description of the projected scope of services or system requirements, a notice of mandatory State contractual provisions or terms and conditions required by this Chapter or federal agencies. Services shall be selected on the basis of a request for proposals.

¹⁵³ Recodification and repeal of General Statutes, Sec. 4a-59(c)(2).

¹⁵⁴ Recodification and repeal of General Statutes, Sec. 4a-59(f).

¹⁵⁵ Derived from Section 3-203(1) of the ABA Model Code.

¹⁵⁶ Derived from Section 3-203(2) of the ABA Model Code.

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(1) Content of Request for Proposals for the Procurement of Infrastructure Facilities and Services¹⁵⁷. Each request for proposals for “Design Plus” Contract:

(a) shall include design requirements;

(b) shall solicit proposal development documents; and

(c) may, when the relevant state contracting agency determines that the cost of procuring proposals is high in view of the size, estimated price, and complexity of the procurement:

(i) prequalify proposers by issuing a request for qualifications in advance of the request for proposals; and

(ii) select a short list of responsible proposers prior to discussions and evaluations under this act, provided that the number of proposals short listed is stated in the request for proposals and prompt public notice is given to all proposers as to which proposals are short listed.

(c) Public Notice¹⁵⁸. Adequate public notice of the request for proposals, request for information or request for qualifications shall be given in the same manner as provided for in section 57(c) of this act.

(d) Receipt of Proposals: Register of Proposals¹⁵⁹. Proposals shall be opened so as to avoid disclosure of contents to competing proposers during the process of negotiation. A register of proposals shall be prepared in accordance with regulations and shall be opened for public inspection after contract award, with the exception of confidential trade and business information withheld in accordance with the general statutes.

(e) Evaluation Factors and Criteria¹⁶⁰. The request for proposals shall state the relative importance of price and other factors and subfactors, if any.

(f) Competitive Negotiations with Responsible Proposers and Revisions to Proposals¹⁶¹. As provided in the request for proposals, and under regulations, discussions may be conducted with responsible proposers who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements.

¹⁵⁷ Derived from Section 3-203(2) of the ABA Model Code.

¹⁵⁸ Recodification and repeal of General Statutes, Sec. 4a-57(a) and Sec. 3-203(3) of the ABA Model Code.

¹⁵⁹ Derived from Section 3-203(4) of the ABA Model Code.

¹⁶⁰ Derived from Section 3-203(5) of the ABA Model Code.

¹⁶¹ Sub-part (f) (1) and (2) are derived from Sec. 3-203(6) of the ABA Model Code.

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(1) Fair and Equal Treatment of Proposers. Proposers shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submission and prior to award for the purpose of obtaining best and final offers.

(2) Prohibition Against Disclosure of Information of Competing Proposers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing proposers, except for such information which may be disclosed by law.

(3) Evaluation Factors. Proposals shall be evaluated only on the basis of evaluation factors stated in the request for proposals. The following factors may be appropriate to use in conducting the evaluation. The relative importance of these and other factors will vary according to the type of supplies, materials, equipment or contractual services being procured¹⁶².

(a) Price an Explicit Factor¹⁶³. Notwithstanding any provision of the general statutes to the contrary, each state contracting agency awarding a contract through competitive negotiation shall include price as an explicit factor in the criteria in the request for proposals and for the contract award.

(4) Specifications for Competitive Negotiations¹⁶⁴. All [bids and] proposals submitted as provided in section 58(f) shall be based on such standard specifications as may be adopted by the Commissioner of Administrative Services, [or] the commissioner's designee or such other head of a state contracting agency as may be authorized by this act or designated by the Commissioner of Administrative Services. Proposers [Bidders] shall submit with their responses [bids] essential information concerning their qualifications, in such form as the commissioner may require by specification in the [bid] request documents. The commissioner may, after adopting the regulations required by subdivision (k) of section 15 of this act [4a-52], waive minor irregularities in bids and proposals if the commissioner determines that such a waiver would be in the best interest of the state. The commissioner shall state the reasons for any such waiver in writing and include such statement in the contract file.

(g) Circumstances in which constituent units authorized to purchase by negotiation¹⁶⁵. Notwithstanding any provision of the general statutes to the contrary, a constituent unit of the state system of higher education or an institution of the Connecticut State University system, may purchase, by negotiation, supplies, materials, equipment and contractual services, as defined

¹⁶² Recodification and repeal of Regulations, Sec. 4a-52-16. See regulations for minimum factors. See also, Regulations Sec. 4a-52-17.

¹⁶³ Recodification and repeal of General Statutes, Sec. 4a-59(c)(second sentence).

¹⁶⁴ Recodification and repeal of General Statutes, Sec. 4a-59(b).

¹⁶⁵ Recodification and repeal of General Statutes, Sec. 4a-52b.

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in this act [section 4a-50], for the constituent unit or institution, as appropriate, when the supplies, materials, equipment or contractual services (1) are required to implement a grant, contract or financial agreement between the constituent unit or institution, as appropriate, and the donor of funds or other things of value which are given with an obligation for service primarily to the donor by the constituent unit or institution, as appropriate and (2) are specified in such grant, contract or financial agreement.

(h) Award.

(1) Proposal Most Advantageous to the State¹⁶⁶. Award shall be made to the responsible proposer whose proposal is deemed by the Commissioner, designee or such other head of a state contracting agency as may be authorized by this act or designated by the Commissioner of Administrative Services, to be the most advantageous to the state, in accordance with the criteria set forth in the request for proposals, including price and evaluation factors¹⁶⁷ and conforms to the solicitation and is determined in writing to be the most advantageous to the State taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made. Written notice of the award of a contract to the successful proposer shall be promptly given to all proposers.

(a) If any such proposer refuses to accept, within ten days, a contract awarded to such proposer, such contract shall be awarded to the next most advantageous proposer, and so on until the contract is awarded and accepted¹⁶⁸.

(2) Prohibition Against Consideration of Other Factors or Criteria. No other factors or criteria, not included in the request for proposals, shall be used in the evaluation.

(3) Contents of Transactional Files. The contract or purchase order files shall contain the basis on which the award is made.

(4) Prompt Written Notice of Award. Written notice of the award of a contract or purchase order to the successful proposer shall be promptly given to all proposers.

(i) Debriefings¹⁶⁹. The contracting officials are authorized to provide debriefings that furnish the basis for the source selection decision and contract award.

¹⁶⁶ Recodification and repeal of General Statutes, Sec. 4a-59(c)(3) and derived from Section 3-203(7) of the ABA Model Code.

¹⁶⁷ Recodification and repeal of General Statutes, Sec. 4a-59(c)(3).

¹⁶⁸ Recodification and repeal of General Statutes, Sec. 4a-59(c)(eighth sentence).

¹⁶⁹ Derived from Section 3-203(8) of the ABA Model Code.

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Part 14. Exceptions to the General Rule

Sec. 59. (NEW) (Effective July 1, 2008) Small Purchases¹⁷⁰.

(a) Any procurement not exceeding the amount established in section 57 of this act, may be made in accordance with small purchase procedures; provided, however, that procurement requirements shall not be artificially divided so as to constitute a small purchase under this Section.

(1) **Award.** The Commissioner of Administrative Services shall award the contract or purchase order to the lowest responsible bidder. If the purchase order is not given to the lowest responsible bidder, a written explanation shall be made by the commissioner and be filed as a public record with the other documents pertinent to the transaction.

(2) **Artificial Division of Procurements Prohibited.** The Commissioner of Administrative Services has the authority to determine that a state contracting agency has artificially divided Procurement requirements so as to constitute a small purchase under this section and thereby prohibit the state contracting agency from utilizing the small purchase procedures.

Sec. 60. (NEW) (Effective July 1, 2008) Sole Source Procurement¹⁷¹.

A contract may be awarded for a supply, service, or construction item without competition when, under regulations, the Commissioner of Administrative Services determines, upon recommendation of the Agency Contracting Officer, in writing that there is only one source for the required supply, service, or construction item¹⁷². Sole source procurement is not permissible unless a requirement is available from only a single supplier. A requirement for a particular proprietary item shall not justify sole source procurement if there is more than one potential bidder or proposer for that item.

Sec. 61. (NEW) (Effective July 1, 2008) Procurements Pertaining to Public Emergencies¹⁷³.

(a) Notwithstanding any other provision of this act, the Commissioner of the Department of Administrative Services may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions as defined in regulations; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances.

(b) A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file and

¹⁷⁰ Derived from Section 3-204 of the ABA Model Code.

¹⁷¹ Recodification and repeal of Regulation Sec. **4a-52-15**.

¹⁷² Derived from Section 3-205 of the ABA Model Code.

¹⁷³ Derived from Section 3-206 of the ABA Model Code.

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transmitted to the Governor, President of the Senate, Majority and Minority Leaders of the Senate, the Speaker of the House of Representatives and the Majority and Minority Leaders of the House of Representatives.

(c) The determination shall be based upon need and shall not be utilized in order to satisfy preferences or convenience of the state contracting agency, for preventing funds from lapsing at the end of a fiscal year or for any reason that would circumvent the procurement methods set forth in this act.

Sec. 62. (Recodification) (Effective July 1, 2008) Standardization Committee, Waiver of Bid or Proposal Requirement: Extraordinary Conditions¹⁷⁴.

(a) There shall continue to be a Standardization Committee, which shall consist of the Commissioner of Administrative Services, the Comptroller or his designee, the Treasurer or designee, and such administrative heads of state departments or their authorized agents as are designated for that duty by the Governor.

(b) Whenever an emergency exists by reason of extraordinary conditions or contingencies that could not reasonably be foreseen and guarded against, or because of unusual trade or market conditions, the Commissioner of Administrative Services, or, in the case of purchases, leases and contracts for information systems, information technology personal property and telecommunication systems, the Chief Information Officer, may, if it is in the best interests of the state, waive the competitive bid or proposal requirements set forth in section 56 of this act [4a-57]. If any such procurement is estimated to cost fifty thousand dollars or more, such waiver shall be subject to the approval of the Standardization Committee. A statement of all purchases made under the provisions of this section shall be set forth in the annual report of the Commissioner of Administrative Services.

(c) The determination shall be based upon need and shall not be utilized in order to satisfy preferences or convenience of the state contracting agency, for preventing funds from lapsing at the end of a fiscal year or for any reason that would circumvent the procurement methods set forth in this act.

Sec. 63. (Recodification) (Effective July 1, 2008) Waiver: Alternative Fuel Vehicles and Certain Public Utility Services¹⁷⁵.

(a) The commissioner of Administrative Services, in consultation with the Commissioner of Environmental Protection and with the approval of the Secretary of the Office of Policy and Management and the State Contracting Standards Board, may waive the requirement of competitive bidding or competitive negotiation in the case of a purchase of cars or light-duty trucks in order to comply with any provisions of the general statutes regarding the purchase of alternative fuel vehicles or any such requirement of federal law.

¹⁷⁴ Recodification and repeal of General Statutes, Sec. 4a-58.

¹⁷⁵ Recodification and repeal of General Statutes, Sec. 4a-57(d) and (e).

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(b)

(1) The purchase of or contract for the following public utility services shall not be subject to competitive bidding or competitive negotiation: (A) Electric distribution services; (B) water services; (C) gas distribution services; (D) electric generation services until the date such services are competitive pursuant to the schedule set forth in section 16-244b, provided electric generation services shall be exempt from competitive bidding and competitive negotiation after said date if such services are provided by an electric municipal utility other than by a participating electric municipal utility, as defined in section 16-1, in the service area of said electric municipal utility; and (E) gas supply services until the date such services are competitive pursuant to legislative act or order of the Department of Public Utility Control, provided gas supply services shall be exempt from competitive bidding and competitive negotiation after said date if such services are provided by a gas municipal utility in the service area of said gas municipal utility.

(2) Any purchase of or contract by the department for electric generation services that are subject to competitive bidding and competitive negotiations shall be conducted in cooperation with the Office of Policy and Management pursuant to section 16a-14e.

Sec. 64. (NEW) (Effective July 1, 2008) Special Procurements¹⁷⁶.

Notwithstanding any other provision of this Code, the Commissioner of Administrative Services may, with prior public notice, initiate a procurement above the small purchase amount specified in section 59 of this act where the commissioner determines, with the concurrence of the State Contracting Standards Board, that an unusual or unique situation exists that makes the application of all requirements of competitive sealed bidding or competitive sealed proposals contrary to the public interest. Any special procurement under this Section shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the procurement and for the selection of the particular contractor shall be included by the commissioner in the contract file, and a report shall be made publicly available at least annually describing all such determinations made subsequent to the prior report.

Part 15. Preferences

Sec. 65. (Recodification) (Effective July 1, 2008) Preferences Pertaining to Dairy Products, Poultry, Eggs, Fruit or Vegetables Grown or Produced in Connecticut¹⁷⁷.

The Commissioner of Administrative Services, when purchasing or contracting for the purchase of dairy products, poultry, eggs, fruits or vegetables

¹⁷⁶ Derived from Section 3-207 of the ABA Model Code.

¹⁷⁷ Recodification and repeal of General Statutes Sec. 4a-51(b).

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pursuant to this Act, shall give preference to dairy products, poultry, eggs, fruits or vegetables grown or produced in this state, when such products, poultry, eggs, fruits or vegetables are comparable in cost to other dairy products, poultry, eggs, fruits or vegetables being considered for purchase by the commissioner that have not been grown or produced in this state.

Sec. 66. (Recodification) (Effective July 1, 2008) Program to encourage bidding on state contracts by businesses which trade with African countries¹⁷⁸.

The Commissioner of Administrative Services, in conjunction with the Commissioner of Economic and Community Development, may initiate a program under which they shall (1) identify Connecticut businesses which (A) trade with African countries with whom the United States has diplomatic relations and (B) provide goods or services which are required by the state and (2) encourage such Connecticut businesses to bid on such goods or services.

Sec. 67. (Recodification) (Effective July 1, 2008) Preference to be given to products and services under the direction or supervision of the Board of Education and Services for the Blind¹⁷⁹.

Whenever any of the products made or manufactured or services provided by blind persons under the direction or supervision of the Board of Education and Services for the Blind meet the requirements of any department, institution or agency supported in whole or in part by the state as to quantity, quality and price such products shall have preference, except over articles produced or manufactured by Department of Correction industries as provided in section 18-88, and except for emergency purchases made under section 61 of this act [4-98]. All departments, institutions and agencies supported in whole or in part by the state shall purchase such articles and services from the Board of Education and Services for the Blind. Any political subdivision of the state may purchase such articles made or manufactured and services provided by the blind through the Board of Education and Services for the Blind. Said board shall issue at sufficiently frequent intervals for distribution to the Commissioner of Administrative Services, the Comptroller and the political subdivisions of the state, a catalog showing styles, designs, sizes and varieties of all products made by blind persons pursuant to this section or disabled persons pursuant to section 68 of this act [17b-656] and describing all available services provided by the blind or disabled.

Sec. 68. (Recodification) (Effective July 1, 2008) Preference to be given to products and services rendered by persons with disabilities. Information concerning products and services to be supplied by bureau¹⁸⁰.

Whenever any products made or manufactured by or services provided by persons with disabilities through community rehabilitation programs described in subsection (b) of section 17b-655 or in any workshop established, operated or

¹⁷⁸ Recodification and repeal of General Statutes Sec. 4a-57b.

¹⁷⁹ Recodification and repeal of General Statutes, Sec. 10-298b.

¹⁸⁰ Recodification and repeal of General Statutes, Sec. 17b-656.

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funded by nonprofit and nonsectarian organizations for the purpose of providing persons with disabilities training and employment suited to their abilities meet the requirements of any department, institution or agency supported in whole or in part by the state as to quantity, quality and price such products shall have preference over products or services from other providers, except (1) articles produced or manufactured by blind persons under the direction or supervision of the Board of Education and Services for the Blind as provided in section 10-298a, as amended, (2) articles produced or manufactured by Department of Correction industries as provided in section 18-88, (3) emergency purchases made under section 4-98, and (4) janitorial services provided by a qualified partnership, pursuant to the provisions of section 2 of Public Act No.06-129. All departments, institutions and agencies supported in whole or in part by the state shall purchase such articles made or manufactured and services provided by persons with disabilities from the Bureau of Rehabilitation Services of the Department of Social Services. Any political subdivision of the state may purchase such articles and services through the Bureau of Rehabilitation Services of the Department of Social Services. A list describing styles, designs, sizes and varieties of all such articles made by persons with disabilities and describing all available services provided by such persons shall be prepared by the Connecticut Community Providers Association. The Bureau of Rehabilitation Services of the Department of Social Services shall cooperate with the State Board of Education and Services for the Blind by submitting necessary information concerning such products and services to the Board of Education and Services for the Blind at frequent intervals.

Part 16. Cancellation of Invitations for Bids or Request for Proposals

Sec. 69. (NEW and Recodification) (Effective July 1, 2008)
Cancellation of Invitation for Bids or Requests for Proposals. Waiver of Minor Irregularities.

(a) **Waiver or Rejection.** An invitation for bids, a request for proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when, in the opinion of the Commissioner of Administrative Services, the best interests of the State will be served¹⁸¹, in accordance with regulations, which shall be approved by the State Contracting Standards Board. The reasons therefore shall be made part of the contract file and shall be sent to the State Contracting Standards Board¹⁸².

(b) **Re-advertising.** If all bids or proposals are so rejected, the commissioner shall advertise again for bids or proposals and such bids or proposals shall be opened, awarded and approved in like manner as provided in this section and sections 57 and 58 of the act¹⁸³.

(c) **Open Market Acquisitions.** If all bids or proposals received on a pending contract are for the same unit price or total amount and no distinction

¹⁸¹ Recodification and repeal of General Statutes, Sec. 4a-59(d).

¹⁸² Derived from Section 3-301 of the ABA Model Code.

¹⁸³ Recodification and repeal of General Statutes, Sec. 4a-59(d).

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can be made in favor of supplies, materials and equipment produced, assembled or manufactured in the state or services originating and provided in the state, the commissioner shall have authority to order the rejection of all bids or proposals and to order the purchase of the required supplies, materials, equipment or contractual services in the open market, provided the price paid in the open market shall not exceed the bid or proposal price¹⁸⁴.

(d) Waiver or Minor Irregularities and Omissions. Correction. The Commissioner reserves the right to award by item, or part thereof, groups of items, or parts thereof, or all items of the bid; to reject any and all bids in whole or in part; to waive minor irregularities and omissions and permit the bidder or responder to correct them if, in his judgment, the best interest of the State will be served¹⁸⁵.

Part 17. Qualifications and Duties

Sec. 70. (NEW and Recodification) (Effective July 1, 2008)
Responsibility of Bidders and Proposers.

(a) Determination of Nonresponsibility. A written determination of nonresponsibility of a bidder or proposer shall be made in accordance with regulations. The unreasonable failure of a bidder or proposer to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or proposer¹⁸⁶.

(1) For the purpose of indicating the types of objective criteria in determining the lowest responsible qualified bidder, as defined in section 47 (jj) of this act or the best proposer, the invitation to bid or request for proposals shall state the evaluation factors, including price, and their relative importance. Past performance and financial responsibility shall always be factors in making this determination¹⁸⁷.

(2) There shall be a written evaluation made of each bid and proposal. This evaluation shall identify the vendors and their respective costs and prices, document the reason why any vendor is deemed to be nonresponsive and recommend a vendor for award¹⁸⁸.

(b) Right of Nondisclosure. Confidential information furnished by a bidder or offeror pursuant to this Section shall not be disclosed outside of the Department of Administrative Services, the State Contracting Agency or State Contracting Standards Board without prior written consent by the bidder or proposer.

¹⁸⁴ Recodification and repeal of General Statutes, Sec. 4a-59(d).

¹⁸⁵ Recodification and repeal of Regulations, Secs. 4a-52-8(b) and **4a-52-19**.

¹⁸⁶ Derived from Section 3-401 of the ABA Model Code.

¹⁸⁷ Recodification and repeal of Regulations, Sec. 4a-52-18.

¹⁸⁸ Recodification and repeal of General Statutes, Sec. 4a-59(c).

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Sec. 71. (Recodification) (Effective July 1, 2008) Awarding of Contracts to National Labor Relations Act Violators Prohibited¹⁸⁹.

(a) The Labor Commissioner shall, not later than June thirtieth of each year, distribute a list to the State Contracting Standards Board and all departments of the state giving the names of persons or firms that have been found in violation of the National Labor Relations Act, 49 Stat. 449 (1935), 29 USC 151 et seq., by the National Labor Relations Board and by a final decision rendered by a federal court or that have been found in contempt of court by a final decision of a federal court for failure to correct a violation of said National Labor Relations Act, on three or more occasions involving different violations during the five preceding calendar years. Such list shall be compiled from the records of the National Labor Relations Board.

(b) No state contract shall be awarded to the persons or firms appearing on such list until three years have elapsed from the first day of July following publication of such list and, during such three-year period no state contract shall be awarded, to any subcontractor or supplier, for merchandise produced or services provided by such persons or firms.

(c) This section shall not prohibit any award of a state contract where such award is determined by the Labor Commissioner to be in the best interest of the state or where the Commissioner of Administrative Services certifies, following notification, in writing, to the State Contracting Standards Board, to the Labor Commissioner that there is only one source for the merchandise or services for which such contract is to be awarded.

Sec. 72. (Recodification) (Effective July 1, 2008) Awarding of Contracts to Occupational Safety and Health Law Violators Prohibited¹⁹⁰.

(a) No contract shall be awarded by the state or any of its political subdivisions to any person or firm or any firm, corporation, partnership or association in which such persons or firms have an interest (1) which has been cited for three or more willful or serious violations of any occupational safety and health act or of any standard, order or regulation promulgated pursuant to such act, during the three-year period preceding the bid, provided such violations were cited in accordance with the provisions of any state occupational safety and health act or the Occupational Safety and Health Act of 1970, and not abated within the time fixed by the citation and such citation has not been set aside following appeal to the appropriate agency or court having jurisdiction or (2) which has received one or more criminal convictions related to the injury or death of any employee in the three-year period preceding the bid.

(b) Any person who knowingly provides false information concerning the information required pursuant to this section shall be assessed a civil penalty of not less than five hundred dollars nor more than five thousand dollars and shall be disqualified from bidding on or participating in a contract with the state or

¹⁸⁹ Recodification and repeal of General Statutes, Sec. 31-57a. (P.A. 79-390, S. 1, 2).

¹⁹⁰ Recodification and repeal of General Statutes, Sec. 31-57b. (P.A. 89-367, S. 6).

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any of its political subdivisions for five years from the date of the final determination that the information is false.

(c) Any political subdivision or any state agency receiving false information pursuant to this section shall notify the Commissioner of Administrative Services and, upon receipt of such notice, the commissioner shall conduct a hearing in accordance with the provisions of chapter 54. Upon a determination that false information was provided, the commissioner shall impose a civil penalty in accordance with the provisions of this section. Such civil penalty shall be paid to the Treasurer or to an official of the political subdivision, as the case may be. Any civil penalty imposed pursuant to this section may be collected in a civil proceeding by any official of a political subdivision authorized to institute civil actions or, in the case of the state, by the attorney general, upon complaint of the Commissioner of Administrative Services.

Part 18. Prequalification

Sec. 73. (NEW) (Effective July 1, 2008) Prequalification of Suppliers¹⁹¹.

Prospective suppliers may be prequalified for particular types of supplies, services, and construction. The method of submitting prequalification information and the information required in order to be prequalified shall be determined by the Commissioner of Administrative Services following consultation with the heads of all affected state contracting agencies.

Sec. 74. (NEW) (Effective July 1, 2008) Bidding for public building contracts. Prequalification requirements¹⁹².

(a) Every contract for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building for work by the state, which is estimated to cost more than five hundred thousand dollars, except

(1) a contract awarded by the Commissioner of Public Works for (A) a community court project; [as defined in subsection (j) of section 4b-55,] (B) the downtown Hartford higher education center project; [as defined in subsection (l) of section 4b-55,] (C) a correctional facility project; [as defined in subsection (m) of section 4b-55,] (D) a juvenile detention center project; [as defined in subsection (n) of section 4b-55,] or (E) a student residential facility for the Connecticut State University system that is a priority higher education facility project, as defined in subsection (j), (l), (m), (n) and (f) of section 131 of this act [4b-55], or

(2) a project, as defined in subdivision (16) of section 10a-109c, undertaken and controlled by The University of Connecticut in accordance with section 10a-109n,

¹⁹¹ Derived from Section 3-402 of the ABA Model Code.

¹⁹² Derived from Sec. 19 of P.A. 06-1. Amendment of C.G.S. Sec. 4b-91.

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shall be awarded to the lowest responsible and qualified general bidder who is prequalified pursuant to section 84 of this act [4a-100] on the basis of competitive bids in accordance with the procedures set forth in this chapter, after the Commissioner of Public Works or, in the case of a contract for the construction of or work on a building under the supervision and control of the Joint Committee on Legislative Management of the General Assembly, the joint committee or, in the case of a contract for the construction of or work on a building under the supervision and control of one of the constituent units of the state system of higher education, the constituent unit, has invited such bids by advertisements inserted at least once in one or more newspapers having a circulation in each county in the state. The Commissioner of Public Works, the joint committee or the constituent unit, as the case may be, shall indicate the prequalification classification required for the contract in such advertisement. As used in this section, "prequalification classification" means the prequalification classifications established by the Commissioner of Administrative Services pursuant to section 84 of this act [4a-100].

(b) The Commissioner of Public Works, the joint committee or the constituent unit, as the case may be, shall determine the manner of submission and the conditions and requirements of such bids, and the time within which the bids shall be submitted, consistent with the provisions of sections **4b-91** to 4b-96, inclusive, subject to approval by the State Contracting Standards Board. Such award shall be made within sixty days after the opening of such bids. If the general bidder selected as the general contractor fails to perform the general contractor's agreement to execute a contract in accordance with the terms of the general contractor's general bid and furnish a performance bond and also a labor and materials or payment bond to the amount specified in the general bid form, an award shall be made to the next lowest responsible and qualified general bidder. No employee of the Department of Public Works, the joint committee or a constituent unit with decision-making authority concerning the award of a contract and no public official, as defined in section 1-79, may communicate with any bidder prior to the award of the contract if the communication results in the bidder receiving information about the contract that is not available to other bidders, except that if the lowest responsible and qualified bidder's price submitted is in excess of funds available to make an award, the Commissioner of Public Works, the Joint Committee on Legislative Management or the constituent unit, as the case may be, may negotiate with such bidder and award the contract on the basis of the funds available, without change in the contract specifications, plans and other requirements. If the award of a contract on said basis is refused by such bidder, the Commissioner of Public Works, the Joint Committee on Legislative Management or the constituent unit, as the case may be, may negotiate with other contractors who submitted bids in ascending order of bid prices without change in the contract, specifications, plans and other requirements. In the event of negotiation with general bidders as provided in this section, the general bidder involved may negotiate with subcontractors on the same basis, provided such general bidder shall negotiate only with subcontractors named on such general bidder's general bid form.

(c) On and after October 1, 2004, no person may bid on a contract, except for a project described in subdivision (2) of subsection (a) of this section, for the construction, reconstruction, alteration, remodeling, repair or demolition of

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any public building for work by the state or a municipality, which is estimated to cost more than five hundred thousand dollars and is paid for, in whole or in part, with state funds, unless the person is prequalified in accordance with section 84 of this act [4a-100].

(d) On and after October 1, 2004, each bid submitted for a contract described in subsection (c) of this section shall include a copy of a prequalification certificate issued by the Commissioner of Administrative Services. The bid shall also be accompanied by an update statement in such form as the Commissioner of Administrative Services prescribes. The form for such update statement shall provide space for information regarding all bonded projects completed by the bidder since the date the bidder's prequalification certificate was issued or renewed, all bonded projects the bidder currently has under contract, including the percentage of work on such projects not completed, the names and qualifications of the personnel who will have supervisory responsibility for the performance of the contract, any significant changes in the bidder's financial position or corporate structure since the date the certificate was issued or renewed, any change in the contractor's qualification status as determined by the provisions of section 84 of this act [subdivision (6) of subsection (c) of section 4a-100] and such other relevant information as the Commissioner of Administrative Services prescribes. Any bid submitted without a copy of the prequalification certificate and an update statement shall be invalid. Any public agency that accepts a bid submitted without a copy of such prequalification certificate and an update statement, as required by this section, shall be ineligible for the receipt of any state funds disbursed for the purpose of the construction, reconstruction, alteration, remodeling, repair or demolition of any public building or any public works project¹⁹³.

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

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

(g) Notwithstanding the provisions of this chapter regarding competitive bidding procedures, the commissioner may select and interview at least three responsible and qualified general contractors who are prequalified pursuant to section 84 of this act [4a-100] and submit the three selected contractors to the construction services award panels process described in section 82 of this act [4b-100a] and any regulation adopted by the commissioner. The commissioner may negotiate with the successful bidder a contract which is both fair and

¹⁹³ Derived from Sec. 23 of P.A. 06-1. Amendment of C.G.S. Sec. 4b-91(d).

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reasonable to the state for a community court project; [as defined in subsection (j) of section 4b-55,] the downtown Hartford higher education center project; [as defined in subsection (l) of section 4b-55,] a correctional facility project; [as defined in subsection (m) of section 4b-55,] a juvenile detention center project; [as defined in subsection (n) of section 4b-55,] or a student residential facility for the Connecticut State University system that is a priority higher education facility project, as defined in subsection (j), (l), (m), (n) and (f) of section 131 of this act [4b-55]. The Commissioner of Public Works, prior to entering any such contract or performing any work on such project, shall submit such contract to the State Properties Review Board for review and approval or disapproval by the board, pursuant to subsection (i) of this section. Any general contractor awarded a contract pursuant to this subsection shall be subject to the same requirements concerning the furnishing of bonds as a contractor awarded a contract pursuant to subsection (b) of this section.

(h) [On and after October 1, 2004, a] Any agency that seeks to have a project awarded without being subject to competitive bidding procedures shall certify to the joint committee of the General Assembly having cognizance of matters relating to government administration and elections that the project is of such an emergency nature that an exception to the competitive bidding procedures of this section is required. Such certification shall include input from all affected agencies, detail the need for the exception and include any relevant documentation.

(i) [In the event that the] The General Assembly [approves] may approve legislation authorizing an exception to the competitive bidding process for a project, provided such legislation is approved, in whole, by a two-thirds vote of the members of each house of the General Assembly. If rejected, the legislation proposing an exception for such project shall not be valid and shall not be implemented. The legislation shall be deemed rejected if the General Assembly fails to vote to approve or reject the legislation (1) prior to the adjournment of the regular session of the General Assembly during which the legislation is filed, (2) prior to the adjournment of the next regular session of the General Assembly following the date on which the legislation is filed if the General Assembly is not in regular session on such date, or (3) prior to the adjournment of a special session convened before the next regular session of the General Assembly for the purpose of considering the legislation if the General Assembly is not in regular session on the date on which the legislation is filed. However, if the legislation is filed less than thirty days before the end of a regular session, the General Assembly may vote to approve or reject the legislation (A) not later than thirty days after the first day of a special session convened before the next regular session of the General Assembly for the purpose of considering the legislation, or (B) not later than thirty days after the first day of the next regular session of the General Assembly. In the event that the General Assembly approves legislation authorizing an exception to the competitive bidding process for a project, the State Properties Review Board shall complete a review of the contract for such project and approve or disapprove such contract no later than thirty days after the Commissioner of Public Works submits such contract to the board. Such review shall be conducted in accordance with the provisions of section 4b-3. On and after October 1, 2008, such review shall be conducted by the subcommittee of the State Contracting Standards Board established under

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subsection (b) of section 12 of this act. In the event that such review does not occur within the thirty-day period prescribed by this subsection, such contract shall be deemed to be approved¹⁹⁴.

(j) On and after January 1, 2007, no person whose subcontract exceeds five hundred thousand dollars in value may perform work as a subcontractor, except for a project described in subdivision (2) of subsection (a) of this section, for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building for work by the state or a municipality, which is estimated to cost more than five hundred thousand dollars and is paid for, in whole or in part, with state funds, unless the person is prequalified in accordance with section 84 [4a-100], as amended by this act¹⁹⁵.

Sec. 75. (Recodification) (Effective July 1, 2008) “Lowest responsible and qualified bidder” defined. Bid bonds, certified checks, when forfeited¹⁹⁶.

As used in this chapter and except as otherwise provided, the words "lowest responsible and qualified bidder" shall mean the bidder who is prequalified pursuant to section 84 of this act [4a-100], and whose bid is the lowest of those bidders possessing the skill, ability and integrity necessary to faithful performance of the work based on objective criteria considering past performance and information contained in the update statement submitted pursuant to section 74 of this act [4b-91]. Essential information in regard to such qualifications shall be submitted with the bid in such form as the awarding authority may require by specification in the bid documents and on the bid form. Every general bid shall be accompanied by a bid bond or a certified check in an amount which shall be ten per cent of the bid, provided no such bid bond or certified check shall be required in relation to any general bid in which the total estimated cost of labor and materials under the contract with respect to which such general bid is submitted is less than fifty thousand dollars. Failure to execute a contract awarded as specified and bid shall result in the forfeiture of such bid bond or certified check. In considering past performance the awarding authority shall evaluate the skill, ability and integrity of bidders in terms of the bidders' fulfillment of contract obligations and of the bidders' experience or lack of experience with projects of the nature and scope of the project for which the bids are submitted.

Sec. 76. (NEW and Recodification) (Effective July 1, 2008) Contract Specifications: subtrades, subcontracts¹⁹⁷.

(a) Every contract subject to this chapter shall include plans and specifications detailing all labor and materials to be furnished thereunder. Such specifications shall have a separate section for each of the following classes of work if, in the estimate of the awarding authority, the class of work will exceed

¹⁹⁴ Derived from Sec. 13 of P.A. 06-1. Amendment of C.G.S. Sec. 4b-91(i).

¹⁹⁵ Derived from Sec. 19 of P.A. 06-1. Amendment of C.G.S. Sec. 4b-91(j).

¹⁹⁶ Recodification and repeal of General Statutes, Sec. 4b-92.

¹⁹⁷ Recodification and repeal of General Statutes, Sec. 4b-93.

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twenty-five thousand dollars: (1) Masonry work; (2) electrical work; (3) mechanical work other than heating, ventilating and air conditioning work; and (4) heating, ventilating and air conditioning work. Such specifications shall also have a separate section for each other class of work for which the awarding authority deems it necessary or convenient.

(b) Each separate section in the specifications provided for by this section shall specify by number each sheet of plans showing work to be done by the subcontractor under such section, and shall require the subcontractor to install all materials to be furnished by him under such section other than materials which, in the opinion of the awarding authority, it is not customary under current trade practices for such subcontractor to install and the installation of which is expressly required by another section of the specifications. Each class of work set forth in a separate section of the specifications pursuant to this section shall be a sub trade designated in the general bid form and shall be the matter of a subcontract made in accordance with the procedure set forth in this chapter.

(c) Whenever the awarding authority has designated a separate section for a class of work, under subsection (a) of this section, the general contractor shall, when applicable, state as part of its application for partial payment that it considers the work required to be done under any such separate section to be fully completed in accordance with the terms of the contract. The awarding authority shall thereupon conduct an inspection of the work in such class, and if it finds that such work has been fully completed in accordance with the terms of the contract, it shall issue a statement certifying that such work is accepted as fully completed, and shall pay the general contractor in full for such work.

Sec. 77. (Recodification) (Effective July 1, 2008) Rejection of Bids¹⁹⁸.

In inviting bids, the awarding authority shall reserve the right to reject any or all such general bids, if (1) the awarding authority determines that the general bidder or bidders involved are not competent to perform the work as specified, based on objective criteria established for making such determinations, including past performance and financial responsibility, (2) the low bid price exceeds the amount of money available for the project, (3) the awarding authority determines that the project shall not go forward or (4) the awarding authority finds cause to reject such bids. If the awarding authority rejects any or all bids pursuant to this section, it shall notify each affected bidder, in writing, of the reasons for such rejection.

Sec. 78. (Recodification) (Effective July 1, 2008) General Bid Form Requirements. Selection by awarding authority. Subcontractors¹⁹⁹.

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

¹⁹⁸ Recodification and repeal of General Statutes, Sec. 4b-94.

¹⁹⁹ Recodification and repeal of General Statutes, Sec. 4b-95.

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(b) Every general bid submitted for a contract subject to this chapter shall be submitted on a form furnished by the awarding authority. The form provided by the awarding authority shall provide a place for listing the names and prices of subcontractors for the four classes of work specified in subsection (a) of section 76 of this act [4b-93], and for each other class of work included by the awarding authority pursuant to said subsection and state that: (1) The undersigned agrees that if selected as general contractor, he shall, within five days, Saturdays, Sundays and legal holidays excluded, after presentation thereof by the awarding authority, execute a contract in accordance with the terms of the general bid; (2) the undersigned agrees and warrants that he has made good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials under such contract and shall provide the Commission on Human Rights and Opportunities with such information as is requested by the commission concerning his employment practices and procedures as they relate to the provisions of the general statutes governing contract requirements; and (3) the undersigned agrees that each of the subcontractors listed on the bid form will be used for the work indicated at the amount stated, unless a substitution is permitted by the awarding authority. The awarding authority may require in the bid form that the general contractor agree to perform a stated, minimum percentage of work with his own forces.

(c) General bids shall be for the complete work as specified and shall include the names of any subcontractors for the four classes of work specified in subsection (a) of section 76 of this act [4b-93], and for each other class of work for which the awarding authority has required a separate section pursuant to said subsection and the dollar amounts of their subcontracts, and the general contractor shall be selected on the basis of such general bids. It shall be presumed that the general bidder intends to perform with its own employees all work in such four classes and such other classes, for which no subcontractor is named. The general bidder's qualifications for performing such work shall be subject to review under section 75 of this act [4b-92]. Every general bid which is conditional or obscure, or which contains any addition not called for, shall be invalid; and the awarding authority shall reject every such general bid. The awarding authority shall be authorized to waive minor irregularities which he considers in the best interest of the state, provided the reasons for any such waiver are stated in writing by the awarding authority and made a part of the contract file. No such general bid shall be rejected because of the failure to submit prices for, or information relating to, any item or items for which no specific space is provided in the general bid form furnished by the awarding authority, but this sentence shall not be applicable to any failure to furnish prices or information required by this section to be furnished in the form provided by the awarding authority. General bids shall be publicly opened and read by the awarding authority forthwith. The awarding authority shall not permit substitution of a subcontractor for one named in accordance with the provisions of this section or substitution of a subcontractor for any designated sub trade work bid to be performed by the general contractor's own forces, except for good cause. The term "good cause" includes but is not limited to a subcontractor's or, where appropriate, a general contractor's: (1) Death or physical disability, if the listed subcontractor is an individual; (2) dissolution, if a corporation or partnership; (3) bankruptcy; (4) inability to furnish any performance and payment bond shown on the bid form; (5) inability to obtain, or loss of, a license necessary for the

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performance of the particular category of work; (6) failure or inability to comply with a requirement of law applicable to contractors, subcontractors, or construction, alteration, or repair projects; (7) failure to perform his agreement to execute a subcontract under section 80 of this act [4b-96].

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

(e) Any general contractor who violates any provision of this section shall be disqualified from bidding on other contracts that are subject to the provisions of this chapter for a period not to exceed twenty-four months, commencing from the date on which the violation is discovered, for each violation. The awarding authority shall periodically review the general contractor's subcontracts to insure compliance with such provisions, and shall after each such review prepare a written report setting forth its findings and conclusions.

Sec. 79. (Recodification) (Effective July 1, 2008) Listing of general bidder as a subcontractor on bid form²⁰⁰.

If a general bidder customarily performs any of the four classes of work specified in subsection (a) of section 76 of this act [4b-93] or any other class of work included by the awarding authority pursuant to said subsection, the general bidder may list himself as a subcontractor together with his price in the space provided in the bid form. A listed sub-bid so submitted by the general bidder shall be considered on a par with other listed sub-bids, and no such sub-bid by a general bidder shall be considered unless the general bidder can show to the satisfaction of the awarding authority, based on objective criteria established for such purpose, that he customarily performs such sub trade work and is qualified to do the character of work required by the applicable section of the specifications.

Sec. 80. (Recodification) (Effective July 1, 2008) Subcontract form. Procedure on failure of subcontractor to execute subcontract. General bidder's responsibilities²⁰¹.

Within five days after being notified of the award of a general contract by the awarding authority, or, in the case of an approval of a substitute subcontractor by the awarding authority, within five days after being notified of such approval, the general bidder shall present to each listed or substitute subcontractor (1) a subcontract in the form set forth in this section and (2) a notice of the time limit under this section for executing a subcontract. If a listed subcontractor fails within five days, Saturdays, Sundays and legal holidays

²⁰⁰ Recodification and repeal of General Statutes, Sec. 4b-95a.

²⁰¹ Recodification and repeal of General Statutes, Sec. 4b-96.

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excluded, after presentation of a subcontract by the general bidder selected as a general contractor, to perform his agreement to execute a subcontract in the form hereinafter set forth with such general bidder, contingent upon the execution of the general contract, the general contractor shall select another subcontractor, with the approval of the awarding authority. When seeking approval for a substitute subcontractor, the general bidder shall provide the awarding authority with all documents showing (A) the general bidder's proper presentation of a subcontract to the listed subcontractor and (B) communications to or from such subcontractor after such presentation. The awarding authority shall adjust the contract price to reflect the difference between the amount of the price of the new subcontractor and the amount of the price of the listed subcontractor if the new subcontractor's price is lower and may adjust such contract price if the new subcontractor's price is higher. The general bidder shall, with respect to each listed subcontractor or approved substitute subcontractor, file with the awarding authority a copy of each executed subcontract within ten days, Saturdays, Sundays and legal holidays excluded, of presentation of a subcontract to such subcontractor. The subcontract shall be in the following form:

SUBCONTRACT

THIS AGREEMENT made this of 20.., by and between a corporation organized and existing under the laws of a partnership consisting of an individual doing business as hereinafter called the "Contractor" and a corporation organized and existing under the laws of a partnership consisting of an individual doing business as hereinafter called the "Subcontractor",

WITNESSETH that the Contractor and the Subcontractor for the considerations hereafter named, agree as follows:

1. The Subcontractor agrees to furnish all labor and materials required for the completion of all work specified in Section No. of the specifications for (Name of Sub trade) and the plans referred to therein and addenda No., and for the (Complete title of project and the project number taken from the title page of the specifications) all as prepared by (Name of Architect or Engineer) for the sum of (\$....) and the Contractor agrees to pay the Subcontractor said sum for said work. This price includes the following alternates:

Supplemental No. (s),,,,,,,

(a) The Subcontractor agrees to be bound to the Contractor by the terms of the hereinbefore described plans, specifications (including all general conditions stated therein which apply to his trade) and addenda No.,,, and, and, and to assume to the Contractor all the obligations and responsibilities that the Contractor by those documents assumes to the (Awarding Authority), hereinafter called the "Awarding Authority", except to the extent that provisions contained therein are by their terms or by law applicable only to the Contractor.

(b) The Contractor agrees to be bound to the Subcontractor by the terms of the hereinbefore described documents and to assume to the

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Subcontractor all the obligations and responsibilities that the Awarding Authority by the terms of the hereinbefore described documents assumes to the Contractor, except to the extent that provisions contained therein are by their terms or by law applicable only to the Awarding Authority.

2. The Contractor agrees to begin, prosecute and complete the entire work specified by the Awarding Authority in an orderly manner so that the Subcontractor will be able to begin, prosecute and complete the work described in this subcontract; and, in consideration thereof, upon notice from the Contractor, either oral or in writing, the Subcontractor agrees to begin, prosecute and complete the work described in this Subcontract in an orderly manner in accordance with completion schedules prescribed by the general contractor for each subcontract work item, based on consideration to the date or time specified by the Awarding Authority for the completion of the entire work.

3. The Subcontractor agrees to furnish to the Contractor, within a reasonable time after the execution of this subcontract, evidence of workers' compensation insurance as required by law and evidence of public liability and property damage insurance of the type and in limits required to be furnished to the Awarding Authority by the Contractor.

4. The Contractor agrees that no claim for services rendered or materials furnished by the Contractor to the Subcontractor shall be valid unless written notice thereof is given by the Contractor to the Subcontractor during the first forty (40) days following the calendar month in which the claim originated.

5. This agreement is contingent upon the execution of a general contract between the Contractor and the Awarding Authority for the complete work.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above-written.

SEAL
ATTEST

....
.... (Name of Subcontractor)

By:

SEAL
ATTEST

....
.... (Name of Subcontractor)

By:

Sec. 81. (Recodification) (Effective July 1, 2008) Regulations²⁰².

(a) The Commissioner of Public Works shall adopt regulations, subject to approval by the State Contracting Standards Board, in accordance with chapter 54, to implement the provisions of sections 74 to 81 of this act [4b-91 to

²⁰² Recodification and repeal of General Statutes, Sec. 4b-100.

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4b-100], inclusive. Such regulations shall include (1) objective criteria for evaluating the qualifications of bidders, (2) objective criteria for evaluating proposals, and (3) the procedures for evaluating bids after the prequalification status of the bidder has been verified.

(b) The Commissioner of Public Works shall adopt regulations, subject to approval by the State Contracting Standards Board, in accordance with the provisions of chapter 54, establishing a procedure for promptly hearing and ruling on claims alleging a violation or violations of sections 74 to 81 of this act [4b-91 to 4b-100], inclusive. Such claims may be initiated by the Department of Public Works or any party whose financial interests may be affected by the decision on such a claim.

Sec. 82. (Recodification) (Effective July 1, 2008) Construction Services Award Panels. Screening, interview and selection of Contractors. Memoranda re selection. Regulations²⁰³.

(a) The Department of Public Works shall establish construction services award panels which shall each consist of six members: Three of whom shall be appointed by the Commissioner of Public Works and shall be current employees of the Department of Public Works; two of whom shall be appointed by the department head of the user agency; and one of whom who shall be a neutral party appointed by the commissioner. The members of each award panel appointed by the Commissioner of Public Works shall serve for terms of one year from July first. If any vacancy occurs on the panel, the Commissioner of Public Works or the head or acting head of the user agency, as appropriate, shall appoint a person for the unexpired term in accordance with the provisions of this subsection.

(b) A panel established pursuant to this section shall not be deemed to be a board or commission within the meaning of section 4-9a. Such panels shall be the award panels for any contract for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building for the state pursuant to sections 74 to 81 of this act [4b-91 to 4b-100], inclusive, and section 130 of this act [4b-24].

(c) For each applicable contract, the commissioner shall designate one panel to screen all submitted proposals and establish a list of bidders to be interviewed and shall designate a separate panel consisting of different members to interview bidders on the list and submit a list of recommended contractors to the commissioner ranked in order of preference with the most qualified bidder listed first.

(d) The commissioner shall designate one voting member on each panel to serve as chairperson. The chairperson shall moderate the committee, collect votes and compile the results.

(e) Each award panel shall prepare a memorandum on the selection process indicating (1) how the evaluation criteria were applied by each panel

²⁰³ Recodification and repeal of General Statutes, Sec. 4b-100a.

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member to determine the most qualified firms, (2) the ranking of each bidder by each panel member which shall be available to the public after execution of the contract with the selected contractor, and (3) a certification by each panel member that the selection of the most qualified firm was not the result of collusion, the giving of a gift or the promise of a gift, compensation, fraud or inappropriate influence from any person.

(f) The commissioner shall select a contractor from among the list of firms submitted by the award panel that interviewed the contractors. After the commissioner has made a selection, the names of the contractor firms submitted to the commissioner shall be available to the public upon request. In the event the commissioner does not select the most qualified bidder listed by the awards panel, the commissioner shall prepare a written explanation of the commissioner's decision. The commissioner shall also prepare a memorandum on the final phase of the selection process, indicating how the commissioner applied the evaluation criteria to determine the successful bidder. Such memorandum shall include a certification by the commissioner that the commissioner's selection of the successful bidder was not the result of collusion, the giving of a gift or the promise of a gift, compensation, fraud or undue pressure from any person and shall be available to the public after execution of the contract with the selected contractor.

(g) The commissioner shall adopt regulations, in accordance with chapter 54, to implement the provisions of this section.

Sec. 83. (Recodification) (Effective July 1, 2008) Information re contractors and subcontractors to be provided to Commissioner of Revenue Services²⁰⁴.

The commissioner of each state agency authorized to contract for the construction or alteration of buildings under section 37 of this act [4b-1] or 4b-51 of the general statutes shall provide to the Commissioner of Revenue Services a complete list of all contractors and subcontractors doing work on any such construction or alteration project, if available, and the contractors' and subcontractors' (1) Connecticut tax registration numbers and (2) federal Social Security account numbers or federal employer identification numbers or both, if available, before making final payment on the project.

Sec. 84. (NEW and Recodification) (Effective July 1, 2008) Prequalification of Contractors. Fees. Application. Renewal. Regulations. Notice to Commissioner of Public Works and Commissioner of Administrative Services re certain contractors²⁰⁵.

(a) As used in this section: (1) "Prequalification" means prequalification issued by the Commissioner of Administrative Services to bid on a contract for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building for work by the state or a municipality or to perform work

²⁰⁴ Recodification and repeal of General Statutes, Sec. 4b-101.

²⁰⁵ Derived from Sec. 17 of P.A. 06-1. Amendment of C.G.S. Sec. 4a-100.

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under such a contract as a substantial subcontractor; (2) "subcontractor" means a person who performs work with a value in excess of twenty-five thousand dollars for a contractor pursuant to a contract for work for the state or a municipality which is estimated to cost more than five hundred thousand dollars; (3) "principals and key personnel" includes officers, directors, shareholders, members, partners and managerial employees; (4) "aggregate work capacity rating" means the maximum amount of work an applicant is capable of undertaking for any and all projects; [and] (5) "single project limit" means the highest estimated cost of a single project that an applicant is capable of undertaking; (6) "substantial subcontractor" means a person who performs work with a value in excess of five hundred thousand dollars for a contractor pursuant to a contract for work for the state or a municipality which is estimated to cost more than five hundred thousand dollars.

(b) (1) Any person may apply for prequalification to the Department of Administrative Services. Such application shall be made on such form as the Commissioner of Administrative Services prescribes and shall be accompanied by a nonrefundable application fee as set forth in subdivision (2) of this subsection. The application shall be signed under penalty of false statement.

(2) The application fee shall be as follows:

Aggregate Work Capacity Rating	Fee
\$ 5,000,000. 00 or less	\$ 600. 00
\$ 5,000,000. 01 - \$ 8,000,000. 00	\$ 750. 00
\$ 8,000,000. 01 - \$ 10,000,000. 00	\$ 850. 00
\$ 10,000,000. 01 - \$ 15,000,000. 00	\$ 1,000. 00
\$ 15,000,000. 01 - \$ 20,000,000. 00	\$ 1,500. 00
\$ 20,000,000. 01 - \$ 40,000,000. 00	\$ 2,000. 00
\$ 40,000,000. 01 or more	\$ 2,500. 00

(c) The application form shall, at a minimum, require the applicant to supply information concerning:

(1) The applicant's form of organization;

(2) The applicant's principals and key personnel and any names under which the applicant, principals or key personnel conducted business during the past five years;

[(3) The applicant's experience on public and private construction projects over the past five years, or on the applicant's ten most recently-completed projects and the names of any subcontractors used on the projects;]

[(4)] (3) Any legal or administrative proceedings pending or concluded adversely against the applicant or any of the applicant's principals or key personnel within the past five years which relate to the

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procurement or performance of any public or private construction contract and whether the applicant is aware of any investigation pending against the applicant or any principal or key personnel;

[(5)] (4) _____ The nature of any financial, personal or familial relationship between the applicant and any public or private construction project owner listed on the application as constituting construction experience;

[(6)] (5) _____ A statement of whether (A) the applicant has been disqualified pursuant to section 4b-95, this section or section 114 of this act [31-57c or 31-57d], (B) the applicant is on the list distributed by the Labor Commissioner pursuant to section 71 of this act [31-57a], (C) the applicant is disqualified or prohibited from being awarded a contract pursuant to section 72 of this act [31-57b], (D) the applicant has been disqualified by another state, (E) the applicant has been disqualified by a federal agency or pursuant to federal law, (F) the applicant's registration has been suspended or revoked by the Department of Consumer Protection pursuant to section 20-341gg, (G) the applicant has been disqualified by a municipality, and (H) the matters that gave rise to any such disqualification, suspension or revocation have been eliminated or remedied; and

[(7)] (6) _____ Other information as the commissioner deems relevant to the determination of the applicant's qualifications and responsibilities.

(d) The applicant shall include a statement of financial condition prepared by a certified public accountant which includes information concerning the applicant's assets and liabilities, plant and equipment, bank and credit references, bonding company and maximum bonding capacity, and other information as the commissioner deems relevant to an evaluation of the applicant's financial capacity and responsibility.

(e) Information contained in the application shall be current as of the time of filing except that the statement of financial condition shall pertain to the applicant's most recently-completed fiscal year.

(f) The commissioner shall determine whether to prequalify an applicant on the basis of the application and on relevant past performance according to procedures and criteria set forth in regulations which the commissioner shall adopt on or before October 1, 2005, in accordance with chapter 54. Such criteria shall include, at a minimum, the record of the applicant's performance, including, but not limited to, written evaluations of the applicant's performance on public or private projects the applicant's past experience on projects of various size and type, the skill, ability and integrity of the applicant and any subcontractors used by the applicant, the experience and qualifications of supervisory personnel employed by the applicant, the maximum amount of work the applicant is capable of undertaking as demonstrated by the applicant's financial condition, bonding capacity, size of past projects and present and anticipated work commitments, and any other relevant criteria that the

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commissioner prescribes. Such regulations shall also (1) provide that the criteria considered shall be assigned separate designated numerical values and weights and that the applicant shall be assigned an overall numerical rating on the basis of all criteria, and (2) establish prequalification classifications, aggregate work capacity ratings and single project limits. Such prequalification classifications shall be used to establish the types of work a contractor or substantial subcontractor is qualified to perform and the aggregate work capacity ratings shall be used to establish the maximum amount of work a contractor or substantial subcontractor is capable of undertaking.

(g) (1) The applicant shall indicate the prequalification classifications, aggregate work capacity ratings and single project limits that are sought. The commissioner may issue a certificate of prequalification to any applicant who meets the requirements of this section. Such certificate shall be effective for one year from the date issued and shall indicate the contractor's or substantial subcontractor's prequalification classifications, aggregate work capacity ratings and single project limits. The commissioner may cause the initial certificate of prequalification to be effective for a period not to exceed two years and may require the applicant to remit payment of the application fee, as set forth in subsection (b) of this section, for the first twelve months of certification as well as a prorated application fee, as described in subdivision (3) of this subsection, for any additional period of certification beyond the first twelve months.

(2) A prequalified contractor or substantial subcontractor may apply at any time for additional prequalification classifications, aggregate work capacity ratings or single project limits by submitting the applicable increase in fee, a completed update statement, and other information the commissioner requires.

(3) The commissioner may renew a prequalification certificate upon receipt of a completed update statement, any other material the commissioner requires and a nonrefundable fee in an amount [equal to] not less than one-half of the application fee for the applicable aggregate work capacity rating as set forth in subsection (b) of this section [except that in no event shall such fee be less than six hundred dollars].

(h) Not later than sixty days after receiving a completed application, the commissioner shall mail or send by electronic mail a notice to the applicant concerning the commissioner's preliminary determination regarding the conditions of the prequalification certification, a denial of certification, a reduction in the level of certification sought or nonrenewal of certification. Any applicant aggrieved by the commissioner's preliminary determination may request copies of the information upon which the commissioner relied in making the preliminary determination, provided such request is made not later than ten days after the date the notice was mailed or sent by electronic mail to the applicant. Not later than twenty days after the date the notice was mailed or sent by electronic mail, the applicant may submit additional information to the commissioner with a request for reconsideration. The commissioner shall issue a final determination regarding the application not later than ninety days after the date the commissioner mailed or sent by electronic mail the notice of the preliminary determination, which ninety-day period may be extended for an additional period

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not to exceed ninety days if (1) the commissioner gives written notice to the applicant that the commissioner requires additional time, and (2) such notice is mailed or sent by electronic mail during the initial ninety-day period.

(i) The commissioner may not issue a prequalification certificate to any contractor or substantial subcontractor (1) who is disqualified pursuant to section 114 of this act [31-57c or 31-57d], (2) who has a principal or key personnel who, within the past five years, has a conviction or has entered a plea of guilty or nolo contendere for or has admitted to commission of an act or omission that reasonably could have resulted in disqualification pursuant to any provision of subdivisions (1) to (3), inclusive, of subsection (b) [(d)] of section 114 of this act [31-57c or subdivisions (1) to (3), inclusive, of subsection (d) of section 31-57d], as determined by the commissioner.

(j) The commissioner may revoke a contractor's or substantial subcontractor's prequalification or reduce the contractor's or substantial subcontractor's prequalification classification or aggregate work capacity ratings, after an opportunity for a hearing, if the commissioner receives additional information that supports such revocation or reduction or if such contractor is suspended from bidding on a state contract pursuant to the provisions of section 115 [8] of this act.

(k) (1) Any materially false statement in the application or any update statement may, in the discretion of the awarding authority, result in termination of any contract awarded the applicant by the awarding authority. The awarding authority shall provide written notice to the commissioner of such false statement not later than thirty days after discovering such false statement. The commissioner shall provide written notice of such false statement to the Commissioner of Public Works and the Commissioner of Consumer Protection not later than thirty days after discovering such false statement or receiving such notice.

(2) The commissioner shall revoke the prequalification of any person, after an opportunity for hearing, if the commissioner finds that the person has included any materially false statement in such application or update statement, has been convicted of a crime related to the procurement or performance of any public or private construction contract has been disqualified by the State Contracting Standards Board from bidding on state contracts pursuant to section 114 [7] of this act or, within the past five years or has otherwise engaged in fraud in obtaining or maintaining prequalification. Any person whose prequalification has been revoked pursuant to this subsection shall be disqualified for a period of two years after which the person may reapply for prequalification, except that a person whose prequalification has been revoked on the basis of conviction of a crime or engaging in fraud shall be disqualified for a period of five years after which the person may reapply for prequalification and a person whose prequalification has been revoked on the basis of disqualification by the State Contracting Standards Board shall be disqualified for the same length of time as the disqualification period imposed by the State Contracting Standards Board pursuant to section 114 of this act. The commissioner shall not prequalify a person whose

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prequalification has been revoked pursuant to this subdivision until the expiration of said [two or five year] suspension or other applicable disqualification period and the commissioner is satisfied that the matters that gave rise to the revocation have been eliminated or remedied.

(l) The commissioner shall provide written notice of any revocation, disqualification, reduction in classification or capacity rating or reinstated prequalification to the Commissioner of Public Works and the Commissioner of Consumer Protection not later than thirty days after any final determination.

(m) The provisions of this section and section 85 of this act [4a-101] shall not apply to subcontractors.

(n) The commissioner shall establish an update statement for use by bidders and substantial subcontractors for purposes of renewing or upgrading a prequalification certificate and for purposes of submitting a bid pursuant to section 74 of this act [4b-91].

(o) Any applicant aggrieved by the commissioner's final determination concerning a preliminary determination, a denial of certification, a reduction in prequalification classification or aggregate work capacity rating or a revocation or nonrenewal of certification may appeal to the Superior Court in accordance with section 4-183.

(p) Not later than one hundred twenty days after becoming prequalified, any contractor or substantial subcontractor prequalified under the provisions of this section shall participate in an ethics training course approved by the State Contracting Standards Board pursuant to section 4 of this act.

(q) The commissioner shall, with the approval of the State Contracting Standards Board, adopt regulations, in accordance with chapter 54, to establish a schedule of application fees for substantial subcontractors.

Sec. 85. (NEW and Recodification) (Effective July 1, 2008) Standard Contractor evaluation form. Regulations. Public Agency to complete and submit evaluation form. Contractor Responses²⁰⁶.

(a) [On or before October 1, 2005, t] The Commissioner of Administrative Services shall with the approval of the State Contracting Standards Board adopt regulations, in accordance with chapter 54, to establish a standard contractor evaluation form. Such form shall include, at a minimum, the following evaluation criteria:

- (1) Timeliness of performance;
- (2) quality of performance;
- (3) cost containment, including, but not limited to, the contractor's ability to work within the contract's allotted cost, the accuracy

²⁰⁶ Derived from Sec. 18 of P.A. 06-1. Amendment of C.G.S. Sec. 4a-101.

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of the contractor's billing, and the number and cause of change orders and the manner in which the contractor determined the price on the change orders;

- (4) safety;
- (5) the quality of the contractor's working relationship with the agency and the quality of the contractor's supervision of the work area;
- (6) communication with the agency;
- (7) the quality of the contractor's required documentation;
- (8) the performance of the contractor's subcontractors and substantial subcontractors, to the extent known by the official who completes the evaluation; and,
- (9) the contractor's and any subcontractor's compliance with part III of chapter 557, or chapter 558, or the provisions of the federal Davis-Bacon Act, 40 USC, Sections 276a to 276a-5, inclusive, as from time to time amended, to the extent known by the official who completes the evaluation.

(b) Each state contracting agency shall compile evaluation information during the performance of the contract and complete and submit the evaluation form to the commissioner after completion of a building project under the agency's control if the building project is funded, in whole or in part, by state funds. Such evaluation information shall be filed with the Commissioner of Administrative Services and the State Contracting Standards Board and made available to any state contracting agency [public agency] for purposes of assessing the responsibility of the contractor during a bid selection and evaluation process. The Agency Procurement Officer [designated official from such agency] shall certify that the information contained in the evaluation form represents, to the best of the certifying officer's [official's] knowledge, a true and accurate analysis of the contractor's performance record on the contract. The commissioner shall include the evaluation in the contractor's prequalification file. The official shall mail a copy of the completed evaluation form to the contractor. Any contractor who wishes to contest any information contained in the evaluation form may submit a written response to the commissioner not later than thirty days after the date the form was mailed as indicated by the postmark on the envelope. Such response shall set forth any additional information concerning the building project or the oversight of the contract by the state contracting agency [public agency] that may be relevant in the evaluation of the contractor's performance on the project. The commissioner shall include any such response in the contractor's prequalification file.

(c) As used in this section, "state contracting agency [public agency]" means a state contracting agency [public agency], as defined in section 47 of this act [1-200], but does not include The University of Connecticut with respect to any project, as defined in subdivision (16) of section 10a-109c, that is undertaken and controlled by the university, and "subcontractor" means a person

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who performs work with a value in excess of twenty-five thousand dollars for a contractor pursuant to a contract for work for the state or a municipality which is estimated to cost more than five hundred thousand dollars.

(d) Upon fifty per cent completion of any building project under a state contracting agency's [public agency] control, the agency shall advise the contractor in writing of the agency's preliminary evaluation of the contractor's performance on the project.

(e) No state contracting agency [public agency], employee of a state contracting agency [public agency] or an Agency Procurement Officer [certifying official of a public agency] shall be held liable to any contractor for any loss or injury sustained by such contractor as the result of the completion of an evaluation form, as required by this section, unless such agency, employee or official is found by a court of competent jurisdiction to have acted in a willful, wanton or reckless manner.

(f) Any state contracting agency [public agency] that fails to submit a completed evaluation form to the Commissioner and the State Contracting Standards Board, as required by this section, not later than seventy days after the completion of a project, shall be ineligible for the receipt of any public funds disbursed by the state for the purposes of the construction, reconstruction, alteration, remodeling, repair or demolition of any public building or any public works project until such completed evaluation form is submitted.

(g) Notwithstanding the provisions of subsection (a) of this section, any political subdivision of the state, when evaluating the performance of a contractor's subcontractors or substantial subcontractors, to the extent known, may rely on an evaluation of such subcontractors or substantial subcontractors that is conducted by the contractor.

Sec. 86. (NEW) (Effective from Passage) Affidavit Regarding Off-Shore Corporations (the "Anthony J. Tercyak Act")²⁰⁷.

(a) This section shall be known as the "Anthony J. Tercyak Act".

(b) The Department of Administrative Services shall require any publicly traded corporation that seeks to do business with the state to certify in an affidavit that such company is not a company that:

- (1) Conducted business in the United States,
- (2) was previously incorporated within the United States' territorial limits,
- (3) reincorporated outside the United States' territorial limits on or after July 1, 2007, and

²⁰⁷ Derived from Sec. 20 of P.A. 06-1.

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(4) as a result of such reincorporation outside the United States' territorial limits, has received a reduction in federal or Connecticut tax liability.

(c) The state may not enter into any contract with any publicly traded company that does not deny such reincorporation in a sworn affidavit, except that the Attorney General may waive such prohibition if the services sought by the state are not available from a company that is incorporated in the United States or if waiver of such prohibition is in the best interest of the state.

Sec. 87. (NEW) (Effective July 1, 2008) Substantiation of Offered Prices²⁰⁸.

The Commissioner of Administrative Services may request factual information reasonably available to the bidder or proposer to substantiate that the price or cost offered, or some portion of it, is reasonable, if:

- (a) the price is not:
 - (1) based on adequate price competition;
 - (2) based on established catalogue or market prices; or
 - (3) set by law or regulation; and,
- (b) the price or cost exceeds an amount established in the regulations.

Sec. 88. (NEW and Recodification) (Effective July 1, 2008) Federal Social Security number or employer identification number required of all contractors purchasing goods or services²⁰⁹.

(a) Each state contracting agency [public agency] when contracting to purchase goods or services or when leasing real or personal property shall require each person contracting with the state to provide such person's federal Social Security account number or federal employer identification number, or both, if available, to such agency or the reason or reasons for the unavailability. Such numbers or reasons shall be obtained by any agency as part of the administration of taxes administered by the commissioner for the purpose of establishing the identification of persons affected by such taxes.

(b) Each state contracting agency [public agency] shall, on or before August 1, 1995, and August first annually thereafter furnish to the commissioner, on a compatible magnetic tape file or in some other form which is acceptable to the commissioner, a list of all persons furnishing goods or services or leasing real or personal property to such agency, if any, during the preceding state fiscal year.

²⁰⁸ Derived from Section 3-403 of the ABA Model Code:

²⁰⁹ Recodification and repeal of General Statutes, Sec. 4a-80.

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(c) Each list provided to the commissioner pursuant to this section shall contain the name, address, federal Social Security account number or federal employer identification number of each person named on such list, or both, if available to such state contracting agency [public agency] or the reason or reasons for the unavailability.

Sec. 89. (Recodification) (Effective July 1, 2008) Contracts for goods and services over fifty thousand dollars. Affidavit by bidder or vendor re consulting agreements. Failure to submit. Disqualification²¹⁰.

(a) On and after July 13, 2005, no state contracting agency [public agency] or quasi-public agency shall execute a contract for the purchase of goods or services, which contract has a total value to the state of fifty thousand dollars or more in any calendar or fiscal year, unless the state contracting agency [public agency] or quasi-public agency obtains the written affidavit described in subsection (b) of this section.

(b)

(1) The chief official of the bidder or proposer [vendor] awarded a contract described in subsection (a) of this section or the individual awarded such contract who is authorized to execute such contract, shall attest in an affidavit as to whether any consulting agreement has been entered into in connection with such contract. Such affidavit shall be required if any duties of the consultant included communications concerning business of such state agency, whether or not direct contact with a state contracting agency [public agency], state or public official or state employee was expected or made. As used in this section "consulting agreement" means any written or oral agreement to retain the services, for a fee, of a consultant for the purposes of (A) providing counsel to a contractor, proposer [vendor], consultant or other entity seeking to conduct, or conducting, business with the state, (B) contacting, whether in writing or orally, any executive, judicial, or administrative office of the state, including any department, institution, bureau, board, commission, authority, official or employee for the purpose of solicitation, dispute resolution, introduction, requests for information, or (C) any other similar activity related to such contract. Consulting agreement does not include any agreements entered into with a consultant who is registered under the provisions of chapter 10 as of the date such affidavit is submitted in accordance with the provisions of this section.

(2) Such affidavit shall be sworn as true to the best knowledge and belief of the person signing the certification on the affidavit and shall be subject to the penalties of false statement.

(3) Such affidavit shall include the name of the consultant, the consultant's firm, the basic terms of the consulting agreement, a brief description of the services provided, and an indication as to whether the consultant is a former state employee or public official. If the consultant is

²¹⁰ Recodification and repeal of General Statutes, Sec. 4a-81.

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a former state employee or public official, such affidavit shall indicate his or her former agency and the date such employment terminated.

(4) Such affidavit shall be amended whenever the bidder or proposer [vendor] awarded the contract enters into any new consulting agreement during the term of such contract.

(c) Each state contracting agency [public agency] and quasi-public agency shall include a notice of the affidavit requirements of this section in the bid specifications or request for proposals for any contract that is described in subsection (a) of this section.

(d) In the event that a bidder or proposer [vendor] refuses to submit the affidavit required under subsection (b) of this section, such bidder or proposer [vendor] shall be disqualified and the state contracting agency [public agency] or quasi-public agency shall award the contract to the next highest ranked proposer [vendor] or the next lowest responsible qualified bidder or seek new bids or proposals.

Part 19. Public Buildings Under Jurisdiction of the Commissioner of Transportation

Sec. 90. (Recodification) (Effective July 1, 2008) Large Contract Re Public Buildings to be awarded to the lowest responsible and qualified bidder or proposer. Regulations. Exception.²¹¹.

With respect to any contract for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building under the supervision and control of the Commissioner of Transportation which contract is estimated to cost more than five hundred thousand dollars and is not subject to section 4b-51, the Commissioner of Transportation shall award the contract to the lowest responsible and qualified bidder, as defined in section 75 of this act [4b-92], in accordance with regulations which the commissioner shall adopt, in accordance with chapter 54. Such regulations shall establish, at a minimum: (1) Standards for the advertisement of opportunities to bid, (2) objective criteria for evaluating the qualifications of bidders or proposers, (3) the procedures for evaluating bids or proposals after the prequalification status of a bidder has been verified, and (4) award panels for the purpose of screening submitted bids or proposals, interviewing bidders or proposers and making recommendations to the commissioner. Any contract that is subject to section 4b-51 shall be awarded by the Commissioner of Public Works in accordance with chapter 60.

Part 20. Specifications

Sec. 91. (Recodification) (Effective July 1, 2008) Purchasing Standards and Specifications²¹².

²¹¹ Recodification and repeal of General Statutes, Sec. 13b-20n.

²¹² Recodification and repeal of General Statutes, Sec. 4a-56.

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The Commissioner of Administrative Services or his designee, in consultation with the State Contracting Standards Board, may classify the requirements of the state government for supplies, materials and equipment which may be purchased by the state and may adopt as standards the minimum number of qualities, sizes and varieties of such supplies, materials and equipment consistent with the successful operation of the state government. If the commissioner adopts any such standards, the commissioner shall prepare, adopt and promulgate written specifications describing such standards, provided specifications shall not be required for any supplies, materials or equipment for which the commissioner determines that the cost of preparing specifications would outweigh the benefits. In the preparation and revision of any such standard specification, the commissioner or his designee may seek the advice, assistance and cooperation of the state agencies concerned in order to ascertain their precise requirements. Each specification adopted for any commodity shall satisfy the requirements of the state departments, agencies and institutions which are to make use of the same, unless the commissioner approves a waiver of the specification and states the reason for the waiver in writing. In developing specifications for the purchase of motor vehicles, the commissioner or his designee shall consider motor vehicles using alternative fuels. The commissioner may adopt the energy performance standards established pursuant to subsection (j) of section 16a-38.

Sec. 92. (NEW) (Effective July 1, 2008) Regulations for Specification Preparation²¹³.

The Commissioner of Administrative Services shall promulgate regulations, with the approval of the State Contracting Standards Board, establishing standards for the preparation, maintenance, and content of specifications for supplies, services, and construction required by the State.

Sec. 93. (NEW) (Effective July 1, 2008) Duties of the State Contracting Standards Board²¹⁴.

The State Contracting Standards Board shall monitor the use of specifications for supplies, services, and construction required by the each State Contracting Agency.

Sec. 94. (NEW) (Effective July 1, 2008) Relationship with State Contracting Agencies²¹⁵.

The Department of Administrative Services shall obtain expert advice and assistance from personnel of State Contracting Agencies in the development of specifications and may delegate in writing to a State Contracting Agency the authority to prepare and utilize its own specifications.

²¹³ Derived from Section 4-201 of the ABA Model Code:

²¹⁴ Derived from Section 4-202 of the ABA Model Code:

²¹⁵ Derived from Section 4-204 of the ABA Model Code:

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Sec. 95. (NEW) (Effective July 1, 2008) Maximum Practicable Competition²¹⁶.

All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the State's needs, and shall not be unduly restrictive.

Sec. 96. (NEW) (Effective July 1, 2008) Specifications Prepared by Other than State Personnel²¹⁷.

The requirements of this Act regarding the purposes and nonrestrictiveness of specifications shall apply to all specifications prepared other than by State personnel, including, but not limited to, those prepared by architects, engineers, and designers.

Part 21. Statutory Specifications

Sec. 97. (Recodification) (Effective July 1, 2008) Equipment and Appliances for State Use, Energy Standards²¹⁸.

The Department of Administrative Services and each other budgeted agency, as defined in section 4-69, exercising procurement authority shall procure equipment and appliances for state use which meet or exceed the federal energy conservation standards set forth in the Energy Policy and Conservation Act, 42 USC 6295, any federal regulations adopted thereunder and any applicable energy performance standards established in accordance with subsection (j) of section 16a-38. Purchases of equipment and appliances for which energy performance standards have been established pursuant to subsection (j) of section 16a-38 shall be (1) made from among those specific models of equipment and appliances which meet such standards, and (2) based, when possible, on competitive bids. Such bids shall be evaluated on the basis of the life-cycle cost standards, if any, established pursuant to subsection (b) of section 16a-38.

Sec. 98. (Recodification) (Effective July 1, 2008) Purchase of Cars and Light Duty Trucks. Gasoline Mileage Ratings. Exemption²¹⁹.

(a) The fleet average for cars or light duty trucks purchased by the state shall: (1) On and after October 1, 2001, have a United States Environmental Protection Agency estimated highway gasoline mileage rating of at least thirty-five miles per gallon and on and after January 1, 2003, have a United States Environmental Protection Agency estimated highway gasoline mileage rating of at least forty miles per gallon, (2) comply with the requirements set forth in 10 CFR 490 concerning the percentage of alternative-fueled vehicles required in the state motor vehicle fleet, and (3) obtain the best achievable

²¹⁶ Derived from Section 4-205 of the ABA Model Code:

²¹⁷ Derived from Section 4-206 of the ABA Model Code:

²¹⁸ Recodification and repeal of General Statutes, Sec. 4a-67c.

²¹⁹ Recodification and repeal of General Statutes, Sec. 4a-67d.

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mileage per pound of carbon dioxide emitted in its class. The alternative-fueled vehicles purchased by the state to comply with said requirements shall be capable of operating on natural gas or electricity or any other system acceptable to the United States Department of Energy that operates on fuel that is available in the state.

(b) The provisions of subsection (a) of this section shall not apply to cars or light duty trucks purchased for law enforcement or other special use purposes as designated by the Department of Administrative Services.

(c) As used in this section, the terms "car" and "light duty truck" shall be as defined in the United States Department of Energy Publication DOE/CE - 0019/8, or any successor publication.

Sec. 99. (Recodification) (Effective July 1, 2008) Standard for purchase of recycled paper²²⁰.

All recycled xerographic or copy paper purchased by the state for use in state offices shall meet the applicable minimum recycled content standards established in federal Executive Order No. 13101, and any regulations or guidelines promulgated by the United States Environmental Protection Agency to carry out the purposes of said order, for purchase of paper by the federal government provided such paper shall have a composition such that at least ten per cent of the fiber material used to produce such paper is derived from post-consumer recovered paper. Any recycled white paper used for state lottery tickets and tax return forms shall meet the standards provided therein for xerographic copy paper provided at least thirty per cent of the fiber material used to produce such paper is derived from post-consumer recovered paper and further provided the recycled paper for lottery tickets meets lottery security requirements. All tax return booklets prepared by the Department of Revenue Services shall be printed on recycled paper which meets the minimum recycled content standards for white paper or newsprint, whichever is used in such booklets, established by the United States Environmental Protection Agency provided at least ten per cent of the fiber material used to produce such white paper is derived from post-consumer recovered paper.

Sec. 100. (Recodification) (Effective July 1, 2008) Specifications for Printing and Writing Paper²²¹.

(a) The Commissioner of Administrative Services shall revise the specifications for printing and writing paper purchased by the state to (1) incorporate the standards provided for in federal Executive Order No. 13101 and any regulations or guidelines promulgated by the United States Environmental Protection Agency to carry out the purposes of said order and (2) provide for the purchase and use by state agencies of paper composed entirely of materials manufactured using processes (A) which do not involve the harvesting of trees or which are otherwise derived entirely from sources other than trees and (B) which

²²⁰ Recodification and repeal of General Statutes, Sec. 4a-67e.

²²¹ Recodification and repeal of General Statutes, Sec. 4a-67f.

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can be categorized as having less adverse impact on the environment than conventional processes.

(b) The commissioner may provide for alternative standards in such specifications if the commissioner determines that (1) a satisfactory level of competition does not exist with regard to the market for a particular paper item specified in such standards, (2) a particular paper item is not available within a reasonable time period or (3) the available items fail to meet reasonable performance standards established by the agency for which such items are being procured.

Part 22. Types of Contracts

Sec. 101. (NEW and Recodification) (Effective July 1, 2008) Types of Contracts²²².

(a) Subject to the limitations of this Section, any type of contract which will promote the best interests of the State may be used; provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the State than any other type or that it is impracticable to obtain the supplies, services, or construction required except under such a contract.

(b) Each bid or proposal, with the name of the bidder, or proposer, shall be entered on a record, and each record, with the successful bid or proposal indicated thereon, shall, after the award of the order or contract, be open to public inspection²²³.

(c) All contracts shall be approved as to form by the Attorney General and a copy of each contract shall be filed with the Comptroller and the State Contracting Standards Board²²⁴.

Sec. 102. (NEW) (Effective July 1, 2008) Approval of Accounting System²²⁵.

Regulations shall be issued requiring that contractors submit appropriate documentation prior to the award of contracts in which the State agrees to reimburse costs, confirming that:

(a) the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and

²²² Derived from Section 3-501 of the ABA Model Code:

²²³ Recodification and repeal of General Statutes, Sec. 4a-59(e).

²²⁴ Recodification and repeal of General Statutes, Sec. 4a-59(e).

²²⁵ Derived from Section 3-502 of the ABA Model Code:

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(b) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

Sec. 103. (NEW) (Effective July 1, 2008) Multi-Year Contracts²²⁶.

(a) *Specified Period.* Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of the State provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.

(b) *Use.* A multi-year contract is authorized where:

(1) estimated requirements cover the period of the contract and are firm and continuing; and

(2) such a contract will serve the best interests of the State by encouraging effective competition or otherwise promoting economies in [State] procurement.

(c) *Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods.* When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled and the contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriations available for such purposes.

Part 23. Inspection of Plant and Audit of Records

Sec. 104. (NEW) (Effective July 1, 2008) Right to Inspect Plant or Place of Business²²⁷.

A state contracting agency may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the State.

Sec. 105. (NEW) (Effective July 1, 2008) Right to Audit Records²²⁸.

(a) *Audit of Cost or Pricing Data.* A state contracting agency may, at reasonable times and places, audit the books and records of any person who has submitted data in substantiation of offered prices pursuant to section 87 of this act to the extent that such books and records relate to that data. Any person who

²²⁶ Derived from Section 3-503 of the ABA Model Code:

²²⁷ Derived from Section 3-601 of the ABA Model Code:

²²⁸ Derived from Section 3-602 of the ABA Model Code:

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receives a contract, change order, or contract modification for which such data is required, shall maintain such books and records that relate to such cost or pricing data for three (3) years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.

(b) *Contract Audit.* A state contracting agency shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contract and by the subcontractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

Sec. 106. (Recodification) (Effective July 1, 2008) State Contractor to Make Payment to Subcontractor within thirty days²²⁹.

Any person contracting with the state shall make payment to any subcontractor employed by such contractor within thirty days of payment by the state to the contractor for any work performed or, in the case of any contract entered into on or after October 1, 1986, for materials furnished by such subcontractor, provided such contractor may withhold such payment if such contractor has a bona fide reason for such withholding and if such contractor notifies the affected subcontractor, in writing, of his reasons for withholding such payment and provides the state board, commission, department, office, institution, council or other agency through which such contractor had made the contract, with a copy of the notice, within such thirty-day period.

Part 24. Determinations and Reports

Sec. 107. (NEW) (Effective July 1, 2008) Finality of Determinations²³⁰.

The determinations required by sections 57, 58, 60, 61, 64, 70, 87, 101, 102, 103 and 125 of this act are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

Sec. 108. (NEW) (Effective July 1, 2008) Reporting of Anticompetitive Practices²³¹.

When for any reason collusion or other anticompetitive practices are suspected among any bidders or proposers, a notice of the relevant facts shall be transmitted to the Attorney General.

²²⁹ General Statutes, Sec. 49-41c.

²³⁰ Derived from Section 3-701 of the ABA Model Code:

²³¹ Derived from Section 3-702 of the ABA Model Code:

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Sec. 109. (NEW) (Effective July 1, 2008) Retention of Procurement Records²³².

All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the Attorney General. All retained documents shall be made available to the Attorney General or a designee upon request and proper receipt therefor.

Sec. 110. (NEW) (Effective July 1, 2008) Record of Sole Source, Emergency and Special Procurements²³³.

The Agency Procurement Officer shall maintain a record listing all contracts made under sections 60, 61 and 64 of this act for a minimum of five (5) years. The record shall contain:

- (1) each contractor's name;
- (2) the amount and type of each contract; and
- (3) a listing of the supplies, services, or construction procured under each contract.

Sec. 111. (Recodification) (Effective July 1, 2008) Reports Pertaining to Awards of Contracts²³⁴.

The department head of each state contracting agency [Commissioner of Administrative Services] shall submit to the State Contracting Standards Board, the standing committee of the General Assembly having cognizance of matters relating to government administration, the State Auditors and the Comptroller, an annual report of all awards made pursuant to the provisions of this [section] act²³⁵.

Part 25. Privatization Contracts

Sec. 112. (NEW) (Effective from Passage) Privatization Contracts²³⁶.

(a) (1) As a state contracting agency seeks to find the best value for the citizens of the State of Connecticut it should evaluate whether delivering services or activities effectively and efficiently is best done using internal state resources or contracted resources with a person or entity not a part of state service. Such an evaluation should be done using both quantitative and qualitative analysis through the development of a business case. Whenever it appears that a person or entity not a part of state service can more effectively

²³² Derived from Section 3-703 of the ABA Model Code:

²³³ Derived from Section 3-704 of the ABA Model Code:

²³⁴ Recodification and repeal of General Statutes, Sec. 4a-59(e).

²³⁵ Recodification and repeal of General Statutes, Sec. 4a-59(c)(twelfth sentence).

²³⁶ Replaces Sec. 14 of P.A. 06-1.

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and efficiently provide services that are currently being provided by state employees the state contracting agency shall first develop a business case to evaluate feasibility, cost-effectiveness, and efficiency.

(2) Upon the completion of such business case in accordance with sub-section (c) of this section, the state contracting agency shall submit such proposal to the State Contracting Standards Board.

(3) This section does not apply to a procurement of contractual services that are obtained with federal funds.

(b) (1) Upon receipt of the business case the State Contracting Standards Board shall immediately refer the proposal to the privatization contract committee of the Board.

(2) There shall be a privatization contract committee of the State Contracting Standards Board that shall review, evaluate, issue advisory reports and make recommendations on business cases submitted to the State Contracting Standards Board for its approval. The privatization contract committee shall consist of five members of the State Contracting Standards Board who represent both the majority and minority parties and who are appointed by the Chair. The Chair of the Board shall serve as the Chair of the privatization contract committee.

(3) The privatization contract committee shall employ a standard process for reviewing, evaluating and recommending business cases for privatization proposals requested by the proposing state contracting agency.

(4) Each state contracting agency shall submit to the State Contracting Standards Board all information, documents, or other materials required by the Board, the privatization contract committee or this chapter.

(c) (1) For any proposed privatization contract, the state contracting agency shall develop a business case that includes, but need not be limited to:

(i) A detailed description of the service or activity for which the privatization contracting is proposed,

(ii) A description and analysis of the state agency's current performance of the service or activity,

(iii) The goals desired to be achieved through the proposed privatization and the rationale for such goals,

(iv) A description of available options for achieving the goals,

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(v) An analysis of the advantages and disadvantages of each option, including, at a minimum, potential performance improvements and risks,

(vi) A description of the current market for the contractual services that are under consideration for privatization,

(vii) A cost-benefit analysis documenting the direct and indirect specific costs, savings, and qualitative and quantitative benefits involved in or resulting from the implementation of the recommended option or options. Such analysis must specify the schedule that, at a minimum, must be adhered to in order to achieve the estimated savings. All elements of cost must be clearly identified in the cost-benefit analysis, described in the business case, and supported by applicable records and reports. The state agency head shall attest that, based on the data and information underlying the business case, all projected costs, savings, and benefits are valid and achievable. As used in this section, the term "cost," means the reasonable, relevant, and verifiable cost, which may include, but is not limited to, elements such as salary, fringe benefits, materials and supplies, services, equipment, capital depreciation, rent, maintenance and repairs, utilities, insurance, personnel travel, overhead, and interim and final payments. The appropriate elements shall depend on the nature of the specific initiative. As used in this section, the term "savings" means the difference between the direct and indirect actual annual baseline costs compared to the projected annual cost for the contracted functions or responsibilities in any succeeding state fiscal year during the term of the proposed contract,

(viii) A description of the specific performance standards that must, at a minimum be met, to ensure adequate performance by any party performing the service or activity,

(ix) The projected timeframe for key events from the beginning of the procurement process through the expiration of a contract,

(x) A specific and feasible contingency plan addressing contractor nonperformance and a description of the tasks involved in and costs required for its implementation, and

(xi) A transition plan for addressing changes in the number of agency personnel, affected business processes, employee transition issues, and communication with affected stakeholders, such as agency clients and the public. The transition plan must contain a reemployment and retraining assistance plan for employees who are not retained by the state or employed by the contractor.

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(2) The Department of Administrative Services, in consultation with the Board, shall:

(i) Recommend and implement standards and processes for state agencies to develop business cases to privatize, including templates for use by state agencies in submitting business cases to the privatization contract committee, policies and procedures to guide agencies to complete business case for privatization contracts, and any other assistance necessary as determined by the Commissioner of Administrative Services.

(ii) Recommend incorporation of any lessons learned from privatization contracting functions, services, and activities into business case standards, procedures, and guidelines, and as appropriate, regarding best practices in privatization contracting efforts.

(iii) Develop guidelines and procedures for assisting state employees whose jobs are eliminated as a result of a privatization contract.

(3) The Office of Policy and Management, in consultation with the Board shall develop policies and procedures, including templates for use by state agencies in submitting business cases to the privatization contract committee, to assist agencies in developing a cost benefit analysis for a business case and shall review with each agency the budgetary impact of such a contract and any need to request budget adjustments.

(d) (1) To privatize a service or activity that has a projected cost exceeding one million dollars over the life of the contract, the state contracting agency shall conduct a complete business case analysis prior to publishing any notice soliciting bids for a privatization contract. Such business case shall be submitted to the Governor, the President of the Senate, the Speaker of the House of Representatives, State Contracting Standards Board and any collective bargaining unit affected by the proposal. The privatization contract committee shall evaluate the business case and submit its evaluation to the State Contracting Standards Board for review and approval.

(2) The State Contracting Standards Board shall no later than 60 days after the receipt of the business case provide to the agency conducting the procurement, the Governor, the President of the Senate, and the Speaker of the House of Representatives and any collective bargaining unit affected by the proposal a report detailing its review, evaluation and disposition regarding such business case. The report must contain the business case, the evaluation of the business case by the privatization contract committee, reasons for approval or disapproval, any relevant recommendations, and sufficient information to assist the state contracting agency proposing to privatize in determining if additional steps are necessary to move forward with the publication of a notice to solicit bids for a privatization contract.

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(3) Only after the Board approves the business case can the requesting state contracting agency publish any notice soliciting bids for a privatization contract.

(4) Each state contracting agency shall notify, in writing, the State Contracting Standards Board, of any changes to a Board approved business case, as a proposed amendment to the business case, for review and approval by the Board. The Board may approve or disapprove of any such proposed amendment to a business case within thirty days of the receipt of such proposed amendment.

(e) (1) The privatization contract requirements, as defined in subsection (d) of this section, will apply to quasi-publics, constituent units of higher education and the judicial and legislative branches of state government in accordance with the implementation dates contained in section 46 of this act.

(2) The Board shall conduct a study of the privatization policies and practices of quasi-public entities and the constituent units of higher education by January 1, 2008.

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Article 4. Legal and Contractual Remedies

Part 26. Pre-Litigation Resolution of Controversies

Sec. 113. (NEW) (Effective July 1, 2008) Authority to Resolve Protested Solicitations and Awards²³⁷.

The State Contracting Standards Board may, in its discretion, establish, by Regulation, a procedure for resolving protested solicitations or awards.

Sec. 114. (NEW and Recodification) (Effective July 1, 2008) Authority to Disqualify Contractors, Bidders or Proposers; Recommendations from the Commissioner of Administrative Services, Commissioner of Public Works, Commissioner of Transportation, Chief Executive of each constituent unit of the State System of Higher Education and other head of state contracting agencies²³⁸.

(a) After reasonable notice, a hearing and consultation with the relevant state contracting agency and the Attorney General, the State Contracting Standards Board, acting through a sub-committee of three members appointed by the Chair, may disqualify any contractor, bidder or proposer, for a period of up to five years, from bidding on, applying for, or participating as a contractor or subcontractor under, contracts with the state. Such disqualification shall be upon the vote of two-thirds of the members of the board sub-committee present and voting for that purpose. Such hearing shall be conducted in accordance with chapter 54 of the general statutes. The board sub-committee shall issue a written decision not later than ninety days after the conclusion of such hearing and state in the decision the reasons for the action taken and, if the contractor, bidder or proposer is being disqualified, the period of such disqualification. The existence of a cause for disqualification, as described in subsection (b) of this section, may not be the sole factor to be considered by the board sub-committee in determining whether the contractor, bidder or proposer shall be disqualified. In determining whether to disqualify a contractor, bidder or proposer, the board shall consider the seriousness of the acts or omissions of the contractor, bidder or proposer and any mitigating factors. The board sub-committee shall send the decision to the contractor by certified mail, return receipt requested. The written decision shall be a final decision for purposes of sections 4-180 and 4-183 of the general statutes.

(b) Causes for such disqualification shall include the following:

(1) Conviction of, or entry of a plea of guilty or nolo contendere or admission to, the commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

²³⁷ Derived from Sec. 9-101 of the ABA Code.

²³⁸ Derived from Sec. 7 of P.A. 06-1; see also, Sec. 9-102 and 9-507 of the ABA Model Code. Replaces and repeals: General Statutes, Secs. 4a-52a(b)-(d), 4a-62, 31-57c and 31-57d.

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(2) Conviction of, or entry of a plea of guilty or nolo contendere or admission to, the violation of any state or federal law for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which affects responsibility as a state contractor;

(3) Conviction of, or entry of a plea of guilty or nolo contendere or admission to, a violation of any state or federal antitrust, collusion or conspiracy law arising out of the submission of bids or proposals on a public or private contract or subcontract;

(4) Accumulation of two or more suspensions pursuant to section 115 of this act within a twenty-four-month period;

(5) A willful, negligent or reckless failure to perform in accordance with the terms of one or more contracts or subcontracts, agreements or transactions with state contracting agencies;

(6) A history of failure to perform or of unsatisfactory performance on one or more public contracts, agreements or transactions with state contracting agencies²³⁹;

(7) A willful violation of a statutory or regulatory provision or requirement applicable to a contract, agreement or transaction with state contracting agencies;

(8) A willful or egregious violation of the ethical standards set forth in sections 1-84 and 1-86e of the general statutes and section 84 of this act, as amended by this act; or

(9) Any other cause or conduct the board determines to be so serious and compelling as to affect responsibility as a state contractor, including, but not limited to:

(A) disqualification by another state for cause;

(B) the fraudulent, criminal or seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with a contractor, bidder or proposer of such contractor, bidder or proposer, provided such conduct occurred in connection with the individual's performance of duties for or on behalf of such contractor, bidder or proposer and such contractor, bidder or proposer knew or had reason to know of such conduct. The term "other seriously improper conduct" shall not include advice from an attorney, accountant or other paid consultant if it was reasonable for the contractor to rely on such advice²⁴⁰.

²³⁹ Recodification and repeal of General Statutes, Sec. 31-57c(d)(5), which will be repealed.

²⁴⁰ Recodification and repeal of General Statutes, Sec. 31-57c(e)(1), which will be repealed.

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(C) The fraudulent, criminal or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee or other individual associated with the contractor, bidder or proposer who participated in, knew of or had reason to know of the conduct of the contractor, bidder or proposer²⁴¹.

(D) The fraudulent, criminal or other seriously improper conduct of one contractor, bidder or proposer participating in a joint venture or similar arrangement may be imputed to other participating contractors, bidders or proposers if the conduct occurred for or on behalf of the joint venture or similar arrangement and these contractors, bidders or proposers knew of or had reason to know of such conduct²⁴².

(D) the existence of an informal or formal business relationship with a contractor who has been disqualified from bidding or proposing on state contracts.

(c) Upon written request by the affected state contractor, bidder or proposer, the State Contracting Standards Board may reduce the period or extent of disqualification for a contractor, bidder or proposer if documentation supporting any of the following reasons for modification is provided to the board by the contractor, bidder or proposer:

- (1) Newly discovered material evidence;
- (2) Reversal of the conviction upon which the disqualification was based;
- (3) Bona fide change in ownership or management; or
- (4) Elimination of other causes for which the disqualification was imposed.

(d) Disqualification of a contractor, bidder or proposer is a serious action that shall be used only in the public interest and for the state government's protection and not for purposes of punishment or in lieu of other applicable enforcement or compliance procedures. The causes for and consequences of disqualification under this section shall be separate from and in addition to causes for and consequences of disqualification under other sections of the general statutes²⁴³. The Commissioners of Administrative Services, Public Works and Transportation, the Chief Executive of each constituent unit of the State System of Higher Education and other heads of state contracting agencies shall conduct reviews of contractors and shall file reports pertaining to any of the reasons set forth in this section of this act that may be the basis for

²⁴¹ Recodification and repeal of General Statutes, Sec. 31-57c(e)(2), which will be repealed.

²⁴² Recodification and repeal of General Statutes, Sec. 31-57c(e)(3), which will be repealed.

²⁴³ Recodification and repeal of General Statutes, Sec. 31-57c(b), which will be repealed. The former provisions are Secs. 4b-95, 31-53a, **31-57a** and 31-57b

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disqualification. Each of the foregoing may file complaints with the State Contracting Standards Board.

(e) The State Contracting Standards Board may grant an exception permitting a disqualified contractor to participate in a particular contract or subcontract upon a written determination by the head of the contract awarding agency that there is good cause, in the interest of the public, for such action²⁴⁴.

Sec. 115. (NEW)²⁴⁵ (Effective July 1, 2008) Suspension of Contractors, Bidders or Proposers²⁴⁵.

(a) After reasonable notice and a hearing, conducted in accordance with the provisions of chapter 54 of the general statutes, the department head of any state contracting agency may suspend any contractor, bidder or proposer for a period of not more than six months from bidding on, applying for or performing work as a contractor or subcontractor under, contracts with the state. The department head shall issue a written decision not later than ninety days after the conclusion of such hearing and state in the decision the reasons for the action taken and, if the contractor, bidder or proposer is being suspended, the period of such suspension. The existence of a cause for suspension, as described in subsection (b) of this section, may not be the sole factor to be considered by the Board sub-committee in determining whether the contractor, bidder or proposer shall be suspended. In determining whether to suspend a contractor, bidder or proposer, the department head shall consider the seriousness of the acts or omissions of the contractor, bidder or proposer and any mitigating factors. The department head shall send such decision to the contractor and the State Contracting Standards Board by certified mail, return receipt requested. Such decision shall be a final decision for purposes of sections 4-180 and 4-183 of the general statutes.

(b) Causes for such suspension shall include the following:

(1) Failure without good cause to perform in accordance with specifications or within the time limits provided in the contract;

(2) A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for suspension;

(3) Any cause the complainant state contracting agency determines to be so serious and compelling as to affect the responsibility of a state contractor, including suspension by another state contracting agency for cause; or

²⁴⁴ Recodification and repeal of General Statutes, Sec. 31-57c(g), which will be repealed.

²⁴⁵ Derived from Sec. 8 of P.A. 06-1; see also, Sec. 9-102 and 9-507 of the ABA Model Code.

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(4) A violation of the ethical standards set forth in sections 1-84 and 1-86e of the general statutes and section 84 of this act.

(c) The State Contracting Standards Board may grant an exception permitting a suspended contractor to participate in a particular contract or subcontract upon a written determination by Board that there is good cause for such exception and that such exception is in the best interest of the state.

(d) The departments of each state contracting agency shall conduct reviews of contractors and shall file reports pertaining to any of the reasons set forth in this section of this act that may be the basis for disqualification.

Sec. 116. (NEW) (Effective July 1, 2008) Award Contest²⁴⁶.

(a) Any bidder or proposer on a state contract may contest the solicitation or award of a contract to a sub-committee of the State Contracting Standards Board, appointed by the Chair. Such contest shall be submitted, in writing, not later than fourteen days after such bidder or proposer knew or should have known of the facts giving rise to such contest and shall be limited to the procedural elements of the solicitation or award process, or claims of an unauthorized or unwarranted, noncompetitive selection process.

(b) The assigned sub-committee of the State Contracting Standards Board, shall have the authority to settle and resolve any such contest.

(c) In the event such contest is not resolved by mutual agreement, the assigned sub-committee of the State Contracting Standards Board, shall issue a decision, in writing, not later than thirty days after receipt of any such contest. Such decision shall:

(1) Describe the procedure used by such agency in soliciting and awarding such contract;

(2) Indicate such agency's finding as to the merits of such bidder or proposers contest; and,

(3) Inform such bidder or proposer of the right to review, as provided in section 117 of this act.

(d) A copy of such decision shall be provided to such bidder or proposer.

²⁴⁶Derived from Sec. 9 of P.A. 06-1. Derived from Sec. 9-506 of the ABA Model Code.

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Sec. 117. (NEW) (Effective July 1, 2008) Appeal²⁴⁷.

(a) Any contractor, bidder or proposer may appeal a decision issued by the Board sub-committee or department head, pursuant to sections 114, 115 and 116 of this act to the State Contracting Standards Board.

(b) Any such request for review shall be filed with the board not later than fourteen days after such contractor, bidder or proposers receipt of a decision issued pursuant to sections 114, 115 and 116 of this act. Such bidder or proposer shall set forth the facts supporting its claim in sufficient detail for the State Contracting Standards Board to determine whether the procedural elements of the solicitation or award failed to comply with the code or whether an unauthorized or unwarranted, noncompetitive selection process was utilized.

(c) Any appeal filed pursuant to subsection (b) of this section shall not be deemed to prohibit the award or execution of any such contested contract.

(d) The State Contracting Standards Board shall create a three-member appeals review subcommittee, not including any members of the subcommittee set forth in section 116 of this act, which shall review any request filed pursuant to subsection (b) of this section and decide whether such solicitation or award was in compliance with the code, and whether allegations of an unauthorized or unwarranted, noncompetitive selection process have been demonstrated. A unanimous vote of such subcommittee shall be dispositive of any such appeal. A split vote of such subcommittee shall result in a review of the appeal by the full membership of the board which, by a vote of two-thirds of its members present and voting for such purpose, shall decide whether the solicitation or award of such contract was in compliance with the code and whether allegations of an unauthorized or unwarranted, noncompetitive selection process have been demonstrated.

(e) Such appeals review subcommittee shall issue a written decision or take other appropriate action on each appeal not later than ninety days after the filing of such appeal. A written copy of any such decision shall be provided to such bidder.

(f) In the event of an appeal review by the full board, the board shall issue a written decision or take other appropriate action on such appeal not later than ninety days after receipt of the appeal from the appeals review subcommittee. A written copy of any such decision shall be provided to such bidder or proposer.

(g) In the event that the appeals review subcommittee or the board determines that a procedural violation occurred, or that allegations of an unauthorized or unwarranted, noncompetitive selection process have been demonstrated, the board shall direct the state contracting agency to take corrective action not later than thirty days after the date of the subcommittee's or board's decision, as applicable.

²⁴⁷Derived from Sec. 10 of P.A. 06-1.

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(h) In the event such appeal is found to be frivolous by the appeals review subcommittee or the full board, such frivolous appeal may serve as a basis for disqualification pursuant to section 114 of this act.

(i) Any three members of the board may request a full board review of any contract deliberation or award process of a state contracting agency.

(j) A decision issued by the board or appeals review subcommittee under this section shall be final and not subject to appeal under sections 4-180 and 4-183 of the general statutes.

Sec. 118. Reserved²⁴⁸.

Sec. 119. Reserved²⁴⁹.

Sec. 120. (NEW) (Effective July 1, 2008) Decisions of the State Contracting Standards Board²⁵⁰.

Acting by one or more of its members, the State Contracting Standards Board shall issue a decision in writing or take other appropriate action on each appeal submitted. A copy of any decision shall be provided to all parties, the department head of the state contracting agency and the Chief Procurement Officer.

Part 27. Solicitations or Awards in Violation of Law

Sec. 121. (NEW) (Effective July 1, 2008) Applicability of this Part²⁵¹.

The provisions of this Part apply where it is determined administratively, or upon administrative or judicial review, that a solicitation or award of a contract is in violation of law.

Sec. 122. (NEW) (Effective July 1, 2008) Remedies Prior to An Award²⁵².

If prior to award it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be:

- (a) cancelled; or
- (b) revised to comply with the law.

²⁴⁸ Reserved

²⁴⁹ Reserved

²⁵⁰ Derived from Sec. 9-504 of the ABA Model Code.

²⁵¹ Derived from Sec. 9-201 of the ABA Model Code.

²⁵² Derived from Sec. 9-202 of the ABA Model Code.

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Sec. 123. (NEW) (Effective July 1, 2008) Remedies After An
Award²⁵³.

If after an award it is determined that a solicitation or award of a contract is in violation of law, then:

(a) if the person awarded the contract has not acted fraudulently or in bad faith:

(1) the contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the State; or

(2) the contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, prior to the termination.

(b) if the person awarded the contract has acted fraudulently or in bad faith:

(1) the contract may be declared null and void; or

(2) the contract may be ratified and affirmed if such action is in the best interests of the State, as determined by the State Contracting Standards Board, in writing, without prejudice to the State's rights to such damages as may be appropriate.

Part 28. Interest

Sec. 124. (NEW) (Effective July 1, 2008) Remedies After An
Award²⁵⁴.

Interest on amounts ultimately determined to be due to a contractor or the State shall be payable at the statutory rate applicable to judgments from the date the claim arose through the date of decision or judgment, whichever is later.

²⁵³ Derived from Sec. 9-203 of the ABA Model Code.

²⁵⁴ Derived from Sec. 9-301 of the ABA Model Code.

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Article 5. Procurement for Infrastructure Facilities and Services

Part 29. Contracting for Infrastructure Facilities and Services

Sec. 125. (NEW) (Effective July 1, 2008) Project Delivery Methods Authorized²⁵⁵.

(a) The following project delivery methods are authorized for procurements relating to infrastructure facilities and services in this State:

- (1) Design-bid-build (including construction management at-risk);
- (2) Operations and maintenance; and,
- (3) Design-build and related methods, as may be set forth in regulation.

(b) Participation in a report or study that is subsequently used in the preparation of design requirements for a project shall not disqualify a firm from participating as a member of a proposing team in a design-build or related procurement unless such participation would provide the firm with a substantial competitive advantage, as determined by the state contracting agency in writing stating the reasons therefore.

Sec. 126. (NEW) (Effective July 1, 2008) Source Selection Methods Assigned to Project Delivery Methods²⁵⁶.

(a) **Scope.** This Section specifies the source selection methods applicable to procurements for the project delivery methods identified in Section 56 of this act, except as provided in sections 59 through 60 and 64 of this act.

(b) Design-bid-build

(1) **Design:** Architectural and Engineering Services. The qualifications based selection process set forth in section 129 of this act shall be used to procure architectural and engineering services in design-bid-build procurements.

(2) **Construction.** Competitive sealed bidding, as set forth in section 57 of this act, shall be used to procure construction in design-bid-build procurements, except where regulations authorize the use of competitive sealed proposals, as set forth in section 58 of this act, for contracts for construction management at-risk.

²⁵⁵ Derived from Sec. 5-201 of the ABA Model Code.

²⁵⁶ Derived from Sec. 5-202 of the ABA Model Code.

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(3) Operations and Maintenance. Contracts for operations and maintenance shall be procured as set forth in section 56 of this act.

(4) Design-build and related methods as set forth in regulation. Contracts for design-build and related methods as set forth in regulation shall be procured by competitive sealed proposals, as set forth in section 58 of this act, except that the regulations may describe the circumstances under which particular design-build procurements will not require the submission of proposal development documents as required in section 128(b)(2) of this act.

Sec. 127. (NEW) (Effective July 1, 2008) Choice of Project Delivery Methods²⁵⁷.

The Departments of Administrative Services, Public Works and Transportation, and the constituent units of the state system of higher education shall promulgate regulations, approved by the State Contracting Standards Board, describing the project delivery methods listed in section 125 of this act. These regulations shall:

(a) set forth criteria to be used in determining which project delivery method is to be used for a particular project;

(b) grant to the head of the State contracting agency or designee, responsible for carrying out the project, the discretion to select an appropriate project delivery method for a particular project;

(c) describe the bond, insurance, and other security provisions contained in this act that apply to each project;

(d) describe the appropriate contract clauses and fiscal responsibility requirements contained in this act that apply to each project; and

(e) require the procurement officer to execute and include in the contract file a written statement setting forth the facts which led to the selection of a particular project delivery method for each project.

Sec. 128. (NEW) (Effective July 1, 2008) Additional Procedures Applicable to Procurement of Certain Project Delivery Methods²⁵⁸.

(a) *Applicability.* In addition to the requirements of section 58 of this act, the procedures in this Section shall apply to procurements for design-build or related method authorized by regulation.

(b) *Content of Request for Proposals.* Each Request for Proposals for design-build or related methods authorized by regulation:

²⁵⁷ Derived from Sec. 5-203 of the ABA Model Code.

²⁵⁸ Derived from Sec. 5-204 of the ABA Model Code.

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- (1) shall include design requirements;
 - (2) shall solicit proposal development documents; and
 - (3) may, when the State contracting agency determines that the cost of preparing proposals is high in view of the size, estimated price, and complexity of the procurement:
 - (i) prequalify proposers by issuing a Request for Qualifications in advance of the Request for Proposals; and
 - (ii) select a short list of responsible proposers prior to discussions and evaluations under section 58(f) of this act, provided that the number of proposals that will be short-listed is stated in the Request for Proposals and prompt public notice is given to all proposers as to which proposals have been short-listed; or
 - (iii) pay stipends to unsuccessful proposers, provided that the amount of such stipends and the terms under which stipends will be paid are stated in the Request for Proposals.
- (c) *Evaluation Factors.* Each Request for Proposals for design-build or related methods authorized by regulation:
- (1) shall state the relative importance of (i) demonstrated compliance with the design requirements; (ii) proposer qualifications; (iii) financial capacity; (iv) project schedule; (v) price (or life-cycle price for design-build related methods procurements as may be authorized by regulation); and (vi) other factors, if any; and
 - (2) shall require each proposer, when the contract price is estimated to exceed \$10,000,000 or in circumstances established by regulation, to identify an Independent Peer Reviewer whose competence and qualifications to provide such services shall be an additional evaluation factor in the award of the contract.

Part 30. Architectural and Engineering Services. Generally

Sec. 129. (NEW) (Effective July 1, 2008) Architectural and Engineering Services²⁵⁹.

(a) *Policy.* It is the policy of this State to publicly announce all requirements for Architectural and Engineering Services and to negotiate contracts for Architectural and Engineering Services on the basis of demonstrated competence and qualification for the type of services required, and at fair and reasonable prices.

²⁵⁹ Derived from Sec. 5-205 of the ABA Model Code.

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(b) Architectural and Engineering Selection Committee. In the procurement of Architectural and Engineering Services, the Commissioner of Administrative Services shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The Commissioner of Administrative Services or designee, the Agency Procurement Officer or designee and the project manager for the project in question shall comprise an Architect-Engineer Selection Committee for each Architectural and Engineering Services contract over \$50,000. The Selection Committee for Architectural and Engineering Services contracts under this amount shall be established in accordance with regulations promulgated by the State Contracting Standards Board. The Selection Committee shall evaluate current statements of qualifications and performance data on file with the State, together with those that may be submitted by other firms regarding the proposed contract. The Selection Committee shall conduct discussions with no less than three firms regarding the contract and the relative utility of alternative methods of approach for furnishing the required services, and then shall select therefrom, in order of preference, based upon criteria established and published by the Selection Committee, no less than three of the firms deemed to be the most highly qualified to provide the services required.

(c) Negotiation. The department head of the state contracting agency or designee shall negotiate a contract with the highest qualified firm for Architectural and Engineering Services at compensation which the agency head determines, in writing, to be fair and reasonable to the State. In making this decision, the agency head shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered. Should the agency head be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price the agency head determines to be fair and reasonable to the State, negotiations with that firm shall be formally terminated. The agency head shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the agency head shall formally terminate negotiations. The agency head shall then undertake negotiations with the third most qualified firm. Should the agency head be unable to negotiate a contract at a fair and reasonable price with any of the selected firms, the agency head shall select additional firms in order of their competence and qualifications, and the agency shall continue negotiations in accordance with this Section until an agreement is reached.

Part 31. Acquisition and Inventory of State Property

Sec. 130. (Recodification) (Effective July 1, 2008) Commissioner of Public Works' Duties re State Realty. Total cost basis projects. Demolitions. Disclosure of principals. Audit of Contractors²⁶⁰.

In acting as the determining authority in fulfilling the needs of the various departments and agencies of state government, except the Legislative Department, and choosing the method of acquisition which shall be pursued in the open competitive market, the commissioner of public works shall:

²⁶⁰ Recodification and repeal of General Statutes, Sec. 4b-24.

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(a)

(1) [(A)] Compile and maintain comprehensive and complete inventories of all the improved and unimproved real estate available to the state by virtue of ownership or lease. The actual mechanical compilation of such inventories may be handled, at the request of the commissioner, by the Secretary of the Office of Policy and Management; provided such compilation shall be available to the Commissioner of Public Works at all times. Such inventory shall be used by the commissioner as the primary source for meeting state needs, and shall be shared with the review board and with the Secretary of the Office of Policy and Management;

(2) [(B)] prepare an annual inventory of improved and unimproved real estate which is owned by the state and which is unused or underutilized and study and make recommendations concerning the reuse or disposition of such real estate;

(3) [(C)] identify in the inventories required under subparagraphs (1) and (2) [(A) and (B)], existing buildings that (i) are of historic, architectural or cultural significance, including buildings listed or eligible to be listed in the national register established under the National Historic Preservation Act of 1966, 80 Stat. 915 (1966), 16 USC 470a and (ii) would be suitable, whether or not in need of repair, alteration or addition, to meet the public building needs of the state or to meet the needs of the public in accordance with the provisions of subsection (m) of section 4b-23.

(b) [(2)] Whenever realty uses designed uniquely for state use and for periods over five years are concerned, the commissioner shall, whenever practicable, attempt to purchase, lease-purchase or construct on state-owned land. In such cases leases shall be used only when other possibilities have been eliminated as not feasible, in the opinion of the commissioner.

(c) [(3)] Whenever the commissioner has established specific plans and specifications for new construction on state land or new construction for sale to the state:

(1)[(A)] If it appears to the commissioner that the cost of the project shall be less than five hundred thousand dollars, contracts shall be made, where practicable, through a process of sealed bidding as provided in section 74 of this act [4b-91] relating to projects in excess of five hundred thousand dollars;

(2)[(B)] if it appears to the commissioner that the space needs of the requesting agency are less than five thousand square feet, the commissioner shall, whenever practicable, carry on advertising, in accordance with the provisions of section 4b-34 relating to projects in excess of five thousand square feet, in order to allow an equal opportunity for third parties to do business with the state without regard to political affiliation, political contributions or relationships with persons in state, federal or local governmental positions.

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(d) [(4)] The commissioner may designate projects to be accomplished on a total cost basis for

(1) [(A)] new facilities to provide for the substantial space needs of a requesting agency,

(2) [(B)] the installation of mechanical or electrical equipment systems in existing state facilities, or

(3) [(C)] the demolition of any state facility that the commissioner is authorized to demolish under the general statutes. If the commissioner designates a project as a designated total cost basis project, the commissioner may enter into a single contract with a private developer which may include such project elements as site acquisition, architectural design and construction.

The commissioner shall select a private developer from among the developers who are selected and recommended by the award panels established in this subdivision. All contracts for such designated projects shall be based on competitive proposals received by the commissioner, who shall give notice of such project, and specifications for the project, by advertising, at least once, in a newspaper having a substantial circulation in the area in which such project is to be located. No contract which includes the construction, reconstruction, alteration, remodeling, repair or demolition of any public building for work by the state for which the total cost is estimated to be more than five hundred thousand dollars may be awarded to a person who is not prequalified for the work in accordance with section 84 of this act [4a-100]. The commissioner shall determine all other requirements and conditions for such proposals and awards and shall have sole responsibility for all other aspects of such contracts. Such contracts shall state clearly the responsibilities of the developer to deliver a completed and acceptable product on a date certain, the maximum cost of the project and, as a separate item, the cost of site acquisition, if applicable. No such contract may be entered into by the commissioner without the prior approval of the State Properties Review Board and unless funding has been authorized pursuant to the general statutes or a public or special act.

(e) [(5)] Whenever a bid is made to the commissioner for any purpose regarding the use of land or whenever any person proposes to sell or lease land to the state, the bidder or such person shall be the owner of the land, or the commissioner shall have the option to void any contract subsequently made with said bidder or third person.

(f) [(6)] In all dealings with the commissioner the owner of record or beneficial owner shall be disclosed to the commissioner and the bid shall be revealed to the owner of record or beneficial owner or the commissioner shall have the option to void any contract subsequently made concerning any such dealing.

(g) [(7)] After the authorization of a project under the provisions of this section [4b-23], the public auditors of the state and the auditors or accountants of the Commissioner of Public Works shall have the right to audit the

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books of any contractor employed by the commissioner pursuant to such authorization, or of any party negotiating with the commissioner for the acquisition of land by lease or otherwise; provided, however, that any such audit shall be limited to the project authorized by the commissioner and the Properties Review Board, and provided further that in the case of a party negotiating with the commissioner, such audit may also be conducted after the negotiations have ended, if a contract is consummated with the commissioner.

*Part 32. State Construction Services Selection Panel and Connecticut
Health and Education Facilities Authority Construction Services Panel*

Sec. 131. (Recodification) (Effective July 1, 2008) Definitions²⁶¹.

As used in [this section,] section 4b-1 and sections 132 to 135 of this act [4b-56 to 4b-59], inclusive, unless the context clearly requires otherwise:

- (a) "Commissioner" means the Commissioner of Public Works;
- (b) "Consultant" means (1) any architect, professional engineer, landscape architect, land surveyor, accountant, interior designer, environmental professional or construction administrator, who is registered or licensed to practice such person's profession in accordance with the applicable provisions of the general statutes, or (2) any planner or financial specialist;
- (c) "Consultant services" shall include those professional services rendered by architects, professional engineers, landscape architects, land surveyors, accountants, interior designers, environmental professionals, construction administrators, planners or financial specialists, as well as incidental services that members of these professions and those in their employ are authorized to perform;
- (d) "University of Connecticut library project" means a project to renovate and improve the Homer Babbidge Library at The University of Connecticut;
- (e) "Firm" means any individual, partnership, corporation, joint venture, association or other legal entity (1) authorized by law to practice the profession of architecture, landscape architecture, engineering, land surveying, accounting, interior design, environmental or construction administration, or (2) practicing the profession of planning or financial specialization;
- (f) "Priority higher education facility project" means any project which is part of a state program to repair, renovate, enlarge, equip, purchase or construct (1) instructional facilities, (2) academic core facilities, including library, research and laboratory facilities, (3) student residential or related student dining facilities, or (4) utility systems related to such projects, which are or will be operated under the jurisdiction of the board of trustees of any constituent unit of the state system of higher education, except The University of Connecticut provided the project is included in the comprehensive facilities master plan of the

²⁶¹ Recodification and repeal of General Statutes, Sec. 4b-55.

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constituent unit pursuant to section 10a-4a or in the most recent state facility plan of the Office of Policy and Management pursuant to section 4b-23;

(g) "Project" means any state program requiring consultant services if (1) the cost of such services is estimated to exceed fifty thousand dollars or, in the case of a constituent unit of the state system of higher education, the cost of such services is estimated to exceed three hundred thousand dollars, and (2) the construction costs in connection with such program are estimated to exceed five hundred thousand dollars; or, in the case of a constituent unit of the state system of higher education, other than The University of Connecticut, the construction costs in connection with such program are estimated to exceed two million dollars;

(h) "Selection panel" or "panel" means the State Construction Services Selection Panel established pursuant to subsection (a) of section 132 of this act [4b-56] or, in the case of a Connecticut Health and Education Facilities Authority project pursuant to section 10a-186a, means the Connecticut Health and Education Facilities Authority Construction Services Panel established pursuant to subsection (c) of section 132 of this act [4b-56];

(i) "User agency" means the state department or agency requesting the project or the agency for which such project is being undertaken pursuant to law;

(j) "Community court project" means (1) any project to renovate and improve a facility designated for the community court pilot program established pursuant to section 51-181c, and (2) the renovation and improvement of other state facilities required for the relocation of any state agency resulting from the placement of the community court;

(k) "Connecticut Juvenile Training School project" means a project (1) to develop on a designated site new facilities for a Connecticut Juvenile Training School in Middletown including, but not limited to, preparing a feasibility study for, designing, constructing, reconstructing, improving or equipping said facility for use by the Department of Children and Families, which is an emergency project because there is an immediate need for completion of said project to remedy overcrowding at Long Lane School; said school shall have an annual average daily population of not more than two hundred forty residents; or (2) to develop a separate facility for girls including, but not limited to, acquiring of land or buildings, designing, constructing, reconstructing, improving or equipping said facility for use by the Department of Children and Families;

(l) "Downtown Hartford higher education center project" means a project to develop a higher education center, as defined in subparagraph (B) of subdivision (2) of section 32-600, and as described in subsection (a) of section 32-612, for the regional community-technical college system;

(m) "Correctional facility project" means any project (1) which is part of a state program to repair, renovate, enlarge or construct facilities which are or will be operated by the Department of Correction, and (2) for which there is an

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immediate need for completion in order to remedy prison and jail overcrowding;
and

(n) "Juvenile detention center project" means any project (1) which is part of a state program to repair, renovate, enlarge or construct juvenile detention centers which are or will be operated by the Judicial Department, and (2) for which there is an immediate need for completion in order to remedy overcrowding.

Sec. 132. (Recodification) (Effective July 1, 2008) State Construction Services Selection Panel and Connecticut Health and Education Facilities Authority Construction Services Panel established. Membership. Terms²⁶².

(a) There shall be established within the Department of Public Works a State Construction Services Selection Panel which shall consist of five members. Four of such members shall be appointed by the commissioner, shall be current or retired employees of the Department of Public Works and shall serve for terms of one year from July first. The remaining member shall be appointed by the head or acting head of the user agency and shall serve only for deliberations involving the project for which he was appointed. If any vacancy occurs on the panel, the commissioner shall appoint a person for the unexpired term in accordance with the provisions of this subsection.

(b) The selection panel shall not be deemed to be a board or commission within the meaning of section 4-9a.

(c) There shall be established within the Department of Public Works a Connecticut Health and Education Facilities Authority Construction Services Panel which shall consist of five members: Three of whom shall be appointed by the Commissioner of Public Works and shall be current employees of the Department of Public Works; and the remaining members shall be appointed by the head or acting head of the user agency and shall serve only for deliberations involving the project for which such member was appointed. The members of the selection panel appointed by the Commissioner of Public Works shall serve for terms of one year from July first. If any vacancy occurs on the panel, the Commissioner of Public Works or the head or acting head of the user agency, as appropriate, shall appoint a person for the unexpired term in accordance with the provisions of this subsection.

(d) The panel established pursuant to subsection (c) of this section shall not be deemed to be a board or commission within the meaning of section 4-9a. Such panel shall be the selection panel only for Connecticut Health and Education Facilities Authority projects pursuant to section 10a-89b.

²⁶² Recodification and repeal of General Statutes, Sec. 4b-56.

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Sec. 133. (Recodification) (Effective July 1, 2008) Invitation of responses. Consideration by Selection Panel²⁶³.

(a) Whenever consultant services are required by the commissioner in fulfilling his responsibilities under section 4b-1 or as otherwise set forth in this act, and in the case of each project, the commissioner shall invite responses from such firms by advertisements inserted at least once in one or more newspapers having a circulation in each county in the state. The commissioner shall prescribe, by regulations adopted in accordance with chapter 54, the advance notice required for, the manner of submission, and conditions and requirements of, such responses.

(b) In the case of a project, the responses received shall be considered by the selection panel. The panel shall select from among those responding no fewer than three firms, which it determines in accordance with criteria established by the commissioner are most qualified to perform the required consultant services. In the case of any project that requires consultant services by an architect or professional engineer, additional criteria to be considered by such panel in selecting a list of the most qualified firms shall include: (1) Such firm's knowledge of this state's building and fire codes, and (2) the geographic location of such firm in relation to the geographic location of the proposed project. The selection panel shall submit a list of the most qualified firms to the commissioner for his consideration unless fewer than three responses for a particular project have been received, in which case, the panel shall submit the names of all firms who have submitted responses.

Sec. 134. (Recodification) (Effective July 1, 2008) Contracting for Consultant Services²⁶⁴.

(a)

(1) Except in the case of a project, a priority higher education facility project, a project, as defined in subdivision (16) of section 10a-109c, undertaken by The University of Connecticut, a community court project, a correctional facility project, a juvenile detention center project, and the downtown Hartford higher education center project, the commissioner shall negotiate a contract for consultant services with the firm most qualified, in the commissioner's judgment, at compensation which the commissioner determines is both fair and reasonable to the state.

(2) In the case of a project, the commissioner shall negotiate a contract for such services with the most qualified firm from among the list of firms submitted by the panel at compensation which the commissioner determines in writing to be fair and reasonable to the state. If the commissioner is unable to conclude a contract with any of the firms recommended by the panel, the commissioner shall, after issuing written findings of fact documenting the reasons for such inability, negotiate with

²⁶³ Recodification and repeal of General Statutes, Sec. 4b-57.

²⁶⁴ Recodification and repeal of General Statutes, Sec. 4b-58..

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those firms which the commissioner determines to be most qualified, at fair and reasonable compensation, to render the particular consultant services under consideration.

(3) Whenever consultant services are required for a priority higher education facility project, a community court project, a correctional facility project, a juvenile detention center project, or the downtown Hartford higher education center project, the commissioner shall select and interview at least three consultants or firms and shall negotiate a contract for consultant services with the firm most qualified, in the commissioner's judgment, at compensation which the commissioner determines is both fair and reasonable to the state, except that if, in the opinion of the commissioner, the Connecticut Juvenile Training School project needs to be expedited in order to meet the needs of the Department of Children and Families, the commissioner may waive such selection requirement. Except for the downtown Hartford higher education center project, the commissioner shall notify the State Properties Review Board of the commissioner's action not later than five business days after such action for its approval or disapproval in accordance with subsection (i) of section 4b-23, except that if, not later than fifteen days after such notice, a decision has not been made, the board shall be deemed to have approved such contract.

(b) In determining fair and reasonable compensation to be paid in accordance with subsection (a) of this section, the commissioner shall consider, in the following order of importance, the professional competence of the consultant, the technical merits of the proposal, the ability of the firm to perform the required services within the time and budgetary limits of the contract and the price for which the services are to be rendered.

Sec. 135. (Recodification) (Effective July 1, 2008) Commissioner to Adopt Regulations²⁶⁵.

The commissioner shall adopt regulations, subject to the approval of the State Contracting Standards Board, in accordance with chapter 54 to carry out the purposes of sections 132 to 135 of this act [4b-56 to 4b-59], inclusive.

Sec. 136. (Recodification) (Effective July 1, 2008) Contracting for Environmental Evaluations for Priority Higher Education Facility Projects²⁶⁶.

Notwithstanding any provisions of this chapter to the contrary, the Commissioner of Public Works may select and interview at least three responsible and qualified environmental professionals, and may negotiate with any one of such professionals a contract which is both fair and reasonable to the state in order to conduct the evaluations required by section 22a-1b for a priority

²⁶⁵ Recodification and repeal of General Statutes, Sec. 4b-59.

²⁶⁶ Recodification and repeal of General Statutes, Sec. 4b-55a.

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higher education facility project, as defined in subsection (f) of section 131 of this act [4b-55].

Sec. 137. (Recodification) (Effective July 1, 2008) Bidding on certain construction contracts for the Connecticut State University System²⁶⁷.

(a) With respect to any construction contract that is to be publicly let other than those projects administered under section 4b-52, the Department of Public Works, on behalf of the Connecticut State University system, may identify a list of potentially responsible qualified bidders for the particular contract. The Commissioner of Public Works shall give notice to those on the list of the work required and of the invitation to prequalify. The invitation to prequalify shall contain such information as the commissioner deems appropriate and a notice of the due date and address to send responses. Upon receipt of such responses, the Department of Public Works shall select each bidder that demonstrated the ability to post surety bonds required by such contract and the financial, managerial and technical ability and integrity necessary, without conflict of interest, for faithful and efficient performance of the work provided for in the contract. The commissioner shall evaluate whether a bidder is responsible and qualified. "Responsible and qualified bidder" shall mean the bidder who possesses the skill, ability and integrity necessary to faithful performance of the work based on objective criteria considering past performance and financial responsibility. In considering past performance the commissioner shall evaluate the skill, ability and integrity of bidders in terms of the bidders' fulfillment of contract obligations and the bidders' experience or lack of experience with projects of the size of the project for which bids are submitted.

(b) The Commissioner of Public Works shall give notice to bidders prequalified pursuant to subsection (a) of this section of the time and place where the public letting shall occur and shall include in the notice such information concerning the required work as appropriate. Each bid shall be kept sealed until opened publicly at the time and place as set forth in the notice soliciting such bid. The commissioner shall not award any construction contract after public letting, except to the responsible qualified bidder, submitting the lowest bid in compliance with the bid requirements. The commissioner may waive any minor irregularity in a bid, and may either reject all bids and again advertise for bids, or, if he deems it advisable, negotiate with other contractors who submitted bids in ascending order of bid prices without change in the contract, specifications, plans and other requirements.

(c) The invitation to bid on the construction contract awarded by the Commissioner of Public Works pursuant to this section shall contain such other terms and conditions and such provisions for penalties, as the commissioner deems appropriate.

(d) The Commissioner of Public Works shall require, for the protection of the state and the Connecticut State University system, such deposits, bonds and security in connection with the submission of bids, the awarding of

²⁶⁷ Recodification and repeal of General Statutes, Sec. 4b-102.

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construction contracts and the performance of work as the commissioner determines appropriate and in the public interest of the state.

Part 33. State Realty Contracts and Leases

Sec. 138. (Recodification) (Effective July 1, 2008) State realty contracts, compliance and enforcement. Tax escalation clauses; Attorney General's duties²⁶⁸.

(a) The expert members of the staff of the commissioner of Public Works shall be responsible for ensuring that sellers, lessors, and contractors strictly comply with all agreed plans, specifications, requirements and contractual terms.

(b) The Attorney General shall be responsible for determining the legal sufficiency of all contracts and leases, both as to substance and to form, and said Attorney General shall enforce all terms of all agreements, including, but not limited to, the obligations of all landlords to meet the terms of leases.

(c) The commissioner shall consult with the State Contracting Standards Board pertaining to the requirements of this act applicable to state realty contracts and leases.

(d) [(c)] In any lease containing a tax escalation clause, there shall be a provision that the state shall be relieved of all liability for increased taxes unless the landlord shall notify the commissioner of any pending increase in sufficient time to permit the state, on behalf of the landlord, to contest such increase if the commissioner determines it to be appropriate.

(e) [(d)] The Attorney General shall determine when to take any such appeal and shall be responsible for perfecting and prosecuting such appeal.

Sec. 139. (Recodification) (Effective July 1, 2008) Offices for state agencies. Leases. Compliance²⁶⁹.

(a) The Commissioner of Public Works shall assign office space and provide necessary accommodations in state-owned facilities for state agencies, other than institutions, the Legislative Department and the Judicial Department. Subject to the provisions of section 4b-23 the commissioner shall execute all leases for offices or any other type of space or facility necessary to meet the needs of all state agencies, the Judicial Department, the Division of Criminal Justice, the Public Defender Services Commission and institutions. Any provisions of the general statutes to the contrary notwithstanding the Commissioner of Public Works shall be the sole authority for negotiating such leases, provided any such leases, intending to provide for the needs of institutions, shall further be subject to the approval of the board of trustees of the institution involved and provided further, the Commissioner of Public Works shall

²⁶⁸ Recodification and repeal of Sec. 4b-26.

²⁶⁹ Recodification and repeal of General Statutes, Sec. 4b-30.

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expedite the handling of leases to meet emergency and short term needs. For the purposes of this section, the term "Judicial Department" does not include the courts of probate, the Division of Criminal Justice and the Public Defender Services Commission, except where they share facilities in state-maintained courts.

(b) The Commissioner of Public Works shall have the primary responsibility for ensuring that the lessor of the offices, space or other facilities which are covered by each such lease complies with the provisions of the lease. In carrying out such responsibility the commissioner shall inspect such offices, space and other facilities at least once annually.

Sec. 140. (Recodification) (Effective July 1, 2008) Sublease of land or buildings and facilities leased to the state²⁷⁰.

(a) The Commissioner of Public Works may, subject to the approval of the State Properties Review Board, sublet land or buildings, or both, and facilities leased to the state to (1) municipalities for municipal use, or (2) private individuals or concerns for private use, when such sublet land or buildings, or both, and facilities are otherwise not used or needed for state use and such action seems desirable to produce income or is otherwise in the public interest. The term of such sublet agreement shall not be extended by the exercise of any option available to the state under the terms of the state's lease.

(b) The commissioner shall deposit all payments received under this section in the General Fund and each such payment shall be credited to the appropriation made from such fund for the lease of such sublet land or buildings, or both, and facilities.

Sec. 141. (Recodification) (Effective July 1, 2008) Renewal of state leases²⁷¹.

All renewals of state leases existing on July 1, 1975, shall be subject to the approval of the commissioner and the State Properties Review Board under regulations to be adopted by said commissioner and said board.

Sec. 142. (Recodification) (Effective July 1, 2008) Disclosure of persons having financial interest in property leased by state²⁷².

(a) Any person, firm, partnership, association, corporation or other entity, seeking to enter into a lease or lease-purchase agreement with the state through the Commissioner of Public Works, shall file a sworn statement with said commissioner disclosing the names of any persons having a financial interest in the property or premises involved, including the beneficiary of any undisclosed trust or the equitable owner of such property or premises. Corporate applicants

²⁷⁰ Recodification and repeal of General Statutes, Sec. 4b-30a.

²⁷¹ Recodification and repeal of Sec. 4b-32.

²⁷² Recodification and repeal of General Statutes, Sec. 4b-33.

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shall disclose the names and addresses of officers and stockholders, except that this requirement shall not apply to publicly held corporations.

(b) If, before the approval of any such lease, lease-purchase agreement or renewal of such lease or agreement, by the State Properties Review Board, there is a change in the persons or the stockholders of a corporation, having a financial interest in the property or premises involved, the applicant shall submit an affidavit to the Commissioner of Public Works indicating the change, not later than five business days after the change. The commissioner shall forward a copy of such affidavit to the State Properties Review Board upon receipt.

(c) Failure to make any disclosure required by this section to the Commissioner of Public Works shall be punishable by a civil penalty of not more than one thousand dollars, which may be imposed by such commissioner after notice and opportunity to be heard at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive.

Sec. 143. (Recodification) (Effective July 1, 2008) Advertising for space. List of prospective lessors. Space inventory. Notice to Connecticut Association of Realtors. Lease from political subdivisions²⁷³.

(a) Except as provided under subsection (e) of this section, whenever it appears from the specifications of the requesting agency or institution that the space needs equal or exceed two thousand five hundred square feet and the Commissioner of Public Works has determined that such needs will be met by lease of space, the commissioner shall give public notice of such space needs and specifications by advertising, at least once, in a newspaper having a substantial circulation in the area in which such space is sought, no less than fifteen days prior to the date of final selection. A copy of such notice shall be sent to the regional chapter of the Connecticut Association of Realtors serving the area in which such space is sought. The provisions of this subsection shall not be construed to require the commissioner to lease space only from persons responding to such advertisements.

(b) The commissioner shall maintain a list of prospective lessors, which shall be updated at least annually after suitable notice to the public through the various media in the state.

(c) The commissioner shall maintain and continuously update an inventory of potential space to lease.

(d) Whenever space sufficient to meet the needs of a requesting agency or institution is owned by a political subdivision of the state and is available for lease, the commissioner may lease such space without complying with the requirements of subsection (a) of this section, if he has determined that the rent and other terms of the proposed lease are at least as favorable to the state as prevailing rental rates and terms for privately owned space.

²⁷³ Recodification and repeal of General Statutes, Sec. 4b-34.

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(e) The provisions of subsection (a) of this section shall not apply in the case of (1) a terminating lease which the commissioner decides to renegotiate, if the commissioner submits his proposal to the State Properties Review Board not later than nine months before the expiration of such lease, (2) a lease (A) which is renegotiated or on holdover status, for a term of not more than eighteen months, and (B) which is for an agency that is scheduled to move into a state-owned building, or (3) the lease of new facilities following a declaration by the commissioner that (A) an emergency exists because a state facility has been damaged, destroyed or otherwise rendered unusable due to any cause and (B) such emergency would adversely affect public safety or the proper conduct of essential state governmental operations. The State Properties Review Board shall approve or disapprove a lease proposal under subdivision (3) of this subsection within five days after receipt of the proposal.

Sec. 144. (Recodification) (Effective July 1, 2008) Lease of state-owned land to private developers. Lease back with option to purchase²⁷⁴.

Subject to the provisions of section 139 of this act [4b-30] the Commissioner of Public Works may lease state-owned land to private developers for construction of buildings and facilities to meet the needs of agencies and institutions, provided such developers shall agree to lease such buildings and facilities back to the state with options to purchase. Such options to purchase shall give the state the alternative of purchasing such building and facilities for a lump sum at a stated time, or times, during or at the end of the lease term; or to purchase the same by paying the purchase price in specified installments over a stated period of time.

Sec. 145. (Recodification) (Effective July 1, 2008) Contracts for Construction of Buildings or Facilities on State-Owned Land. Lease to state with provision to purchase²⁷⁵.

Subject to the provisions of section 139 of this act [4b-30], the commissioner may enter into contracts for the construction upon state-owned land of buildings or facilities or both, and the subsequent leasing thereof to the state to meet the needs of agencies and institutions, without first leasing the underlying state-owned land to the developer. Such contracts shall contain provisions providing for the state to buy the buildings and facilities for a lump sum at stated times during or at the end of the lease term or, at the state's option, to buy the same by paying the purchase price in installments.

Sec. 146. (Recodification) (Effective July 1, 2008) Terms of Option to Buy in Lease Agreement²⁷⁶.

In any lease entered into pursuant to sections 144 to 147 of this act [4b-35 to 4b-38], inclusive, and section 4b-39 of the general statutes, which grant the state an option to buy where the option price is to be paid in installments over a

²⁷⁴ Recodification and repeal of General Statutes, Sec. 4b-35.

²⁷⁵ Recodification and repeal of General Statutes, Sec. 4b-36.

²⁷⁶ Recodification and repeal of General Statutes, Sec. 4b-37.

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stated period of time, such installments shall be described in the lease so as to identify clearly those portions of the installments which represent interest, taxes or any other item the identification of which will promote the most economical and advantageous terms to the state.

Sec. 147. (Recodification) (Effective July 1, 2008) Lease of state-owned land or buildings for municipal or private use²⁷⁷.

(a) Subject to the provisions of section 139 of this act [4b-30] the commissioner may lease state-owned land or buildings, or both, and facilities to (1) municipalities for municipal use or (2) private individuals or concerns for private use, when such land, buildings and facilities are otherwise not used or needed for state use and such action seems desirable to produce income or is otherwise in the public interest, provided the Treasurer has determined that such action will not affect the status of any tax-exempt obligations issued or to be issued by the state of Connecticut. Each lease to a municipality under this subsection shall have a term of not more than twenty years.

(b) The commissioner may also lease any land or interest therein for the following purposes, provided the Treasurer has determined that such action will not affect the status of any tax-exempt obligations issued or to be issued by the state of Connecticut:

(1) To enter into leases of space on major pedestrian access levels and courtyards and rooftops of any public building with persons, firms or organizations engaged in commercial, cultural, educational or recreational activities. The commissioner shall establish a rental rate for such leased space equivalent to the prevailing commercial rate for comparable space devoted to a similar purpose in the vicinity of the public building. Such leases may be negotiated without competitive bids, but shall contain such terms and conditions and be negotiated pursuant to such procedures as the commissioner deems necessary to promote competition and to protect the public interest;

(2) To make available, on occasion, or to lease at such rates and on such other terms and conditions as the commissioner deems to be in the public interest, auditoriums, meeting rooms, courtyards, rooftops and lobbies of public buildings to persons, firms or organizations engaged in cultural, educational or passive recreational activities that will not disrupt the operation of the building.

(c) The commissioner shall deposit all payments received under leases or rentals executed pursuant to subdivisions (1) and (2) of subsection (b) of this section in the General Fund, and each such payment shall be credited to the appropriation made from such fund for the operation of such building.

(d) The commissioner may furnish utilities, maintenance, repair and other services to persons, firms or organizations leasing space pursuant to

²⁷⁷ Recodification and repeal of General Statutes, Sec. 4b-38.

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subdivisions (1) and (2) of subsection (b) of this section. Such services may be provided during and outside of regular working hours of state agencies.

(e) The commissioner shall, where practicable, give priority in the assignment of space on any major pedestrian access level not leased under the terms of subdivisions (1) and (2) of subsection (b) of this section, in such buildings, to state activities requiring regular contact with members of the public, including collocation requirements for human services agencies under section 4b-31. To the extent such space is unavailable, the commissioner shall provide space with maximum ease of access to building entrances.

(f) Not less than two weeks before executing a lease of land, a building or facility or an interest in land under subsection (a) or (b) of this section, with a person, firm or corporation in the private sector, for a term of six months or more, the commissioner shall notify in writing the chief executive officer of the municipality in which the land, building, facility or interest is located concerning the proposed lease and the manner in which the lessee proposes to use the land, building, facility or interest. Upon executing any such lease, the commissioner shall forward a copy to the assessor or board of assessors of the municipality in which the leased property is located.

(g) Notwithstanding the provisions of this section, the board of trustees of a constituent unit of the state system of higher education may lease land or buildings, or both, and facilities under the control and supervision of such board when such land, buildings or facilities are otherwise not used or needed for use by the constituent unit and such action seems desirable to produce income or is otherwise in the public interest, provided the Treasurer has determined that such action will not affect the status of any tax-exempt obligations issued or to be issued by the state of Connecticut. Upon executing any such lease, said board shall forward a copy to the assessor or board of assessors of the municipality in which the leased property is located. The proceeds from any lease or rental agreement pursuant to this subsection shall be retained by the constituent unit. Any land so leased for private use and the buildings and appurtenances thereon shall be subject to local assessment and taxation annually in the name of the lessee, assignee or sublessee, whichever has immediate right to occupancy of such land or building, by the town wherein situated as of the assessment day of such town next following the date of leasing. Such land and the buildings and appurtenances thereon shall not be included as property of the constituent unit for the purpose of computing a grant in lieu of taxes pursuant to section 12-19a provided, if such property is leased to an organization which, if the property were owned by or held in trust for such organization would not be liable for taxes with respect to such property under section 12-81, such organization shall be entitled to exemption from property taxes as the lessee under such lease, and the portion of such property exempted and leased to such organization shall be eligible for a grant in lieu of taxes pursuant to said section 12-19a.

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Part 34. Department of Transportation Consultants

Sec. 148. (Recodification) (Effective July 1, 2008) Definitions²⁷⁸.

As used in sections 148 to 157 of this act [13b-20b to 13b-20k], inclusive:

- (a) "Commissioner" means the Commissioner of Transportation;
- (b) "Selection panel" means the evaluation and selection panel established under section 149 of this act [13b-20c]; and
- (c) "Negotiation committee" means the committee established under section 162 of this act [3b-20d].

Sec. 149. (Recodification) (Effective July 1, 2008) Consultant Services Evaluation and Selection Panels²⁷⁹.

There is established within the Department of Transportation one or more consultant services evaluation and selection panels which shall consist of the following persons from within the department: (1) Three individuals appointed by the commissioner; (2) one individual appointed by the bureau head of the bureau for which the specific project is being performed, subject to the approval of the commissioner; and (3) one individual appointed by the bureau head of any other bureau if such other bureau is requesting the specific consultant services and if such bureau will be responsible for the administration of the consultant contract, subject to the approval of the commissioner.

Sec. 150. (Recodification) (Effective July 1, 2008) Negotiation Committees²⁸⁰.

There shall be within the Department of Transportation one or more negotiation committees each of which shall consist of three individuals, appointed by the commissioner from within the department, none of whom shall be members of a selection panel.

Sec. 151. (Recodification) (Effective July 1, 2008) Prequalification of Consultants. Letters of Interest for Provision of Consultant Services²⁸¹.

(a) Any consultant who desires to provide consulting services to the department in any calendar year shall be required to submit, not later than the fifteenth day of November immediately preceding such calendar year, information concerning their qualifications as may be required by the department. Such consultants shall provide the department with additional or updated information upon request by the department. The commissioner shall by January first,

²⁷⁸ Recodification and repeal of General Statutes, Sec. 13b-20b.

²⁷⁹ Recodification and repeal of General Statutes, Sec. 13b-20c.

²⁸⁰ Recodification and repeal of General Statutes, Sec. 13b-20d.

²⁸¹ Recodification and repeal of General Statutes, Sec. 13b-20e.

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annually, analyze the information submitted and determine those consultants qualified to perform services in areas of expertise established by the department. The commissioner shall publish annually, in accordance with the provisions of section 153 of this act [13b-20g], at any time between September first to October first, a notice that any person, firm or corporation which desires to be listed with the department as a consultant shall submit such information as required pursuant to this subsection to the department. Such notice shall also list the areas of expertise likely to be needed by the department during the next calendar year.

(b) Except as provided in subsection (c) of this section, any consultant, who has not submitted his qualifications to the department, pursuant to subsection (a) of this section, shall not be eligible to perform consultant services for the department. Any prequalified consultant, who has submitted his qualifications to the department, pursuant to subsection (a) of this section, who desires to provide consultant services to the department in response to a notice published in accordance with the provisions of section 153 of this act [13b-20g] shall submit only a letter of interest to that effect.

(c) If the prequalified list contains less than five consulting firms or does not include a consultant with a particular expertise required by the department, any consultant may submit a letter of interest to the department in response to a notice published, in accordance with the provisions of section 153 of this act [13b-20g]. The letter of interest shall set forth the consultant's qualifications for performing the specific service sought by the department. The selection panel shall then develop a qualified list of consultants in accordance with sections 155 and 156 of this act [13b-20i and 13b-20j].

Sec. 152. (Recodification) (Effective July 1, 2008) Evaluation of Consultants Having Active Agreements with Department²⁸².

The performance of all consultants who have active agreements with the department shall be evaluated by the supervising unit within the bureau utilizing the consultant services, at six-month intervals and upon completion of the consultant services. Each such evaluation shall be kept on file in the supervising unit, and] a copy filed with the permanent selection panel and a copy with the data repository designated by the State Contracting Standards Board.

Sec. 153. (Recodification) (Effective July 1, 2008) Notice of Need for Consultants. Responses²⁸³.

Whenever there is a need to engage a consultant, the commissioner shall publish a notice in appropriate professional magazines, professional newsletters and newspapers indicating the general scope of the assignment and requesting responses in accordance with subsection (b) of section 151 of this act [13b-20e], and at least once in one or more newspapers having a circulation in each county of the state. Responses shall be received at the Department of Transportation

²⁸² Recodification and repeal of General Statutes, Sec. 13b-20f.

²⁸³ Recodification and repeal of General Statutes, Sec. 13b-20g.

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not later than fourteen days after the last date on which the notice is published, unless additional time is specifically authorized by the commissioner, or not later than any specific date set forth in such notice. For certain specialized projects the notice may also solicit a full work proposal in addition to the technical qualifications of a firm.

Sec. 154. (Recodification) (Effective July 1, 2008) Selection Panel. Responsibilities. Meetings²⁸⁴.

(a) A selection panel shall be responsible for the preparation of the evaluation of interested consultants and for the development of a list of prospective consultants for each specific project.

(b) Meetings of a selection panel may be called any time during normal working hours. All motions and decisions shall require for passage the affirmative vote of at least three of the members.

(c) A selection panel shall screen all responses submitted in proper form for a project and shall select five consultant firms for further consideration for appointment and award of a contract. If fewer than five responses are received, all responses shall be considered as eligible for further consideration.

Sec. 155. (Recodification) (Effective July 1, 2008) Criteria for Selection of Consultants²⁸⁵.

In making the initial review of responses and in all other steps of the selection process, the commissioner and the selection panel shall be guided by the following objective criteria:

(a)[(1)] Specialized design and technical competence of the consultant firm regarding the types of service required;

(b)[(2)] Capacity and capability of the firm to perform the work, including any specialized services, within the time limitations;

(c)[(3)] Past record of performance on contracts with the state and other clients with respect to such factors as control of costs, quality of work, conformance with program and cooperation with client;

(d)[(4)] The volume of work performed by the firm within the previous three years for the Department of Transportation and the volume of work to be completed by such firm, if any, with the objective of effecting an equitable distribution of contracts among qualified firms and of assuring that the interest of the public in having available a substantial number of qualified firms is protected, provided, the principle of selection of the most highly qualified firms is not violated; and

²⁸⁴ Recodification and repeal of General Statutes, Sec. 13b-20h.

²⁸⁵ Recodification and repeal of General Statutes, Sec. 13b-20i.

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(e)[(5)] Where a full work proposal process is utilized, the degree to which the consultant's proposal satisfies the requirements of the department.

Sec. 156. (Recodification) (Effective July 1, 2008) Procedure for Selection of Consultants. Memorandum re application of evaluation Criteria²⁸⁶.

(a) A selection panel shall conduct interviews with the five consultant firms selected, or if fewer than five responses are received, the panel shall conduct interviews with all such firms and present the names of all the consultant firms responding to the commissioner.

(b) A selection panel shall proceed to furnish a list of the most qualified consultant firms to the commissioner, or the names of all the consultant firms responding if fewer than five respond. A panel shall prepare a memorandum of the selection process, indicating how the evaluation criteria were applied to determine the most qualified firms, which shall be available to the public after execution of the contract with the selected consultant. The commissioner shall select a consultant from among the list of firms submitted by a selection panel. After the commissioner has made his selection, the names of the consultant firms submitted to the commissioner shall be available to the public upon request. The commissioner shall also prepare a memorandum of the final phase of the selection process, indicating how he applied the evaluation criteria to determine the most qualified firm. Such memorandum shall be available to the public after execution of the contract with the selected consultant.

Sec. 157. (Recodification) (Effective July 1, 2008) Negotiations with Selected Consultants. Memorandum re negotiations²⁸⁷.

(a) Upon notification by the commissioner of his selection, the bureau head who will administer the contract shall notify the consultant of his selection. The selected firm shall be audited if necessary prior to negotiations and also during the contract life in accordance with federal statutes, the general statutes and regulations adopted pursuant to such statutes. A member of the negotiation committee shall be present at all such audit meetings.

(b) The selected consultant shall send its fee proposal to the negotiation committee. The appropriate bureau of the department shall prepare a comparative fee proposal that shall also be submitted to a negotiation committee. The committee shall complete negotiations and submit appropriate data to the initiating bureau for the purpose of processing an agreement.

(c) Prior to a contract being executed, the selected consultant shall execute a certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time of contracting and the consultant firm shall provide to the bureau responsible for

²⁸⁶ Recodification and repeal of General Statutes, Sec. 13b-20j.

²⁸⁷ Recodification and repeal of General Statutes, Sec. 13b-20k.

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administering the project a list of individuals who are expected to contribute to the project.

(d) Any such contract shall contain a provision that the original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the commissioner determines the contract price was increased due to inaccurate, incomplete or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within one year following the end of the contract.

(e) If the negotiation committee is unable to negotiate a satisfactory contract with the firm selected by the commissioner, at a price the committee determines to be fair, competitive and reasonable, negotiations with that firm shall be formally terminated. The commissioner shall select a consultant from the remaining firms on the list submitted by the selection panel and the procedure established under this section shall be followed.

(f) Should the negotiation committee be unable to negotiate a satisfactory contract with any of the firms selected by the panel, the panel shall select additional firms and the procedures established under section 156 of this act [3b-20j] and this section shall be followed.

(g) After award of a contract under sections 148 to 157 of this act [13b-20b to 13b-20k], inclusive, the negotiation committee shall prepare a memorandum setting forth the principal elements of the negotiations with each firm. Such memorandum shall contain sufficient detail to reflect the significant considerations controlling price and other terms of the contract. The memorandum shall be available to the public upon request.

Sec. 158. (Recodification) (Effective July 1, 2008) Guidelines for Determining Reasonableness of Consultant Services²⁸⁸.

In order to promote engineering and design quality and ensure maximum competition by firms providing consultant services, as defined in section 47 of this act [13b-20b], the Secretary of the Office of Policy and Management, in consultation with the Commissioner of Transportation, shall establish guidelines for determining the reasonableness and allowability of various cost factors which shall include, but not be limited to, salary limits, benefits and expense reimbursement.

Part 35. Bonds, Insurance and Guarantees

Sec. 159. (NEW) (Effective July 1, 2008) Bid Security²⁸⁹.

(a) **Requirement for Bid Security.** Bid security shall be required for all competitive sealed bidding for construction contracts in a design-bid-build procurement when the price is estimated by the state contracting agency to

²⁸⁸ Recodification and repeal of General Statutes, Sec. 13b-20m.

²⁸⁹ Derived from Section 5-301 of the ABA Model Code.

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exceed an amount established by regulations pertaining to the agency. Bid security shall be a bond provided by a surety company authorized to do business in this State, or the equivalent in cash, or otherwise supplied in a form satisfactory to the State. Nothing herein prevents the requirement of such bonds on such contracts under the amount set by regulation when the circumstances warrant.

(b) Amount of Security. Bid security shall be in an amount equal to at least five percent of the amount of the bid.

(c) Rejection of Bids for Noncompliance with Bid Security Requirements. When the invitation for bids requires security, noncompliance requires that the bid be rejected unless, pursuant to regulations, it is determined that the bid fails to comply in a non-substantial manner with the security requirements.

(d) Withdrawal of Bids. After bids are opened, they shall be irrevocable for the period specified in the invitation for bids (except as provided for bids in section 57 of this act. If a bidder is permitted to withdraw its bid (or proposal) before award, or is excluded from the competition before award, no action shall be had against the bidder or the bid security.

Sec. 160. (NEW) (Effective July 1, 2008) Contract Performance and Payment Bonds²⁹⁰.

(a) When Required – Amounts. When a construction, design-build or related methods contract is awarded in excess of the amount, set forth in regulation, the following bonds or security shall be delivered to the State and shall become binding on the parties upon the execution of the contract:

(1) a performance bond satisfactory to the State, executed by a surety company authorized to do business in this State or otherwise secured in a manner satisfactory to the State, in an amount equal to one hundred per cent of the portion of the contract price that does not include the cost of operation, maintenance, and finance; and

(2) a payment bond satisfactory to the State, executed by a surety company authorized to do business in this State or otherwise secured in a manner satisfactory to the State, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the construction work provided for in the contract. The bond shall be in an amount equal to one hundred percent of the portion of the contract price that does not include the cost of operation, maintenance, and finance.

(b) Reduction of Bond Amounts. Regulations may authorize the State Contracting Standards Board to reduce the amount of performance and payment bonds to fifty percent of the amounts established in subsection (a) of this section.

²⁹⁰ Derived from Section 5-302 of the ABA Model Code.

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(c) **Authority to Require Additional Bonds.** Nothing in this section shall be construed to limit the authority of the State to require a performance bond or other security in addition to such bonds, or in circumstances other than specified in subsection (a) of this section.

Sec. 161. (NEW) (Effective July 1, 2008) Bond Forms and Copies²⁹¹.

(a) **Bond Forms.** The Commissioner of Administrative Services shall promulgate by regulation, with the approval of the Contract Standards Board, the form of the bonds required by this Part.

(b) **Certified Copies of Bonds.** Any person may request and obtain from the State a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be *prima facie* evidence of the contents, execution, and delivery of the original.

Sec. 162. (NEW) (Effective July 1, 2008) Errors and Omissions Insurance²⁹².

The Commissioner of Administrative Services shall promulgate regulations, with the approval of the State Contracting Standards Board, that specify when the State contracting agency shall require proposers to provide appropriate errors and omissions insurance to cover architectural and engineering services under the project delivery methods set forth in section 125 of the act.

Part 36. Contract Clauses and Fiscal Responsibility

Sec. 163. (NEW) (Effective July 1, 2008) Contract Clauses and Their Administration²⁹³.

(a) **Contract Clauses.** The State Contracting Standards Board, in consultation with the state contracting agencies, shall promulgate regulations shall be promulgated requiring the inclusion in State contracts issued under this act of clauses providing for adjustments in prices, time of performance, or other contract provisions, as appropriate, and covering the following subjects:

- (1) the unilateral right of the State to order in writing:
 - (i) changes in the work within the scope of the contract;
and
 - (ii) changes in the time of performance of the contract
that do not alter the scope of the contract work;

²⁹¹ Derived from Section 5-303 of the ABA Model Code.

²⁹² Derived from Section 5-304 of the ABA Model Code.

²⁹³ Derived from Section 5-401 of the ABA Model Code.

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(2) variations occurring between estimated quantities of work in a contract and actual quantities;

(3) suspension of work ordered by the State; and

(4) site conditions differing from those indicated in the contract, or ordinarily encountered, except that differing site conditions clauses promulgated by the Board need not be included in a contract:

(i) when the contract is negotiated;

(ii) when the contractor provides the site or design; or

(iii) when the parties have otherwise agreed with respect to the risk of differing site conditions.

(b) Price Adjustments.

(1) Adjustments in price pursuant to clauses promulgated under Subsection (a) of this Section shall be computed in one or more of the following ways:

(i) by agreement on a fixed-price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(ii) by unit prices specified in the contract or subsequently agreed upon;

(iii) by the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

(iv) in such other manner as the contracting parties may mutually agree; or

(v) in the absence of agreement by the parties, by a unilateral determination by the State of the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by the State in accordance with applicable sections of the regulations promulgated under this act.

(2) A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of section 87 of this act.

(c) Additional Contract Clauses. Regulations shall be promulgated requiring the inclusion in State construction contracts of clauses providing for appropriate remedies and covering the following subjects:

(1) liquidated damages as appropriate;

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- (2) specified excuses for delay or nonperformance;
- (3) termination of the contract for default; and
- (4) termination of the contract in whole or in part for the convenience of the State.

Sec. 164. (NEW) (Effective July 1, 2008) Fiscal Responsibility²⁹⁴.

Every contract modification, change order, or contract price adjustment under a construction contract with the State in excess of fifty thousand dollars shall be subject to prior written certification by the fiscal officer of the state contracting agency or other agency responsible for funding the project or the contract, or other official responsible for monitoring and reporting upon the status of the costs of the total project budget or contract budget, as to the effect of the contract modification, change order, or adjustment in contract price on the total project budget or the total contract budget. In the event that the certification of the fiscal officer or other responsible official discloses a resulting increase in the total project budget and/or the total contract budget, the Agency Procurement Officer shall not execute or make such contract modification, change order, or adjustment in contract price unless sufficient funds are available therefor, or the scope of the project or contract is adjusted so as to permit the degree of completion that is feasible within the total project budget and/or total contract budget as it existed prior to the contract modification, change order, or adjustment in contract price under consideration; provided, however, that with respect to the validity, as to the contractor, of any executed contract modification, change order, or adjustment in contract price which the contractor has reasonably relied upon, it shall be presumed that there has been compliance with the provisions of this Section.

²⁹⁴ Derived from Section 5-402 of the ABA Model Code.

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Article 6. Personal Service Agreements

Sec. 165. (Recodification) (Effective July 1, 2008) Definitions²⁹⁵.

As used in sections 165 to 172 of this act [4-212 to 4-219], inclusive: [(4)] "Secretary" means the Secretary of the Office of Policy and Management²⁹⁶.

Sec. 166. (Recodification) (Effective July 1,, 2008) Personal Service Agreement Required When Hiring Personal Service Contractor²⁹⁷.

On and after July 1, 1994, no state contracting agency may hire a personal service contractor without executing a personal service agreement with such contractor.

Sec. 167. (Recodification) (Effective July 1, 2008) Personal Service Agreements Having Cost of Not More than Twenty Thousand Dollars and Term of Not More than One Year. State Agency Reports²⁹⁸.

(a) Each personal service agreement executed on or after July 1, 1994, and having a cost of not more than twenty thousand dollars and a term of not more than one year shall be based, when possible, on competitive negotiation or competitive quotations.

(b) Not later than thirty days after the end of each six-month period, beginning with the six-month period ending on December 31, 1994, each state contracting agency shall submit a report to the secretary indicating (1) for each personal service agreement described in subsection (a) of this section that is executed during the six-month period, the name of the personal service contractor, a description of the services to be provided, the term and cost of the agreement and the method of selecting the contractor and (2) for each personal service agreement described in said subsection (a) that is in effect during the six-month period, the amount of all payments made during the six-month period to the contractor, by fund, and the amount of any federal or private funds allocated for such payments.

Sec. 168. (Recodification) (Effective July 1, 2008) Personal Service Agreements Having Cost of More than Twenty thousand Dollars but Not More than Fifty Thousand Dollars and Term of Not More than One Year. State Agency Reports²⁹⁹.

(a) Each personal service agreement executed on or after July 1, 1994, and having a cost of more than twenty thousand dollars but not more than fifty thousand dollars and a term of not more than one year shall be based on

²⁹⁵ Recodification and repeal of General Statutes, Sec. 4-212.

²⁹⁶ Recodification and repeal of General Statutes, Sec. 4-212(4).

²⁹⁷ Recodification and repeal of General Statutes, Sec. 4-213.

²⁹⁸ Recodification and repeal of General Statutes, Sec. 4-214.

²⁹⁹ Recodification and repeal of General Statutes, Sec. 4-215.

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competitive negotiation or competitive quotations, unless the state contracting agency purchasing the personal services determines that a sole source purchase is required and applies to the secretary for a waiver from such requirement and the secretary grants the waiver. Not later than March 1, 1994, the secretary shall adopt guidelines for determining the types of services that may qualify for such waivers. The qualifying services shall include, but not be limited to, (1) services for which the cost to the state of a competitive selection procedure would outweigh the benefits of such procedure, as documented by the state contracting agency, (2) proprietary services, (3) services to be provided by a contractor mandated by the general statutes or a public or special act, and (4) emergency services, including services needed for the protection of life or health.

(b) Each state contracting agency shall submit the following information to the secretary concerning each proposed personal service agreement described in subsection (a) of this section, at the same time that it submits the agreement to the Commissioner of Administrative Services or the Attorney General: The name of the personal service contractor, a description of the services to be provided, the term and cost of the agreement, the method of selecting the contractor, the state fund from which the contractor will be paid and whether any federal or private funds will be allocated for such payments.

Sec. 169. (Recodification) (Effective July 1, 2008) Personal Service Agreements Having Cost of More than Fifty Thousand Dollars and Term of More than One Year³⁰⁰.

(a) No state contracting agency may execute a personal service agreement having a cost of more than fifty thousand dollars or a term of more than one year, without the approval of the secretary. A state contracting agency may apply for an approval by submitting the following information to the secretary: (1) A description of the services to be purchased and the need for such services; (2) an estimate of the cost of the services and the term of the agreement; (3) whether the services are to be on-going; (4) whether the state contracting agency has contracted out for such services during the preceding two years and, if so, the name of the contractor, term of the agreement with such contractor and the amount paid to the contractor; (5) whether any other state contracting agency has the resources to provide the services; (6) whether the agency intends to purchase the services by competitive negotiation and, if not, why; and (7) whether it is possible to purchase the services on a cooperative basis with other state contracting agencies. The secretary shall approve or disapprove an application within fifteen business days after receiving it and any necessary supporting information, provided if the secretary does not act within such fifteen-day period the application shall be deemed to have been approved. The secretary shall immediately notify the Auditors of Public Accounts of any application which the secretary receives for approval of a personal services agreement for audit services and give said auditors an opportunity to review the application during such fifteen-day period and advise the secretary as to whether such audit services are necessary and, if so, could be provided by said auditors.

³⁰⁰ Recodification and repeal of General Statutes, Sec. 4-216.

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(b) Each personal service agreement having a cost of more than fifty thousand dollars or a term of more than one year shall be based on competitive negotiation or competitive quotations, unless the state contracting agency purchasing the personal services applies to the secretary for a waiver from such requirement and the secretary grants the waiver in accordance with the guidelines adopted under subsection (a) of section 4-215.

Sec. 170. (Recodification) (Effective July 1, 2008) Standards. Written Procedures. Request for Proposals³⁰¹.

(a) Not later than March 1, 1994, the Secretary of the Office of Policy and Management shall establish standards for state contracting agencies to follow in entering into personal service agreements. The standards shall include, but not be limited to, provisions for: (1) Evaluating the need to use a personal service agreement, (2) developing a request for proposals, (3) advertising for personal service contractors, (4) evaluating submitted proposals, (5) selecting a personal service contractor, including compliance with section 178 and 179 of this act [4a-60g], (6) systematically monitoring and evaluating personal service contractor performance, (7) documenting the entire process for selecting and managing personal service contractors and (8) carrying out any other aspect of such process.

(b) Not later than May 1, 1994, each state contracting agency shall: (1) Establish written procedures for implementing the standards established by the secretary under subsection (a) of this section, and (2) submit such procedures to the secretary for his approval. If the secretary disapproves an agency's procedures he shall return the procedures to the agency with recommendations for revisions. On and after July 1, 1994, no state contracting agency may execute a personal service agreement unless the secretary has approved procedures established by the agency under this section.

(c) A request for proposals issued under sections 167, 168 or 169 of this act [4-214, 4-215 or 4-216] shall include, but not be limited to, an outline of the work to be performed, the required minimum qualifications for the personal service contractor, criteria for review of proposals by the state contracting agency, the format for proposals and the deadline for submitting proposals. Each state contracting agency which prepares a request for proposals shall establish a screening committee to evaluate the proposals submitted in response to the request for proposals. The screening committee shall rank all proposals in accordance with the criteria set forth in the request for proposals and shall submit the names of the top three proposers to the executive head of the agency, who shall select the personal service contractor from among such names.

Sec. 171. (Recodification) (Effective July 1, 2008) Reports to the Secretary and the State Contracting Standards Board Concerning Personal Service Agreements³⁰².

³⁰¹ Recodification and repeal of General Statutes, Sec. 4-217.

³⁰² Recodification and repeal of General Statutes, Sec. 4-218.

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(a) Not later than thirty days after the end of each six-month period, beginning with the six-month period ending on December 31, 2008 [1994], each state contracting agency shall submit a report to the secretary and the State Contracting Standards Board indicating (1) for each personal service agreement executed during such six-month period with a person, firm or corporation providing "contractual services", as defined in this act [section 4a-50], to the state, a "consultant", as defined in this act [section 4b-55], or an agency of the federal government, of the state or of a political subdivision of the state, (A) the name of the person, firm or corporation, (B) a description of the services to be provided, (C) the term and cost of the agreement and (D) the method of selecting the person, firm or corporation and (2) for each such agreement either executed or otherwise in effect during the six-month period, (A) the amount of all payments made during the six-month period to the person, firm or corporation, by fund, and (B) the amount of any federal or private funds allocated for such payments. No state agency utilizing contractual services hired by using a purchase order approved and committed by the State Comptroller shall be required to submit a report to the secretary.

(b) Not later than thirty days after the end of each six-month period, beginning with the six-month period ending on December 31, 1995, the Department of Transportation shall submit a report to the secretary indicating (1) for each agreement executed during such six-month period with a "consultant", as defined in this act [section 13b-20b], or an agency of the federal government, of the state or of a political subdivision of the state, (A) the name of the person, firm or corporation, (B) a description of the services to be provided, (C) the term and cost of the agreement and (D) the method of selecting the person, firm or corporation and (2) for each such agreement either executed or otherwise in effect during the six-month period, (A) the amount of all payments made during the six-month period to the person, firm or corporation, by fund, and (B) the amount of any federal or private funds allocated for such payments.

(c) Not later than September 1, 1995, and annually thereafter, the secretary shall submit a report to the General Assembly summarizing information received pursuant to subsection (b) of section 167 of this act [4-214], subsection (b) of section 168 of this act [4-215], subsection (a) of section 169 of this act [4-216], and subsections (a) and (b) of section 171 of this act [4-218] for the preceding fiscal year.

Sec. 172. (Recodification) (Effective July 1, 2008) Amendments to Personal Service Agreements³⁰³.

No state contracting agency may, without the approval of the secretary, execute (1) an amendment to a personal service agreement, which agreement has an original cost of more than fifty thousand dollars, or (2) an amendment to any other personal service agreement, which amendment (A) has a cost of one hundred per cent or more of the cost of the original agreement, (B) increases the cost of the agreement to more than fifty thousand dollars, (C) extends the terms of the agreement beyond a one-year period or (D) is the second or subsequent amendment to the agreement. The secretary shall approve or disapprove a

³⁰³ Recodification and repeal of General Statutes, Sec. 4-219.

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proposed amendment within fifteen business days after receiving it and any necessary supporting information, provided if the secretary does not act within such fifteen-day period the application shall be deemed to have been approved.

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Article 7. Modification and Termination of Contracts for Supplies and Services

Sec. 173. (Recodification) (Effective July 1, 2008) Restrictions on Contract Extensions. Exception³⁰⁴.

(a) No state agency may extend a contract for the purchase of supplies, materials, equipment or contractual services which expires on or after October 1, 1990, and is subject to the competitive bidding requirements of subsection (a) of section 56 of this act [4a-57], without complying with such requirements, unless (1) the Commissioner of Administrative Services makes a written determination, supported by documentation, that (A) soliciting competitive bids for such purchase would cause a hardship for the state, (B) such solicitation would result in a major increase in the cost of such supplies, materials, equipment or contractual services, or (C) the contractor is the sole source for such supplies, materials, equipment or contractual services, (2) such commissioner solicits at least three competitive quotations in addition to the contractor's quotation, and (3) the commissioner makes a written determination that no such competitive quotation which complies with the existing specifications for the contract is lower than or equal to the contractor's quotation. Any such contract extension shall be based on the contractor's quotation. No contract may be extended more than two times under this section.

(b) Notwithstanding the provisions of subsection (a) of this section, the Commissioners of Administrative Services and Public Works may, for a period of one year from the date such contract would otherwise expire, extend any contract in effect on May 1, 2005, with a value of fifty thousand dollars or more per year, to perform any of the following services for the state: Janitorial, building maintenance, security and food and beverage. Any such extension shall include any applicable increase in the standard wage and the payroll burden to administer the standard wage, as established by the Labor Department.

Sec. 174. (NEW) (Effective July 1, 2008) Contract Clauses and their Administration³⁰⁵.

(a) **Contract Clauses.** The State Contracting Standards Board, in consultation with state contracting agencies may promulgate regulations permitting or requiring the inclusion of clauses providing for adjustments in prices, time of performance, or other contract provisions as appropriate covering the following subjects:

- (1) the unilateral right of the State to order in writing:

³⁰⁴ Recodification and repeal of General Statutes, Sec. 4a-59a.

³⁰⁵ Derived from Section 6-101 of the ABA Model Code.

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(i) changes in the work within the scope of the contract;
and

(ii) temporary stopping of the work or delaying performance; and

(2) variations occurring between estimated quantities of work in a contract and actual quantities.

(b) Price Adjustments.

(1) Adjustments in price pursuant to clauses promulgated under Subsection (a) of this Section shall be computed in one or more of the following ways:

(i) by agreement on a fixed-price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(ii) by unit prices specified in the contract or subsequently agreed upon;

(iii) by the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

(iv) in such other manner as the contracting parties may mutually agree; or

(v) in the absence of agreement by the parties, by a unilateral determination by the State of the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by the State in accordance with applicable sections of the regulations promulgated under this act.

(c) Additional Contract Clauses. The Commissioner of Administrative Services may promulgate regulations, following approval by the State Contracting Standards Board, including, but not limited to, regulations permitting or requiring the inclusion in State contracts of clauses providing for appropriate remedies and covering the following subjects:

(1) liquidated damages as appropriate;

(2) specified excuses for delay or nonperformance;

(3) termination of the contract for default; and

(4) termination of the contract in whole or in part for the convenience of the State.

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Sec. 175. (Recodification) (Effective July 1, 2008) Non discrimination and affirmative actions provisions in contracts of the State and Political Subdivisions other than municipalities³⁰⁶.

(a) Every contract to which the state or any political subdivision of the state other than a municipality is a party shall contain the following provisions:

(1) The contractor agrees and warrants that in the performance of the contract such contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, mental retardation or physical disability, including, but not limited to, blindness, unless it is shown by such contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the state of Connecticut. The contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, mental retardation, or physical disability, including, but not limited to, blindness, unless it is shown by such contractor that such disability prevents performance of the work involved;

(2) the contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the commission;

(3) the contractor agrees to provide each labor union or representative of workers with which such contractor has a collective bargaining agreement or other contract or understanding and each vendor with which such contractor has a contract or understanding, a notice to be provided by the commission advising the labor union or workers' representative of the contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment;

(4) the contractor agrees to comply with each provision of this section and sections 46a-68e and 46a-68f and with each regulation or relevant order issued by said commission pursuant to sections 46a-56, 46a-68e and 46a-68f;

(5) the contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the contractor as relate to the provisions of this section and section 46a-56. If the contract is a public works contract, the contractor agrees and warrants that he will

³⁰⁶ Recodification and repeal of General Statutes, Sec. 4a-60.

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make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works project.

(b) For the purposes of this section, "minority business enterprise" means any small contractor or supplier of materials fifty-one per cent or more of the capital stock, if any, or assets of which is owned by a person or persons:

- (1) Who are active in the daily affairs of the enterprise,
- (2) who have the power to direct the management and policies of the enterprise and
- (3) who are members of a minority, as such term is defined in subsection (a) of section 32-9n; and "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations. "Good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements.

(c) Determination of the contractor's good faith efforts shall include but shall not be limited to the following factors: The contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.

(d) The contractor shall develop and maintain adequate documentation, in a manner prescribed by the commission, of its good faith efforts.

(e) The contractor shall include the provisions of subsection (a) of this section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the state and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the commission. The contractor shall take such action with respect to any such subcontract or purchase order as the commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with section 46a-56; provided, if such contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the commission, the contractor may request the state of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the state and the state may so enter.

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Sec. 176. (Recodification) (Effective July 1, 2008) Contracts of the State and Political Subdivisions, Other than Municipalities, to contain provisions re nondiscrimination on the basis of sexual orientation³⁰⁷.

(a) Every contract to which the state or any political subdivision of the state other than a municipality is a party shall contain the following provisions:

(1) The contractor agrees and warrants that in the performance of the contract such contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or of the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation;

(2) the contractor agrees to provide each labor union or representative of workers with which such contractor has a collective bargaining agreement or other contract or understanding and each vendor with which such contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment;

(3) the contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said commission pursuant to section 46a-56;

(4) the contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the contractor which relate to the provisions of this section and section 46a-56.

(b) The contractor shall include the provisions of subsection (a) of this section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the state and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the commission. The contractor shall take such action with respect to any such subcontract or purchase order as the commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with section 46a-56; provided, if such contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the commission, the contractor may request the state of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the state and the state may so enter.

³⁰⁷ Recodification and repeal of General Statutes, Sec. 4a-60a.

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Article 8. Assistance to Small and Disadvantaged Businesses; Federal Assistance or Contract Procurement Requirements

Sec. 177. (NEW) (Effective Upon Passage) Disparity Study.

(a) The Commission on Human Rights and Opportunities, in cooperation with the Office of Policy and Management and the Department of Administrative Services, shall conduct a disparity study.

(b) The study shall generate statistical data by which the state could establish a foundation for adjusting, upward or downward, its current set-aside goals. The study shall include, but not be limited to, examining

(1) whether there is significant evidence of past or continuing discrimination in the way that the state's contracting duties are executed;

(2) the number of small and minority businesses qualified for eligibility for state contracts;

(3) the state's contracting processes to determine if there are any unintentional but existing barriers in the process that prevent small and minority businesses from fully participating in the state's procurement process.

(c) The Commission shall submit its recommendations to the Governor, the joint standing committee of the General Assembly having cognizance over the judiciary and the State Contracting Standards Board, no later than January 1, 2008.

Sec. 178. (NEW and Recodification) (Effective July 1, 2008) Definitions of Terms Used in This Part³⁰⁸.

The Commissioner of Administrative Services shall promulgate regulations, with the approval of the State Contracting Standards Board, establishing detailed definitions of the following terms, using, in addition to the criteria set forth in this Section, such other criteria as it may deem desirable, including the number of employees and the dollar volume of business. As used in this Part [(a) As used in this section and sections 4a-60h to 4a-60j, inclusive, the following terms have the following meanings]:

(a) [(1)] "Small contractor" means any contractor, subcontractor, manufacturer or service company

(1) [(A)] which has been doing business under the same ownership and management and has maintained its principal place of business in the

³⁰⁸ Recodification and repeal of General Statutes, Sec. 4a-60g(a) and Sec. 11-101 of the ABA Model Code.

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state, for a period of at least one year immediately prior to the date of application for certification under this section,

(2) [(B)] which had gross revenues not exceeding ten million dollars in the most recently completed fiscal year prior to such application and

(3) [(C)] at least fifty-one per cent of the ownership of which is held by a person or persons who exercise operational authority over the daily affairs of the business and have the power to direct the management and policies and receive the beneficial interests of the business, except that a nonprofit corporation shall be construed to be a small contractor if such nonprofit corporation meets the requirements of subparagraphs (1) and (2) [(A) and (B)] of this subdivision.

(b) [(2)] "State agency" mean a state contracting agency as set forth in section 47 of this act [each state board, commission, department, office, institution, council or other agency with the power to contract for goods or services itself or through its head].

(c) [(3)] "Minority business enterprise" means any small contractor

(1) [(A)] fifty-one per cent or more of the capital stock, if any, or assets of which are owned by a person or persons

(i) who exercise operational authority over the daily affairs of the enterprise,

(ii) who have the power to direct the management and policies and receive the beneficial interest of the enterprise, and

(iii) who are members of a minority, as such term is defined in subsection (a) of section 32-9n,

(2) [(B)] who is an individual with a disability, or

(3) [(C)] which is a nonprofit corporation in which fifty-one per cent or more of the persons who

(i) exercise operational authority over the enterprise, and

(ii) have the power to direct the management and policies of the enterprise are members of a minority, as defined in this subsection, or are individuals with a disability.

(d) [(4)] "Affiliated" means the relationship in which a person directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with another person.

(e) [(5)] "Control" means the power to direct or cause the direction of the management and policies of any person, whether through the ownership of voting securities, by contract or through any other direct or indirect means.

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Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, twenty per cent or more of any voting securities of another person.

(f) [(6)] "Person" means any individual, corporation, limited liability company, partnership, association, joint stock company, business trust, unincorporated organization or other entity.

(g) [(7)] "Individual with a disability" means an individual

(1) [(A)] having a physical impairment that substantially limits one or more of the major life activities of the individual or

(2) [(B)] having a record of such an impairment.

(h) [(8)] "Nonprofit corporation" means a nonprofit corporation incorporated pursuant to chapter 602 or any predecessor statutes thereto.

Sec. 179. (Recodification) (Effective July 1, 2008) Set Aside Program for Small Contractors, Minority Business Enterprises, Individuals with Disabilities and Nonprofit Corporations³⁰⁹.

(a) [(b)] It is found and determined that there is a serious need to help small contractors, minority business enterprises, nonprofit organizations and individuals with disabilities to be considered for and awarded state contracts for the construction, reconstruction or rehabilitation of public buildings, the construction and maintenance of highways and the purchase of goods and services. Accordingly, the necessity, in the public interest and for the public benefit and good, of the provisions of this section, sections 180 to 182 [4a-60h to 4a-60j], inclusive, and sections 32-9i to 32-9p, inclusive, is declared as a matter of legislative determination. Notwithstanding any provisions of the general statutes to the contrary, and except as set forth herein, the head of each state agency and each political subdivision of the state other than a municipality shall set aside in each fiscal year, for award to small contractors, on the basis of competitive bidding procedures, contracts or portions of contracts for the construction, reconstruction or rehabilitation of public buildings, the construction and maintenance of highways and the purchase of goods and services. Eligibility of nonprofit corporations under the provisions of this section shall be limited to predevelopment contracts awarded by the Commissioner of Economic and Community Development for housing projects. The total value of such contracts or portions thereof to be set aside by each such agency shall be at least twenty-five per cent of the total value of all contracts let by the head of such agency in each fiscal year, provided that neither: (1) A contract that may not be set aside due to a conflict with a federal law or regulation; or (2) a contract for any goods or services which have been determined by the Commissioner of Administrative Services to be not customarily available from or supplied by small contractors shall be included, except that the head of any such agency may set aside an amount based on the amount of all contracts not excluded from the calculation which are anticipated to be let in any fiscal year if the method of calculation for such year would result in a maximum value of contracts to be set aside of less than twenty-five per cent of the contracts anticipated to be let in such year or in a

³⁰⁹ Recodification and repeal of General Statutes, Sec. 4a-60g(b)-(o).

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minimum value of contracts to be set aside of greater than twenty-five per cent of the contracts anticipated to be let in such year. Contracts or portions thereof having a value of not less than twenty-five per cent of the total value of all contracts or portions thereof to be set aside shall be reserved for awards to minority business enterprises.

(b) [(c)] The head of any state agency or political subdivision of the state other than a municipality may, in lieu of setting aside any contract or portions thereof, require any general or trade contractor or any other entity authorized by such agency to award contracts, to set aside a portion of any contract for subcontractors who are eligible for set-aside contracts under this section. Nothing in this subsection shall be construed to diminish the total value of contracts which are required to be set aside by any state agency or political subdivision of the state other than a municipality pursuant to this section.

(c) [(d)] The heads of all state agencies and of each political subdivision of the state other than a municipality shall notify the Commissioner of Administrative Services of all contracts to be set aside pursuant to subsection (a) or (b) [(b) or (c)] of this section at the time that bid documents for such contracts are made available to potential contractors.

(d) [(e)] In no case shall the Commissioner of Administrative Services recommend, nor shall any small contractor be awarded, any such contract or contracts, the total amount of which exceeds ten million dollars in any one fiscal year.

(e) [(f)] The awarding authority shall require that a contractor or subcontractor awarded a contract or a portion of a contract under this section perform not less than fifteen per cent of the work with the workforces of such contractor or subcontractor and shall require that not less than twenty-five per cent of the work be performed by contractors or subcontractors eligible for awards under this section. A contractor awarded a contract or a portion of a contract under this section shall not subcontract with any person with whom the contractor is affiliated. No person who is affiliated with another person shall be eligible for awards under this section if both affiliated persons considered together would not qualify as a small contractor or a minority business enterprise under section 178 of this act [subsection (a)].

(f) [(g)] The awarding authority may require that a contractor or subcontractor awarded a contract or a portion of a contract under this section furnish the following documentation: (1) A copy of the certificate of incorporation, certificate of limited partnership, partnership agreement or other organizational documents of the contractor or subcontractor; (2) a copy of federal income tax returns filed by the contractor or subcontractor for the previous year; and (3) evidence of payment of fair market value for the purchase or lease by the contractor or subcontractor of property or equipment from another contractor who is not eligible for set-aside contracts under this section.

(g) [(h)] The awarding authority or the Commissioner of Administrative Services or the Commission on Human Rights and Opportunities may conduct an audit of the financial, corporate and business records and conduct an

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investigation of any small contractor or minority business enterprise which applies for or is awarded a set-aside contract for the purpose of determining eligibility for awards or compliance with the requirements established under this section.

(h) [(i)] The provisions of this section shall not apply to any state agency or political subdivision of the state other than a municipality for which the total value of all contracts or portions of contracts of the types enumerated in subsection (a) [(b)] of this section is anticipated to be equal to ten thousand dollars or less.

(i) [(j)] In lieu of a performance, bid, labor and materials or other required bond, a contractor or subcontractor awarded a contract under this section may provide to the awarding authority, and the awarding authority shall accept a letter of credit. Any such letter of credit shall be in an amount equal to ten per cent of the contract for any contract that is less than one hundred thousand dollars and in an amount equal to twenty-five per cent of the contract for any contract that exceeds one hundred thousand dollars.

(j) [(k)]

(1) Whenever the awarding agency has reason to believe that any contractor or subcontractor awarded a set-aside contract has willfully violated any provision of this section, the awarding agency may send a notice to such contractor or subcontractor by certified mail, return receipt requested. Such notice shall include: (A) A reference to the provision alleged to be violated; (B) a short and plain statement of the matter asserted; (C) the maximum civil penalty that may be imposed for such violation; and (D) the time and place for the hearing. Such hearing shall be fixed for a date not earlier than fourteen days after the notice is mailed.

(2) The awarding agency shall hold a hearing on the violation asserted unless such contractor or subcontractor fails to appear. The hearing shall be held in accordance with the provisions of chapter 54. If, after the hearing, the awarding agency finds that the contractor or subcontractor has willfully violated any provision of this section, the awarding agency shall suspend all set-aside contract payments to the contractor or subcontractor and may, in its discretion, order that a civil penalty not exceeding ten thousand dollars per violation be imposed on the contractor or subcontractor. If such contractor or subcontractor fails to appear for the hearing, the awarding agency may, as the facts require, order that a civil penalty not exceeding ten thousand dollars per violation be imposed on the contractor or subcontractor. The awarding agency shall send a copy of any order issued pursuant to this subsection by certified mail, return receipt requested, to the contractor or subcontractor named in such order. The awarding agency may cause proceedings to be instituted by the Attorney General for the enforcement of any order imposing a civil penalty issued under this subsection.

(k) [(l)] On or before January 1, 2000, the Commissioner of Administrative Services shall establish a process for certification of small

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contractors and minority business enterprises as eligible for set-aside contracts. Each certification shall be valid for a period not to exceed two years. The application for certification shall be no longer than six pages. Annually, the commissioner shall print a directory of small contractors and minority business enterprises certified under this section. State agencies shall be provided with updated directory information quarterly.

(l) ~~[(m)]~~ On or before September 30, 1995, and annually thereafter, each state agency and each political subdivision of the state other than a municipality setting aside contracts or portions of contracts shall prepare a report establishing small and minority business set-aside program goals for the twelve-month period beginning July first in the same year. Each such report shall be submitted to the Commissioner of Administrative Services, the Commission on Human Rights and Opportunities and the co chairpersons and ranking members of the joint standing committees of the General Assembly having cognizance of matters relating to planning and development and government administration and elections.

(m) ~~[(n)]~~ On or before November 1, 1995, and quarterly thereafter, each state agency and each political subdivision of the state other than a municipality setting aside contracts or portions of contracts shall prepare a status report on the implementation and results of its small business and minority business enterprise set-aside program goals during the three-month period ending one month before the due date for the report. Each report shall be submitted to the Commissioner of Administrative Services and the Commission on Human Rights and Opportunities. The Commission on Human Rights and Opportunities shall: (1) Monitor the achievement of the annual goals established by each state agency and political subdivision of the state other than a municipality; and (2) prepare a quarterly report concerning such goal achievement. The report shall be submitted to each state agency that submitted a report, the Commissioner of Economic and Community Development, the Commissioner of Administrative Services and the co chairpersons and ranking members of the joint standing committees of the General Assembly having cognizance of matters relating to planning and development and government administration and elections. Failure by any state agency or political subdivision of the state other than a municipality to submit any reports required by this section shall be a violation of section 46a-77.

(n) ~~[(o)]~~ On or before January 1, 2000, and annually thereafter, the Department of Administrative Services shall establish a precertification list of small contractors and minority business enterprises who have established a principal place of business in the state but have not maintained such place of business for one year and are not in the directory prepared pursuant to subsection (k) ~~[(l)]~~ of this section. An awarding agency may select a small contractor or minority business enterprise from such precertification list only after such awarding agency makes a good faith effort to find an eligible small contractor or minority business enterprise in the directory and determines that no small contractor or minority business enterprise is qualified to perform the work required under the contract.

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Sec. 180. (Recodification) (Effective July 1, 2008) Administration of Set-Aside Program. Regulations. Access to competitive contracts outside of program guaranteed³¹⁰.

(a) The Commissioner of Administrative Services shall be responsible for the administration of the set-aside program. The commissioner shall conduct regular training sessions, as the commissioner deems necessary, for state agencies to explain the set-aside program and to specify the factors that must be addressed in calculating agency goals under the program. The commissioner shall conduct informational workshops to inform businesses of set-aside opportunities and responsibilities.

(b) The commissioner shall adopt regulations in accordance with the provisions of chapter 54 to carry out the purposes of sections 178 to 182 [4a-60g to 4a-60j], inclusive of this act. Such regulations shall include (1) provisions concerning the application of the program to individuals with a disability; (2) guidelines for a legally acceptable format for, and content of, letters of credit authorized under subsection (h) [(j)] of section 179 of this act [4a-60g]; (3) procedures for random site visits to the place of business of an applicant for certification at the time of application and at subsequent times, as necessary, to ensure the integrity of the application process; and (4) time limits for approval or disapproval of applications.

(c) On or before January 1, 1994, the Commissioner of Administrative Services shall, by regulations adopted in accordance with chapter 54, establish a process to ensure that small contractors, small businesses and minority business enterprises have fair access to all competitive contracts outside of the set-aside program.

Sec. 181. (Recodification) (Effective July 1, 2008) Responsibilities of Agency Heads to Negotiate and Approve Contracts Not Affected³¹¹.

Nothing in sections 178 to 181 of this act [4a-60g to 4a-60i], inclusive, shall be construed to interfere with the responsibilities of the heads of all state agencies to directly negotiate and approve all such contracts.

Sec. 182. (Recodification) (Effective July 1, 2008) Time for Payment of Contractors³¹².

A small contractor shall receive payment on a contract awarded to him under the provisions of sections 178 to 181 of this act [4a-60g to 4a-60i], inclusive, no later than thirty days from the due date of any such payment on such contract.

³¹⁰ Recodification and repeal of General Statutes, Sec. 4a-60h..

³¹¹ Recodification and repeal of General Statutes, Sec. 4a-60i.

³¹² Recodification and repeal of General Statutes, Sec. 4a-60j.

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Sec. 183. (Recodification) (Effective July 1, 2008) Award of Contracts Concerning Minority Business Enterprises³¹³.

The Commissioner of Administrative Services, with the advice of the Commissioner of Economic and Community Development, shall adopt regulations, in accordance with chapter 54, establishing procedures for the award of contracts concerning minority business enterprises by the state or any political subdivision of the state other than a municipality.

Sec. 184. (Recodification) (Effective July 1, 2008) Minority Business Enterprise Review Committee³¹⁴.

(a) There is established a Minority Business Enterprise Review Committee. The committee shall consist of two members of the House of Representatives appointed by the speaker of the House, two members of the House appointed by the minority leader of the House, two members of the Senate appointed by the president pro tempore of the Senate, and two members of the Senate appointed by the minority leader of the Senate. The committee shall conduct an ongoing study of contract awards, loans and bonds made or guaranteed by the state or any political subdivision of the state other than a municipality for the purpose of determining the extent of compliance with the provisions of the general statutes concerning contract awards, loans and bonds for minority business enterprises, including the set-aside program for such business enterprises.

(b) The committee may request any agency of the state authorized to award public works contracts or to enter into purchase of goods or services contracts to submit such information on compliance with sections 175, 178 and 179 of this act [4a-60 and 4a-60g] and at such times as the committee may require. The committee shall consult with the Departments of Public Works, Transportation and Economic Development and the Commission on Human Rights and Opportunities concerning compliance with the state programs for minority business enterprises. The committee shall report annually on or before February first to the Joint Standing Committee on Legislative Management on the results of its ongoing study and include its recommendations, if any, for legislation.

Sec. 185. (Recodification) (Effective July 1, 2008) Bidders, Proposers and Contractors required to file affirmative action plan. Certificate of compliance issued by commission. Revocation³¹⁵.

In addition to the provisions of section 175 of this act [4a-60], each bidder, proposer or contractor with fifty or more employees awarded a public works contract in excess of fifty thousand dollars in any fiscal year, but not subject to the provisions of section 186 of this act [46a-68d], shall develop and file with the commission an affirmative action plan which shall comply with regulations adopted by said commission. Failure to develop an approved affirmative action

³¹³ Recodification and repeal of General Statutes, Sec. 4a-61.

³¹⁴ Recodification and repeal of General Statutes, Sec. 4a-62.

³¹⁵ Recodification and repeal of General Statutes, Sec. 46a-68c.

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plan pursuant to this section shall act as a bar to bidding on or the award of future contracts until such requirement has been met. When the commission approves an affirmative action plan pursuant to this section, it shall issue a certificate of compliance to the bidder, proposer or contractor. This certificate shall be prima facie proof of the bidder, proposer or contractor's eligibility to bid or be awarded contracts for a period of two years from the date of the certificate. Such certificate shall not excuse the bidder, proposer or contractor from monitoring by the commission or from the reporting and record-keeping requirements of sections 187 and 188 of this act [46a-68e and 46a-68f]. The commission may revoke the certificate of a bidder, proposer or contractor if the bidder, proposer or contractor does not implement its affirmative action plan in compliance with this section and sections 175, 178, 179 of this act [4a-60, 4a-60g], 4a-62, 46a-56, 46a-68b, 186 [46a-68d] and 46a-68h [e] to 46a-68k, inclusive.

Sec. 186. (Recodification) (Effective July 1, 2008) Public works contracts subject to affirmative action requirements. Conditional acceptance by commission. Advance filing of plan³¹⁶.

In addition to the provisions of section 175 of this act [4a-60], every public works contract subject to the provisions of part II of chapter 60 shall also be subject to the provisions of this section. After a bid or proposal has been accepted but before a contract is awarded, the successful bidder or proposer shall file and have approved by the commission an affirmative action plan. The commission may provide for conditional acceptance of an affirmative action plan provided written assurances are given by the bidder or proposer [contractor] that it will amend its plan to conform to affirmative action requirements. The state shall withhold two per cent of the total contract price per month from any payment made to such contractor until such time as the contractor has developed an affirmative action plan, and received the approval of the commission. Notwithstanding the provisions of this section, a contractor subject to the provisions of this section may file a plan in advance of or at the same time as its bid or proposal. The commission shall review plans submitted pursuant to this section within sixty days of receipt and either approve, approve with conditions or reject such plan. When the commission approves an affirmative action plan pursuant to this section, it shall issue a certificate of compliance to the bidder, proposer or contractor as provided in section 185 of this act [46a-68c].

Sec. 187. (Recodification) (Effective July 1, 2008) Contractors and subcontractors required to file compliance reports³¹⁷.

Each contractor shall file, and shall cause each of his subcontractors to file, with the commission such compliance reports at such times as the commission may direct. Compliance reports shall contain such information as to the practices, policies, programs and employment policies, employment

³¹⁶ Recodification and repeal of General Statutes, Sec. 46a-68d.

³¹⁷ Recodification and repeal of General Statutes, Sec. 46a-68e.

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programs, and employment statistics of the contractor and each subcontractor and be in such form as the commission may prescribe.

Sec. 188. (Recodification) (Effective July 1, 2008) Compliance reports to include labor union practices³¹⁸.

Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the compliance report shall include information pertaining to such labor union's or agency's practices and policies affecting compliance, as the commission may prescribe; provided, to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency refuses to furnish information to the contractor, the contractor shall so certify to the commission as part of its compliance report and shall set forth what efforts have been made to obtain such information.

Sec. 189. (Recodification) (Effective July 1, 2008) Prohibition re contractors who have not satisfactorily complied with affirmative action requirements reports³¹⁹.

State contracting agencies shall not enter into contracts with any bidder, proposer or prospective contractor unless the bidder, proposer or prospective contractor has satisfactorily complied with the provisions of sections 175 [4a-60] and 185 to 188 [46a-68c to 46a-68f], inclusive, of this Act and sections 132, 178 and 179 [4a-60g and 46a-56], or submits a program for compliance acceptable to the commission.

³¹⁸ Recodification and repeal of General Statutes, Sec. 46a-68f.

³¹⁹ Recodification and repeal of General Statutes, Sec. 46a-68g.

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Article 9. Supply Management

Part 37. Regulations Required

Sec. 190. (NEW and Recodification) (Effective July 1, 2008) Supply Management Regulations Required³²⁰.

The Commissioner of Administrative Services shall promulgate regulations, with the approval of the State Contracting Standards Board, governing:

- (a) the management of supplies during their entire life cycle;
- (b) the sale, lease, or disposal of surplus supplies by public auction, competitive sealed bidding, or other appropriate method designated by regulation, provided that no employee of the owning or disposing agency shall be entitled to purchase any such supplies; and
- (c) transfer of excess supplies.

Sec. 191. (Recodification) (Effective July 1, 2008) Control of State Property and Equipment³²¹.

Except as provided in sections 192 and 193 of this act [subsections (b) and (c)], the Commissioner of Administrative Services shall consider and devise ways and means of establishing and maintaining proper control of state property and equipment, including vehicles and office equipment; shall require the establishment of proper permanent inventory records and the taking of physical inventories of both stores and equipment; shall discover unused and improperly used or neglected equipment and shall authorize the transfer, use or disposal of such equipment.

Sec. 192. (Recodification) (Effective July 1, 2008) Control of State Judicial Department Property and Equipment³²².

The Office of the Chief Court Administrator shall consider and devise ways and means of establishing and maintaining proper control of Judicial Department property and equipment, including vehicles and office equipment, require the establishment of proper permanent inventory records and the taking of physical inventories of Judicial Department equipment, and authorize the transfer, use or disposal of unused and improperly used or neglected Judicial Department equipment. For the purposes of this subsection, the term "Judicial Department" does not include the courts of probate, the Division of Criminal Justice and the

³²⁰ Recodification and repeal of General Statutes, Sec. 8-201 of the ABA Model Code.

³²¹ Recodification and repeal of General Statutes, Sec. 4a-4(a).

³²² Recodification and repeal of General Statutes, Sec. 4a-4(b).

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Public Defender Services Commission, except where they share facilities in state-maintained courts.

Sec. 193. (Recodification) (Effective July 1, 2008) Control of State System of Higher Education Property and Equipment³²³.

The chief executive officer of each constituent unit of the state system of higher education may consider and devise ways and means of and The University of Connecticut shall be responsible for establishing and maintaining proper control of equipment, including all vehicles and office equipment of such unit, require the establishment of proper permanent inventory records and the taking of physical inventories of the equipment of such constituent unit, and may authorize the transfer, use or disposal of unused and improperly used or neglected equipment of such unit.

Part 38. Estimated Requirements of State contracting agencies

Sec. 194. (Recodification) (Effective July 1, 2008) Recording of estimated requirements³²⁴.

In July and December of each fiscal year the Comptroller shall record upon the records of the revolving fund established under section 55 of this act [4a-75], or adjust the records to reflect, as anticipated resources of the fund, such amount as the Commissioner of Administrative Services estimates to be the requirements of state agencies for the twelve months immediately succeeding. The amounts so estimated shall be deemed to be appropriated and subject to allotment according to law.

Part 39. Proceeds

Sec. 195. (NEW) (Effective July 1, 2008) Allocation of Proceeds from Sale or disposal of Surplus Supplies³²⁵.

Unless otherwise provided by law, the Commissioner of Administrative Services shall be empowered, pursuant to regulations, to allocate proceeds from the sale, lease, or disposal of surplus supplies.

Sec. 196. (Recodification) (Effective July 1, 2008) Distribution of Surplus State Property. Lease of Property to Municipalities³²⁶.

(a) The Commissioner of Administrative Services shall administer a property distribution program for the disposition of usable property that a state agency deems surplus to its operating needs. If any such property cannot be transferred between state agencies and there is not an immediate need to

³²³ Recodification and repeal of General Statutes, Sec. 4a-4(c).

³²⁴ Recodification and repeal of General Statutes, Sec. 4a-76.

³²⁵ Derived from Section 8-301 of the ABA Model Code.

³²⁶ Recodification and repeal of General Statutes, Sec. 4a-57a.

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remove the property from a state facility, the commissioner shall offer the property for sale to municipalities and transit districts. If no municipality or transit district purchases the property, the commissioner shall offer the property for sale to the public. If the commissioner is unable to sell the property to a municipality or transit district or the public, the commissioner may donate the property to a nonprofit organization. The commissioner may dispose of any property that is not transferred, sold or donated. The commissioner shall establish a process for notifying municipalities and nonprofit organizations of their eligibility to receive surplus property under this subsection.

(b) No surplus motor vehicle owned by the state that has been declared to be a constructive total loss pursuant to section 38a-353 shall be offered for sale at an auction conducted under the provisions of subsection (a) of this section to anyone other than any person, firm or corporation licensed in accordance with the provisions of section 14-52 or 14-67l. No surplus motor vehicle owned by the state which has a certificate of title stamped "SALVAGE PARTS ONLY" or which has ten or more major component parts damaged beyond repair shall be offered for sale at an auction conducted under the provisions of subsection (a) of this section to anyone other than any person, firm or corporation licensed in accordance with the provisions of section 14-67l.

(c) The state may lease to a municipality any personal state property that has become obsolete, unserviceable or unusable if the Commissioner of Administrative Services determines that:

(1) An emergency situation exists in the municipality that could not be reasonably foreseen;

(2) the municipality has no feasible alternative means of obtaining such property within a reasonable time; and

(3) the lease would have a minimal fiscal and administrative impact on the state. Such lease shall be for not more than three months, unless extended for an additional three months by the commissioner.

The municipality shall be solely liable for any damage to, or any damage or injury resulting from use of, such property and shall indemnify the state against all claims arising out of the use of such property.

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Article 10. Intergovernmental Relations

Part 40. Cooperative Purchasing

Sec. 197. (Recodification) (Effective July 1, 2008) Cooperative Purchasing Plans³²⁷.

(a) The Commissioner of Administrative Services may join with federal agencies, other state governments, political subdivisions of this state or nonprofit organizations in cooperative purchasing plans when the best interests of the state would be served thereby.

(b) The Commissioner of Administrative Services, in conjunction with the Department of Environmental Protection and within available appropriations, shall make known to the chief executive officer of each municipality the existence of cooperative plans for the purchase of recycled paper.

Part 41. Specifically Prescribed Cooperative Purchasing Plans

Sec. 198. (Recodification) (Effective July 1, 2008) Purchasing by certain institutions through the Administrative Services Commissioner³²⁸.

Connecticut Children's Medical Center, The American School at Hartford for the Deaf, The Connecticut Institute for the Blind, any other institution or agency which receives at least sixty per cent of its funding from the state or federal government, or both, and, by contract, any independent college or university, as defined in section 10a-37, may each purchase through the Commissioner of Administrative Services such supplies, materials, equipment or contractual services as such institutions require at the cost thereof to the state.

Sec. 199. (Recodification) (Effective July 1, 2008) Laundry service and supply contracts³²⁹.

Any institution or agency of the state of Connecticut, with the approval of the Commissioner of Administrative Services, may become a member of a corporation established to provide hospital laundry services and supplies on a cooperative basis to its members and may, with the approval of the Commissioner of Administrative Services, enter into a contract or contracts with said corporation, including a long-term contract for the purchase of laundry services and supplies for the hospital facilities operated by said institution or agency. Such contract or contracts shall be for such periods and upon such terms and conditions as may be mutually determined by such institutions or agencies and the corporation.

³²⁷ Recodification and repeal of General Statutes, Sec. 4a-531.

³²⁸ Recodification and repeal of General Statutes, Sec. 4a-54.

³²⁹ Recodification and repeal of General Statutes, Sec. 4a-55.

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Part 42. Federal Property

Sec. 200. (Recodification) (Effective July 1, 2008) Acquisition of federal property. Contracts with federal agencies concerning health services. Exemption from statutes or municipal charter. Purchasing from federal contractors³³⁰.

(a) The state, through the Commissioner of Administrative Services, or any political subdivision thereof, through the officer or agent legally authorized to make purchases on its behalf, may enter into any contract with the United States government or any federal agency for the purchase, lease or other acquisition of any equipment, supplies, materials or other property or for the purchase, sale or exchange of, or other cooperation concerning, services related to medicine or health. No provision of the statutes or of any municipal charter concerning the inviting of competitive bids, public advertising for bids or of expenditures, the delivery of purchases before payment, or any other provision which may result in disadvantage or loss of opportunity to such state agency or subdivision in such transactions with the federal government, shall apply to transactions made under the provisions of this subsection. Any municipality desiring to enter into any such contract may do so only after the acceptance of the applicable provisions of this section at a meeting of such municipality warned and held for the purpose.

(b) The state, through the Commissioner of Administrative Services and pursuant to Public Law 103-355, may purchase equipment, supplies, materials or other property from a person who has a contract to sell such property to a department, agency or instrumentality of the United States government, in accordance with the terms and conditions of said contract.

Sec. 201. (Recodification) (Effective July 1, 2008) Acquisition of federal surplus property³³¹.

The Commissioner of Administrative Services is designated as the official agency of the state to acquire, warehouse and distribute surplus personal property of the federal government and to act on behalf of any state agencies or other donees eligible for such federal surplus personal property under federal legislation or regulations, and is authorized to execute, with the approval of the Attorney General, any certification or agreement required by the federal government and to take all other action necessary or appropriate to cooperate with the federal government in carrying out the purpose of any federal act or regulation in connection with such surplus personal property. All moneys or other assets derived from the sale of property acquired under the provisions of this section shall be credited to the revolving fund established by section 4a-75 and may be expended after allotment in accordance with law.

³³⁰ Recodification and repeal of General Statutes, Sec. 4a-66.

³³¹ Recodification and repeal of General Statutes, Sec. 4a-67.

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Article 11. Other Statutes Affected by the Code

Sec. 202. (NEW) (Effective July 1, 2008) Modification of Sec. 1-91(a)³³².

Regulations of the Citizen's Ethics Advisory Board. Subsection (a) of section 1-92 of the 2006 supplement to the general statutes is repealed and the following is substituted in lieu thereof:

(a) The Citizen's Ethics Advisory Board shall adopt regulations in accordance with chapter 54 to carry out the purposes of this part. Such regulations shall not be deemed to govern the conduct of any judge trial referee in the performance of such judge trial referee's duties pursuant to this chapter. Not later than January 1, 1992, the board shall adopt regulations which further clarify the meaning of the terms "directly and personally received" and "major life event", as used in subsection (e) of section 1-79, as amended, and subsection (g) of section 1-91, as amended. The commission shall adopt regulations that further clarify the meaning of the term "directly or indirectly involved in any enterprise", as used in this act.

Sec. 203. (NEW) (Effective July 1, 2008) Modification of Sec. 4-124p.

Sec. 4-124p. Receipt of funds. Dues. Contracts. Audits. Annual report.

Each regional council of governments established under the provisions of sections 4-124i to 4-124p, inclusive, is authorized to receive for its own use and purposes any funds from any source including the state and federal governments and including bequests, gifts and contributions made by any individual, corporation or association. Any town, city or borough participating in a regional council of governments shall annually appropriate funds for the expenses of such council in the performance of its purposes. Such funds shall be appropriated and paid in accordance with a dues formula established by the regional council of governments. Such council may withhold any services it deems advisable from any town, city or borough which has failed to pay such dues. Within the amount so received, a council may engage employees, and contract with professional consultants, municipalities, the state and the federal governments, other regional councils of governments, regional councils of elected officials, regional planning agencies and other intertown, regional or metropolitan agencies, or with any one or more of them, and may enter into contracts from time to time to carry out its purposes. Any such contract shall be approved by action of the regional council of governments in a manner prescribed by the council, utilizing best procurement practices as may be recommended by the State Contracting Standards Board. Any regional council of governments may enter into a contract to carry out its purpose with any other regional council of governments, any regional council of

³³² Derived from Sec. 15 of P.A. 06-1.

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elected officials, established under sections 4-124c to 4-124h, inclusive, or any regional planning agency formed under section 8-31a. The accounts of any regional council of governments shall be subject to an annual audit under the provisions of chapter 111 and such council shall file an annual report with the clerks of its member towns, cities or boroughs, with planning commissions, if any, of members, and with the Secretary of the Office of Policy and Management, or his designee.

Sec. 204. (NEW) (Effective July 1, 2008) Modification of Sec. 4a-2(a)(2).

Sec. 4a-2. (Formerly Sec. 4-23b). Commissioner's general powers and responsibilities.

(a) The Commissioner of Administrative Services shall have the following general duties and responsibilities:

(1) The establishment of personnel policy and responsibility for the personnel administration of state employees;

(2) The purchase and provision of supplies, materials, equipment and contractual services, as defined in section 4a-50, subject to the provisions of the general statutes and the policies as set forth by the State Contracting Standards Board;

(3) The publishing, printing or purchasing of laws, stationery, forms and reports; and

(4) The collection of sums due the state for public assistance.

(b) Subject to the provisions of chapter 67, the Commissioner of Administrative Services may appoint such employees as are necessary for carrying out the duties prescribed to said commissioner by the general statutes.

Sec. 205. (NEW) (Effective July 1, 2008) Modification of Sec. 4a-6(a).

Leasing of personal property by state agencies; responsibilities of Commissioner of Administrative Services.

(a) No state agency shall enter into any agreement, whether oral or written, or renew any agreement for the leasing of any personal property, except upon approval of the Commissioner of Administrative Services and subject to such procedures as [the commissioner] the State Contracting Standards Board may establish respecting the leasing of personal property. The commissioner shall cause to be kept a complete record of all personal property leased by state agencies, the location of each item of such property and a copy of all leasing agreements and renewals thereof.

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Sec. 206. (NEW) (Effective July 1, 2008) Modification of Sec. 4a-9.

Capital Equipment Purchase Fund.

There is created a Capital Equipment Purchase Fund. The fund shall be administered by the Secretary of the Office of Policy and Management. The fund shall be used for the purpose of acquiring, by purchase or by exercise of prepayment or purchase options in existing capital leases entered into by the state, capital equipment with an anticipated remaining useful life of not less than five years from the date of purchase and (1) to the extent of not more than two million nine hundred thousand dollars, payment for projects under subsection (a) of section 4-67f, and (2) to the extent of not more than one hundred thousand dollars, payment for awards under subsection (b) of said section. Notwithstanding the provisions of this section, or any regulations adopted under the general statutes, a state agency may purchase, in accordance with the applicable provisions of this act, necessary data processing equipment that has a unit price of less than one thousand dollars from the Capital Equipment Purchase Fund authorized under section 4a-10, provided such equipment has a useful life of not less than five years.

Sec. 207. (NEW) (Effective July 1, 2008) Modification of Sec. 4a-51.

Sec. 4a-51. (Formerly Sec. 4-110). Duties of Administrative Services Commissioner re purchases.

(a) The Commissioner of Administrative Services shall: [(1) Purchase, lease or contract for all supplies, materials, equipment and contractual services required by any state agency, except as provided in sections 4-98 and 56 of this act [4a-57]; (2) enforce standard specifications established in accordance with section 91 of this act [4a-56]; (3)] (1) establish and operate a central duplicating and mailing room for state agencies located in or near the city of Hartford and such other places as he deems practical; and [(4)] (2) establish and operate or have supervisory control over other central supply services in such locations as may best serve the requirements of the state agencies.

[(b) The Commissioner of Administrative Services, when purchasing or contracting for the purchase of dairy products, poultry, eggs, fruits or vegetables pursuant to subsection (a) of this section, shall give preference to dairy products, poultry, eggs, fruits or vegetables grown or produced in this state, when such products, poultry, eggs, fruits or vegetables are comparable in cost to other dairy products, poultry, eggs, fruits or vegetables being considered for purchase by the commissioner that have not been grown or produced in this state.]

Sec. 208. (Repeal) (Effective July 1, 2008) Repeal of Sec. 4a-52a(b)-(d).

Disqualification from bidding³³³.

³³³ Recodification and repeal of General Statutes, Sec. 4a-52a(b)-(d).

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~~[(a)]~~ ~~[(b)]~~ The chief executive officer of each constituent unit of the state system of higher education or, in the case of the Connecticut State University system, the chief executive officer of a state university may disqualify any person, firm or corporation, for up to two years, from bidding on contracts with the constituent unit or institutions under its jurisdiction, pursuant to section 10a-151b, for supplies, materials, equipment and contractual services required by the constituent unit or institution, for one or more causes specified in subsection ~~(c)~~ ~~[(d)]~~ of this section. The chief executive officer may initiate a disqualification proceeding only after consulting with the Attorney General and shall provide notice and an opportunity to be heard to the person, firm or corporation which is the subject of the proceeding. The chief executive officer shall issue a written decision within ninety days of the last date of such hearing and state in the decision the reasons for the action taken, and if the person, firm or corporation is being disqualified, the period of the disqualification. The chief executive officer shall send the decision to such person, firm or corporation by certified mail, return receipt requested, and a copy of the decision shall be sent to the Commissioner of Administrative Services. The written decision shall be a final decision for the purposes of sections 4-180 and 4-183.

~~(b)~~ ~~[(c)]~~ Before initiating such a proceeding or during the proceeding, the chief executive officer may, after consulting with the Attorney General, suspend the person, firm or corporation from being considered for the awarding of such a contract for such supplies, materials, equipment or contractual services, if the chief executive officer determines that there is probable cause for disqualification under subsection (b) of this section. No such suspension shall exceed three months. The chief executive officer may suspend such a person, firm or corporation only by issuing a written decision setting forth the reasons for, and the period of the suspension. The chief executive officer shall send the decision to such person, firm or corporation by certified mail, return receipt requested, and a copy of the decision shall be sent to the Commissioner of Administrative Services.

~~(c)~~ ~~[(d)]~~ Causes for disqualification or suspension from bidding on contracts shall include the following:

(1) Conviction or entry of a plea of guilty for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(2) Conviction or entry of a plea of guilty under state or federal law for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which affects responsibility as a state contractor;

(3) Conviction or entry of a plea of guilty under state or federal antitrust, collusion or conspiracy statutes arising out of the submission of bids or proposals;

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(4) Noncompliance with contract provisions, of a character regarded by the chief executive officer to be of such gravity as to indicate a lack of responsibility to perform as a contractor, including deliberate failure, without good cause, to perform in accordance with specifications or time limits provided in a contract;

(5) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, unless such failure to perform or unsatisfactory performance was caused by acts beyond the control of the contractor or supplier; or

(6) Any other cause the chief executive officer determines to be so serious or compelling as to affect responsibility as a contractor, including disqualification by another government entity, having caused financial loss to the state or having caused a serious delay or inability of state officials to carry out their duties on a past contract.]

Sec. 209. (Repeal) (Effective July 1, 2008) Repeal of Sec. 4a-63.

Disqualification from bidding on contracts. Suspension³³⁴.

[(a) The Commissioner of Administrative Services may disqualify any person, firm or corporation, for up to two years, from bidding on contracts with the Department of Administrative Services, pursuant to section 56 of this act [4a-57], for supplies, materials, equipment and contractual services required by any state agency, for one or more causes set forth under subsection (c) of this section. The commissioner may initiate a disqualification proceeding after consulting with the state contracting [purchasing] agency, if any, and the Attorney General and shall provide notice and an opportunity to be heard to the person, firm or corporation which is the subject of the proceeding. The commissioner shall issue a written decision within ninety days of the last date of such hearing and state in the decision the reasons for the action taken and, if the person, firm or corporation is being disqualified, the period of such disqualification. The commissioner shall send the decision to such person, firm or corporation by certified mail, return receipt requested. The written decision shall be a final decision for the purposes of sections 4-180 and 4-183.

(b) Before initiating such a proceeding or during the proceeding, the commissioner may, after consulting with any such state contracting [purchasing] agency and the Attorney General, suspend the person, firm or corporation from being considered for the awarding of such a contract for such supplies, materials, equipment or contractual services, if the commissioner determines that there is probable cause for disqualification under subsection (a) of this section. No such suspension shall exceed three months. The commissioner may suspend such a person, firm or corporation only by issuing a written decision setting forth the reasons for, and the period of, the suspension. The commissioner shall send the decision to such person, firm or corporation by certified mail, return receipt requested.

³³⁴Recodification and repeal of General Statutes, Sec.4a-63.

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(c) Causes for disqualification or suspension from bidding on contracts shall include the following:

(1) Conviction or entry of a plea of guilty for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(2) Conviction or entry of a plea of guilty under state or federal law for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which affects responsibility as a state contractor;

(3) Conviction or entry of a plea of guilty under state or federal antitrust, collusion or conspiracy statutes arising out of the submission of bids or proposals;

(4) Noncompliance with contract provisions, of a character regarded by the commissioner to be of such gravity as to indicate a lack of responsibility to perform as a state contractor, including deliberate failure, without good cause, to perform in accordance with specifications or time limits provided in a contract;

(5) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, unless such failure to perform or unsatisfactory performance was caused by acts beyond the control of the contractor or supplier; or

(6) Any other cause the commissioner determines to be so serious or compelling as to affect responsibility as a state contractor, including disqualification by another governmental entity, having caused financial loss to the state or having caused a serious delay or inability of state officials to carry out their duties on a past contract or contracts.]

Sec. 210. (NEW) (Effective July 1, 2008) Modification of Sec. 4b-1.

Sec. 4b-1. (Formerly Sec. 4-126). Duties of commissioner.

(a) The Commissioner of Public Works shall (1) be responsible for the administrative functions of construction and planning of all capital improvements undertaken by the state, except (A) highway and bridge construction, the construction and planning of capital improvements related to mass transit, marine and aviation transportation, (B) the Connecticut Marketing Authority, (C) planning and construction of capital improvements to the State Capitol building or the Legislative Office Building and related facilities by the Joint Committee on Legislative Management, (D) any project as defined in subdivision (16) of section 10a-109c, undertaken by The University of Connecticut, and (E) construction and planning of capital improvements related to the Judicial Department if such construction and planning do not constitute a project within the meaning of

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subsection (g) of section 4b-55, including the preparation of preliminary plans, estimates of cost, development of designs, working plans and specifications, award of contracts and supervision and inspection. For the purposes of this subparagraph (E), the term "Judicial Department" does not include the courts of probate, the Division of Criminal Justice and the Public Defender Services Commission, except where such agencies share facilities in state-maintained courts; (2) select consultant firms as set forth in section _____ of this act [in accordance with the provisions of sections 4b-56 to 4b-59, inclusive, to assist in the development of plans and specifications when in the commissioner's judgment such assistance is desirable]; (3) render technical advice and service to all state agencies in the preparation and correlation of plans for necessary improvement of their physical plants; (4) cooperate with those charged with fiscal programming and budget formulation in the development of a capital program and a capital budget for the state; (5) be responsible for the purchase, sale, lease, sublease and acquisition of property and space to house state agencies as set forth in section _____ of this act [and, subject to the provisions of section 4b-21, the sale or exchange of any land or interest in land belonging to the state; (6) maintain a complete and current inventory of all state-owned or leased property and premises, including space-utilization data]; (7) supervise the care and control of buildings and grounds owned or leased by the state in Hartford, except the building and grounds of the State Capitol and the Legislative Office Building and parking garage and related structures and facilities and grounds, as provided in section 2-71h, and the Connecticut Marketing Authority and property under the supervision of the Office of the Chief Court Administrator under the terms of section 4b-11; and (8) be responsible for the administrative functions of establishing and maintaining security standards for all facilities housing the offices and equipment of the state except (A) Department of Transportation mass transit, marine and aviation facilities, (B) the State Capitol and the Legislative Office Building and related facilities, (C) facilities under the care and control of The University of Connecticut or other constituent units of the state system of higher education, (D) Judicial Department facilities, (E) Department of Public Safety facilities, (F) Military Department facilities, (G) Department of Correction facilities, (H) Department of Children and Families client-occupied facilities, (I) facilities occupied by the Governor, Lieutenant Governor, Attorney General, Comptroller, Secretary of the State and Treasurer, and (J) facilities occupied by the Board of Pardons and Paroles. As used in this subdivision, "security" has the meaning assigned to it in section 4b-130. Subject to the provisions of chapter 67, said commissioner may appoint such employees as are necessary for carrying out the duties prescribed to said commissioner by the general statutes.

(b) Notwithstanding any other provision of the general statutes, except for the property of The University of Connecticut, the commissioner may supervise the care and control of (1) any state-owned or leased office building, and related buildings and grounds, outside the city of Hartford, used as district offices, except any state-owned or leased office building, and related buildings and grounds, used by the Judicial Department, and (2) any other state-owned or leased property, on a temporary or permanent basis, if the commissioner, the Secretary of the Office of Policy and Management and the executive head of the department or agency supervising the care and control of such property agree, in writing, to such supervision.

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Sec. 211. (NEW) (Effective July 1, 2008) Modification of Sec. 4b-23.

Sec. 4b-23. State facility plan. Implementation. Responsibilities of Secretary of the Office of Policy and Management, Commissioner of Public Works and Properties Review Board. Regulations.

(a) As used in this section, "facility" means buildings and real property owned or leased by the state. The Secretary of the Office of Policy and Management shall establish guidelines which further define such term. All agencies and departments of the state shall notify the Secretary of the Office of Policy and Management of their facility needs including, but not limited to, the types of such facilities and the municipalities or general location for the facilities. Each agency and department shall continue long-range planning for facility needs, establish a plan for its long-range facility needs and submit such plan and related facility project requests to the Secretary of the Office of Policy and Management, and a copy thereof to the Commissioner of Public Works, on or before September first of each even-numbered year. Each such request shall be accompanied by a capital development impact statement, as required by section 4-66b, and a collocation statement, as required by section 4b-31, if the secretary so requires. Each agency and department shall base its long-term planning for facility needs on a program plan. The secretary shall establish a content guide and schedule for such plans. Each agency and department shall prepare its program plan in accordance with such guide and file it with the secretary pursuant to such schedule. Facility plans shall include, but not be limited to: Identification of (1) long-term and short-term facility needs, (2) opportunities for the substitution of state-owned space for leased space, (3) facilities proposed for demolition or abandonment which have potential for other uses and (4) space modifications or relocations that could result in cost or energy savings. Each agency or department program plan and facility plan and its facility project requests shall cover a period of at least five years. The secretary shall provide agencies and departments with instructions for preparing program plans, long-term facility plans and facility project requests and shall provide appropriate programmatic planning assistance. The Commissioner of Public Works shall assist agencies and departments with long-term facilities planning and the preparation of cost estimates for such plans and requests. The Secretary of the Office of Policy and Management shall review such plans and prepare an integrated state facility plan which meets the aggregate facility needs of the state. The secretary shall review the cost effective retrofit measures recommended to him by the Commissioner of Public Works under subsection (b) of section 16a-38a and include in the plan those measures which would best attain the energy performance standards established under subdivision (1) of subsection (b) of section 16a-38.

(b) On or before December first of each even-numbered year, the Commissioner of Public Works shall provide the Secretary of the Office of Policy and Management with a review of the plans and requests submitted pursuant to subsection (a) of this section for consistency with realistic cost factors, space requirements, space standards, implementation schedules, priority needs, objectives of the Commissioner of Public Works in carrying out his responsibilities under section 4b-30 and the need for the maintenance, improvement and replacement of state facilities.

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(c) The Secretary of the Office of Policy and Management shall present a proposed state facility plan to the Properties Review Board on or before February fifteenth of each odd-numbered year. Such plan shall be known as the recommended state facility plan and shall include all leases and capital projects and a statement of the degree to which it promotes the collocation goals addressed in subsection (e) of section 4b-31. The secretary shall establish guidelines defining "capital projects". The Properties Review Board shall submit its recommendations to the secretary on or before March first of each odd-numbered year. The Properties Review Board recommendations shall address the goals described in subsection (e) of section 4b-31. The secretary shall present the recommended state facility plan to the General Assembly on or before March fifteenth of each odd-numbered year.

(d) Upon the approval by the General Assembly of the operating and capital budget appropriations, the Secretary of the Office of Policy and Management shall update and modify the recommended state facility plan, which shall then be known as the state facility plan. The state facility plan shall be used as an advisory document for the leasing of property for use by state agencies and departments and for related capital projects.

(e) Implementation of the state facility plan shall be the responsibility of the Commissioner of Public Works. He shall conduct a study of each proposed facility in the plan to determine: (1) The method of choice for satisfying each such facility need, (2) the geographical areas best suited to such need, (3) the feasibility and cost of such acquisition using a life-cycle cost analysis as established by subdivision (2) of subsection (b) of section 16a-38, (4) the degree to which the plan promotes the goals addressed in subsection (e) of section 4b-31 and (5) any other relevant factors. Said commissioner shall review and approve each facility plan implementation action and shall submit to the Properties Review Board a list of each such action approved and the method and plan, including, but not limited to the plan for procurement in accordance with this act, by which it shall be accomplished. Said commissioner shall endeavor to locate human services agencies in the same buildings as municipal and private agencies that provide human services. The results of said commissioner's study along with all supportive materials shall be immediately sent to the Properties Review Board. The board shall meet to review the decision of the commissioner and may request the commissioner or any member of his department, and the head of the requesting agency or any of his employees to appear for the purpose of supplying pertinent information. Said board shall call a meeting within two weeks of the receipt of the commissioner's decision, and may meet as often as necessary, to review said decision. The board, within ninety days after the receipt of the decision of the Commissioner of Public Works, shall either accept, reject or request modification of such decision, except that when more time is required, the board may have a ninety-day extension of time, provided the board shall advise the Commissioner of Public Works in writing as to the reasons for such extension of time. If such decision is disapproved by the board, it shall so inform the commissioner along with its reasons therefor, and the commissioner shall inform the head of the requesting agency and the Secretary of the Office of Policy and Management that its request has been rejected. If such decision is approved by the board it shall inform the commissioner of such approval and the

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commissioner shall immediately communicate his decision to the head or acting head of such governmental unit and to the Secretary of the Office of Policy and Management and shall set forth the procedures to be taken to accomplish the results of such decision. The decision to make public such decision shall rest solely with the commissioner both as to time and manner of disclosure, but in no event shall such period exceed one year. The commissioner shall, when he deems it to be in the public interest, authorize the disclosure of such information; however, in the absence of such authorization, any unauthorized disclosure shall be subject to the criminal provisions of section 4b-27. All decisions made by the commissioner under the provisions of this section shall require review by the board. Except as otherwise hereinafter provided, the approval or disapproval of the Properties Review Board shall be binding on the commissioner and the requesting agency with regard to the acquisition of any real estate by lease or otherwise, notwithstanding any other statute or special act to the contrary. A majority vote of the board shall be required to accept or reject a decision of the commissioner.

(f) Within forty-five days from the date of the board's decision regarding the request of a governmental unit, the head or acting head of such unit shall notify the commissioner (1) that it accepts his decision, (2) that it rejects his decision and withdraws its request, or (3) that it does not approve such decision and requests that all or part of such decision be modified by the commissioner. When such modification is requested, the commissioner shall, within three weeks from receipt of such request, consider and act upon such request for modification and submit his decision to the Properties Review Board. If the commissioner and the board fail to agree to such modification in whole or in part, the governmental unit may, within ten days from the date of notification of such final decision, accept the commissioner's final decision, reject such decision and withdraw its request, or appeal to the Governor. Upon such appeal, the commissioner shall submit a report to the Governor stating the board's conclusions and supporting material therefor and the governmental agency shall submit a report to the Governor stating its objections to such decision and its supporting material therefor. The Governor shall, within thirty days of the receipt of such reports, make a decision which shall be binding on the parties involved. In the absence of any such appeal or withdrawal of request, the decision of the commissioner and the board shall be final and binding upon the governmental unit.

(g) After final action is taken approving any request or modification thereof, condemnation procedures shall continue to be prosecuted in the same manner as they were on July 1, 1975, by the agency involved, where such procedures are applicable and authorized by statute.

(h) Approval by the Properties Review Board shall not be required prior to State Bond Commission authorization of funds (1) for planning costs and other preliminary expenses for any construction or acquisition project, or (2) for any construction or acquisition project for which an architect was selected prior to July 1, 1975.

(i) As used in this subsection, (1) "project" means any state program, except the downtown Hartford higher education center project, as defined in

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subsection (l) of section 4b-55, requiring consultant services if (A) the cost of such services is estimated to exceed fifty thousand dollars or, in the case of a constituent unit of the state system of higher education, the cost of such services is estimated to exceed three hundred thousand dollars, or (B) (i) the construction costs in connection with such program are estimated to exceed five hundred thousand dollars or, in the case of a constituent unit of the state system of higher education, other than The University of Connecticut, the construction costs in connection with such program are estimated to exceed two million dollars, and (ii) the cost of a consultant services contract for such program exceeds twenty thousand dollars or the cost of an amendment to a consultant services contract makes the total cost of the amendment, all previous amendments to such contract and the contract exceed twenty thousand dollars for the first time; (2) "consultant" means "consultant" as defined in section 4b-55; and (3) "consultant services" means "consultant services" as defined in section 4b-55. Any consultant selected by the commissioner, and any contracts entered into by the commissioner with any consultants for employment, on any project under the provisions of this section, shall be subject to the approval of the Properties Review Board prior to the employment of said consultant or consultants by the commissioner. The Properties Review Board shall, within thirty days, approve or disapprove the selection of or contract with any consultant made by the Commissioner of Public Works pursuant to sections 4b-1 and 4b-55 to 4b-59, inclusive. The Chief Procurement Officer shall be assigned to advise the Properties Review Board with respect to the applicability of the provisions of this act. If upon the expiration of the thirty-day period a decision has not been made, the Properties Review Board shall be deemed to have approved such selection or contract.

(j) The Properties Review Board shall, within thirty days, approve or disapprove the proposed acquisition by lease of any residential property by the Commissioner of Mental Retardation pursuant to subsection (d) of section 4b-3. If upon the expiration of such thirty-day period a decision has not been made, the Properties Review Board shall be deemed to have approved such lease.

(k) Any agency or department of state government requiring additional facilities not included in the state facility plan may submit a request to the Secretary of the Office of Policy and Management outlining the justification for its request. The agency or department shall also provide (1) in the case of a request not previously submitted to the secretary pursuant to subsection (a) of this section, the reasons why it was not so submitted, and (2) in the case of a request so submitted, sufficient new information to warrant reconsideration. Such request shall include a statement of the degree to which the proposed state facility plan promotes the goals addressed in subsection (e) of section 4b-31, if the secretary so requires. Such request shall also be accompanied by a capital development impact statement as required under section 4-66b, if the secretary so requires. Subsections (b) to (d), inclusive, of this section shall not apply to the review of such requests. Any such request for additional facilities which are determined by the Secretary of the Office of Policy and Management to be of emergency nature or the lack of which may seriously hinder the efficient operation of the state, may be approved by the Properties Review Board and the Secretary of the Office of Policy and Management and shall be known as an approval made during the interim between state facility plans. No action may be taken by the state to lease

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or construct such additional facilities unless the secretary makes such a determination.

(l) The Commissioner of Public Works shall monitor the amount of leased space being requested and the costs of all proposed and approved facility project actions and shall advise the Secretary of the Office of Policy and Management and the Governor when the space to be leased or the forecast costs to complete the project exceed the square footage amount or the cost levels in the approved state facility plan by ten per cent or more. Approval of the Secretary of the Office of Policy and Management, the Properties Review Board, the State Bond Commission and the Governor shall be required to continue the project.

(m) (1) Plans to construct, renovate or modify state-owned or occupied buildings shall provide for a portion of the total planned floor area of newly constructed state buildings or buildings constructed specifically for use by the state to be served by renewable sources of energy, including solar, wind, water and biomass sources, for use in space heating and cooling, domestic hot water and other applications. For the plan due December 1, 1979, the portion to be served by renewable energy sources shall be not less than five per cent of total planned new floor area. For each succeeding state facilities plan submitted after December 1, 1979, the portion of the total planned floor area of any additional newly constructed state buildings or buildings constructed specifically for use by the state to be served by renewable energy sources shall be increased by at least five per cent per year until a goal of fifty per cent of total planned floor area of any additional newly constructed state buildings or buildings constructed specifically for use by the state is reached. For any facility served by renewable energy sources in accordance with this subsection, not less than thirty per cent of the total energy requirements of any specific energy application, including, but not limited to, space heating or cooling and providing domestic hot water, shall be provided by renewable energy sources. The installation in newly constructed state buildings or buildings constructed specifically for use by the state of systems using renewable energy sources in accordance with this subsection, shall be subject to the life-cycle cost analysis provided for in section 16a-38. (2) The state shall fulfill the obligations imposed by subdivision (1) of this section unless such action would cause an undue economic hardship to the state.

(n) The recommended state facility plan shall include policies for:

(1) The encouragement of the acquisition, transfer and utilization of space in suitable buildings of historic, architectural or cultural significance, unless use of such space would not prove feasible and prudent compared with available alternatives;

(2) The encouragement of the location of commercial, cultural, educational and recreational facilities and activities within public buildings;

(3) The provision and maintenance of space, facilities and activities to the extent practicable, which encourage public access to and stimulate public pedestrian traffic around, into and through public buildings, permitting cooperative improvements to and uses of the areas

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between the building and the street, so that such activities complement and supplement commercial, cultural, educational and recreational resources in the neighborhood of public buildings;

(4) The encouragement of the public use of public buildings for cultural, educational and recreational activities;

(5) The encouragement of the ownership or leasing of modern buildings to replace obsolete facilities, achieve cost and energy efficiencies, maximize delivery of services to the public, preserve existing infrastructure and provide a comfortable and space-efficient work environment; [and]

(6) The encouragement of the establishment of child day care facilities and child development centers including provisions for (A) full-day and year-round programs for children of working parents, (B) opportunities for parents to choose among accredited public or private programs, (C) open enrollment for children in child day care and school readiness programs, and (D) incentives for the collocation and service integration of child day care programs and school readiness programs pursuant to section 4b-31; and,

(7) The utilization of competitive procurement practices as set forth in this Act.

(o) Not later than January 1, 1988, the Commissioner of Public Works shall adopt regulations, in consultation with the Secretary of the Office of Policy and Management and the State Properties Review Board, and in accordance with the provisions of chapter 54, setting forth the procedures which the Department of Public Works and such office and board shall follow in carrying out their responsibilities concerning state leasing of offices, space or other facilities. Such regulations shall specify, for each step in the leasing process at which an approval is needed in order to proceed to the next step, what information shall be required, who shall provide the information and the criteria for granting the approval. Notwithstanding any other provision of the general statutes, such regulations shall provide that: (1) The Commissioner of Public Works shall (A) review all lease requests included in, and scheduled to begin during, the first year of each approved state-wide facility and capital plan and (B) provide the Secretary of the Office of Policy and Management with an estimate of the gross cost and total square footage need for each lease, (2) the secretary shall approve a gross cost and a total square footage for each such lease and transmit each decision to the requesting agency, the commissioner and the State Properties Review Board, (3) the commissioner shall submit to the secretary, for approval, only negotiated lease requests which exceed such approved cost, or which exceed such approved square footage by at least ten per cent, and (4) the secretary shall approve or disapprove any such lease request not more than ten working days after he receives the request. If the secretary fails to act on the request during such period, the request shall be deemed to have been approved and shall be forwarded to the board.

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Sec. 212. (NEW) (Effective July 1, 2008) Modification of Sec. 4d-2.

Sec. 4d-2. (Formerly Sec. 16a-110). Department of Information Technology. Chief Information Officer. Duties and responsibilities.

(a) There is established the Department of Information Technology. The Department of Information Technology shall be administered by a Chief Information Officer, who shall be an individual knowledgeable with respect to information and telecommunication systems. The Chief Information Officer shall be appointed by the Governor in accordance with the provisions of sections 4-5 to 4-8, inclusive, with the powers and duties prescribed in said sections.

(b) The Department of Information Technology shall constitute a successor department to the Office of Information and Technology, in accordance with the provisions of sections 4-38d, 4-38e and 4-39.

(c) The Chief Information Officer shall: (1) Develop and implement an integrated set of policies and architecture pertaining to information and telecommunication systems for state agencies; (2) develop a series of comprehensive standards and planning guidelines pertaining to the development, acquisition, implementation, and oversight and management of information and telecommunication systems for state agencies; (3) identify and implement (A) optimal information and telecommunication systems to efficiently service the needs of state agencies and (B) opportunities for reducing costs for such systems; (4) approve or disapprove [, in accordance with guidelines established by the Chief Information Officer,] each proposed state agency acquisition of hardware or software for an information or telecommunication system, except for (A) hardware or software having a cost of less than twenty thousand dollars or (B) hardware or software having a cost of twenty thousand dollars or more, but less than one hundred thousand dollars, which is for a project that complies with the agency's business systems plan as approved by the Chief Information Officer, as set forth in Section ____ of this act; (5) approve or disapprove [, in accordance with guidelines established by the Chief Information Officer], all state agency requests or proposed contracts for consultants for information and telecommunication systems, as set forth in Section ____ of this act; (6) be responsible for purchasing, leasing and contracting for all information system and telecommunication system facilities, equipment and services for state agencies, in accordance with the provisions of section ____ of this act [subsection (a) of section 4d-8], except for the offices of the Governor, Lieutenant Governor, Treasurer, Attorney General, Secretary of the State and Comptroller; (7) review existing and new information and telecommunication system technologies to ensure consistency with the strategic plan established under section 4d-7 and approved state agency architecture and make recommendations to the Standardization Committee established under section 4a-58 for review and appropriate action; (8) cooperate with the General Assembly, the Judicial Department and the constituent units of the state system of higher education in assessing opportunities for cost savings and greater sharing of information resources which could result if such entities acquire information and telecommunication systems similar to those of state agencies; and (9) ensure state-wide implementation of the 9-1-1 and E 9-1-1 systems.

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(d) The Department of Information Technology shall approve or disapprove a state agency request or proposed contract under subdivision (4) or (5) of subsection (c) of this section no later than seven business days after receipt of the request or proposed contract and any necessary supporting information. If the Department of Information Technology does not approve or disapprove the request or proposed contract by the end of such seven-day period, the request or proposed contract shall be deemed to have been approved. The provisions of said subdivision (5) shall not apply to telecommunication consultants retained by the Department of Public Utility Control or the Office of Consumer Counsel in connection with telecommunication proceedings of said department.

Sec. 213. (NEW) (Effective July 1, 2008) Modification of Sec. 13b-36.

Sec. 13b-36. Acquisition of land, buildings, equipment or facilities; right of first refusal of railroad properties and facilities, when.

(a) The commissioner may purchase or take and, in the name of the state, may acquire title in fee simple to, or any lesser estate, interest or right in, any land, buildings, equipment or facilities which the commissioner finds necessary for the operation or improvement of transportation services. The determination by the commissioner that such purchase or taking is necessary shall be conclusive. Such taking shall be in the manner prescribed in subsection (b) of section 13a-73 for the taking of land for state highways.

(b) The commissioner may sell, lease, convey or enter into any other arrangement for the use of such property for the operation of transportation services, or for such other purposes as the commissioner determines to be consistent with the best interests of the state and in accordance with the provisions of this act.

(c) Any company or corporation which conducts or has conducted rail operations in the state shall not, except as provided for in this subsection, sell, lease, transfer or otherwise dispose of any railroad properties and related facilities within the state that are abandoned, inactive or currently being used for railroad purposes to any party, without first offering such properties and facilities for sale to the Commissioner of Transportation. This provision shall not apply to any rail related facility that is to be replaced as a result of a rehabilitation program or emergency or routine maintenance programs. Such offer shall be made in writing and shall be sent by certified mail to the Commissioner of Transportation. Such offer shall include a map and description of the subject properties or facilities, the price, if available, for such properties or facilities, a description of the present or past railroad use of the subject property or facilities, and any other terms or conditions said company or corporation proposes to include as part of such sale. The commissioner, upon receipt of such offer, shall within forty-five days notify said company or corporation, in writing by certified mail, whether he is interested in acquiring the subject properties or facilities. Within one hundred thirty-five days of such written notice, the commissioner shall notify said company or corporation in writing by certified mail either that he has made an express finding in accordance with section 13b-35 and shall acquire such properties or

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facilities or that he shall not accept such offer and shall not acquire such properties or facilities. In no event shall said company or corporation offer to sell any railroad properties or related facilities which were the subject of negotiations between the commissioner and said company or corporation to any other party on terms more favorable to said party than the final terms offered to the commissioner during negotiations. Nothing in this section shall be construed to prevent a railroad company from transferring rail facilities within its own system or from selling, leasing or transferring or otherwise disposing of railroad properties or related facilities currently in use to another party provided that in no event shall the sale, lease, transfer or other disposition of such properties or facilities result in the discontinuance of existing rail service in the state. For the purposes of this section, the terms railroad properties and related facilities shall mean all the land, structures, buildings, rails, ties, ballast, signals and materials that have been or are used for rail transportation purposes and that are located either within the right-of-way as defined by railroad valuation maps or other suitable maps or abutting such right-of-way.

Sec. 214. (NEW) (Effective July 1, 2008) Modification of Sec. 13b-53.

Sec. 13b-53. Acquisition and operation of facilities.

The commissioner may, on behalf of the state, acquire, own, construct, maintain or operate, upon, at or near the seaboard or any navigable waterway, land, or any harbor, wharf, dock, pier, quay, canal, slip or basin, or any appropriate harbor facility, shed, warehouse of any kind, vault, railroad track, yard, terminal or equipment, or such other facility related to the transportation of goods or people by water as he deems necessary to the fulfillment of the purposes of this chapter and in accordance with the provisions of this act. The commissioner may make any such facility available for use by any person and in any manner, as he deems appropriate, in order to promote the efficient interchange of traffic between modes of transportation by water, and modes of transportation other than by water, including but not limited to transportation by rail, air and land.

Sec. 215. (NEW) (Effective July 1, 2008) Modification of Sec. 17b-3.

Sec. 17b-3. Commissioner of Social Services: Powers and Duties.

(a) The Commissioner of Social Services shall administer all law under the jurisdiction of the Department of Social Services. The commissioner shall have the power and duty to do the following:

- (1) Administer, coordinate and direct the operation of the department;
- (2) adopt and enforce such regulations, in accordance with chapter 54, as are necessary to implement the purposes of the department as established by statute;

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(3) establish rules for the internal operation and administration of the department;

(4) establish and develop programs and administer services to achieve the purposes of the department as established by statute;

(5) contract for facilities, services and programs to implement the purposes of the department as established by statute and in accordance with this act and the policies of the State Contracting Standards Board;

(6) process applications and requests for services promptly;

(7) with the approval of the Comptroller and in accordance with such procedures as may be specified by the Comptroller, make payments to providers of services for individuals who are eligible for benefits from the department as appropriate;

(8) make no duplicate awards for items of assistance once granted, except for replacement of lost or stolen checks on which payment has been stopped;

(9) promote economic self-sufficiency where appropriate in the department's programs, policies, practices and staff interactions with recipients;

(10) act as advocate for the need of more comprehensive and coordinated programs for persons served by the department;

(11) plan services and programs for persons served by the department;

(12) coordinate outreach activities by public and private agencies assisting persons served by the department;

(13) consult and cooperate with area and private planning agencies;

(14) advise and inform municipal officials and officials of social service agencies about social service programs and collect and disseminate information pertaining thereto, including information about federal, state, municipal and private assistance programs and services;

(15) encourage and facilitate effective communication and coordination among federal, state, municipal and private agencies;

(16) inquire into the utilization of state and federal government resources which offer solutions to problems of the delivery of social services;

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(17) conduct, encourage and maintain research and studies relating to social services development;

(18) prepare, review and encourage model comprehensive social service programs;

(19) maintain an inventory of data and information and act as a clearing house and referral agency for information on state and federal programs and services; and

(20) conduct, encourage and maintain research and studies and advise municipal officials and officials of social service agencies about forms of intergovernmental cooperation and coordination between public and private agencies designed to advance social service programs.

The commissioner may require notice of the submission of all applications by municipalities, any agency thereof, and social service agencies, for federal and state financial assistance to carry out social services. The commissioner shall establish state-wide and regional advisory councils.

(b) The Commissioner of Social Services is authorized to do all things necessary to apply for, qualify for and accept any federal funds made available or allotted under any federal act for social service development, or any other projects, programs or activities which may be established by federal law, for any of the purposes or activities related thereto, and said commissioner shall administer any such funds allotted to the department in accordance with federal law. The commissioner may enter into contracts with the federal government concerning the use and repayment of such funds under any such federal act, the prosecution of the work under any such contract and the establishment of and disbursement from a separate account in which federal and state funds estimated to be required for plan preparation or other eligible activities under such federal act shall be kept. Said account shall not be a part of the General Fund of the state or any subdivision of the state.

(c) The powers and duties enumerated in this section shall be in addition to and shall not limit any other powers or duties of the commissioner contained in any other law.

Sec. 216. (NEW) (Effective July 1, 2008) Modification of Sec. 17b-25.

Sec. 17b-25. Purchase or Lease and Management of Property.

The Commissioner of Social Services may obtain real and personal property, in accordance with the provisions of this act and the policies of the State Contracting Standards Board, with the approval of the Attorney General, by purchase or lease. The expense of obtaining and maintaining such property shall be paid out of appropriations for the Department of Social Services. Said commissioner may, subject to the provisions of chapter 67, appoint such supervisory and other personnel as may be necessary for the management of such property.

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Sec. 217. (NEW) (Effective July 1, 2008) Modification of Sec. 17b-28b.

Sec. 17b-28b. Competitive Bidding for Medicaid Managed Care Plans.

On and after January 1, 1997, the Department of Social Services may award, on the basis of a competitive bidding procedure, in accordance with the provisions of this act and the policies of the State Contracting Standards Board, contracts for Medicaid managed care health plans.

Sec. 218. (NEW) (Effective July 1, 2008) Modification of Sec. 18-88.

Sec. 18-88. (Formerly Sec. 18-14). Industrial activities. State agencies required to purchase necessary products from institution industries. Retail hobby stores.

(a) The commissioner shall use the industrial fund for the institutions of the department as a revolving fund for the maintenance and continuance of such productive industries as the commissioner directs and for the purchase of supplies, stock, tools, machinery and other equipment to promote in any way the industrial activities, including agricultural activities, of the institutions. The proceeds from all sales resulting from such activities shall be paid to the Treasurer and credited to said fund.

(b) The commissioner shall approve the establishment and maintenance of any and all such industrial activities, including, but not limited to, an optical shop to produce prescription eyeglasses for inmates of correctional institutions, for persons under state care in other institutions and for other persons receiving or eligible to receive benefits under Title XIX of the federal Social Security Act, as amended, provided such optical shop is under the direct supervision of an optician licensed under chapter 381, and provided further such eyeglasses are prescribed by an optometrist licensed under chapter 380, and are fitted by such licensed optometrist or by an optician licensed under chapter 381, after considering and determining the extent, if any, to which each industry may compete with private industry and, as far as possible, shall encourage a diversified program. If said optical shop is unable to fill the prescription for such eyeglasses for any reason, within the two-week period from its receipt of such prescription, said shop shall notify the person who prescribed such eyeglasses within ten days after receipt of such prescription.

(c) The commissioner may, by regulation, provide, for any injury suffered by any inmate arising out of and in the course of his employment in such industries, a compensation award not covered under section 4-165b. Such payments shall not exceed the sum of one dollar and fifty cents per week and shall be payable solely from profits from such industries.

(d) The commissioner may appoint, in accordance with chapter 67, a superintendent of institution industries and such assistants and employees as he deems necessary to (1) manage the industries, (2) market and deliver the

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products and (3) investigate complaints. The compensation of such appointees shall be paid from the industrial fund.

(e) The commissioner shall cause such articles, materials and products as are used by state agencies and political subdivisions to be produced by the labor of prisoners and sold at prices comparable with the lowest market prices for such articles and materials sold or offered for sale outside the institutions. Said articles, materials and products shall be filed with the State Contracting Portal following consultation with State Contracting Standards Board and Department of Administrative Services

(f) Any political subdivision of the state or federal government or any private nonprofit entity, including one which receives all or part of its revenues from any political subdivision of the state or federal government, may purchase any articles, materials or products required by it which are produced or manufactured by the institution industries, and any person may purchase products and by-products of farming operations in accordance with section 53-329. The commissioner may promulgate and circulate at sufficiently frequent intervals for distribution to the Commissioner of Administrative Services, the Comptroller, the State Contracting Standards Board and such political subdivisions a catalog showing styles, designs, sizes and varieties of all articles, materials and products manufactured and produced at the institutions and periodical price lists for all such articles.

(g) Each state department, agency, commission or board shall purchase its necessary products and services from the institution industries if such products and services are produced or manufactured and made available by such industries, provided such products and services are of comparable price and quality and in sufficient quantity as may be available for sale or offered for sale outside the institutions.

(h) The commissioner shall file an annual report of the industrial operations with the Governor and a balance sheet and statement of operations with the Comptroller at such times as he requests. The commissioner shall determine at the end of each fiscal year the amount of cash working capital necessary to be retained in the industrial fund and the excess of the amount so determined shall be transferred to the General Fund.

(i) The Commissioner of Correction may establish retail hobby stores for the purpose of the sale to the public, but not for resale, of articles made by inmates of any of the institutions of the department. The proceeds of such sales, less a charge to defray the cost of the sales as determined by the commissioner, shall be deposited in the inmate's institutional account. Such hobby products shall be subject to approval by the Commissioner of Correction.

(j) Any person who sells or offers for sale on the open market, to any person other than as specified in this section, any articles, materials or products manufactured or produced by institution inmates, shall be fined not less than one hundred dollars nor more than five thousand dollars or be imprisoned not more than six months, or be both fined and imprisoned.

(k) The Commissioner of Correction may establish, within the industrial fund, commissaries to be operated for the purpose of sale to inmates of items

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authorized by the commissioner. The cost of the commissary operation shall be charged to the fund and the proceeds of such sales shall be deposited in the fund. The commissioner is authorized to transfer a portion of the profits from the operation of the commissaries to the Correctional General Welfare Fund established under section 4-57a.

Sec. 219. (NEW) (Effective July 1, 2008) Modification of Sec. 27-25.

Sec. 27-25. Property and Procurement Officer.

The Adjutant General shall appoint a property and procurement officer who shall be the assistant of the Adjutant General in the care of all military property and who shall hold office at the pleasure of the Adjutant General. He shall devote all of his time, during the office hours of the department, to the duties of his office. The property and procurement officer may award contracts in accordance with the provisions of this act and the policies of the State Contracting Standards Board.

Sec. 220. (NEW) (Effective July 1, 2008) Modification of Sec. 28-1a(b).

Sec. 28-1a(b). Department of Emergency Management and Homeland Security. Commissioner. Qualifications and duties. Organization of department. Regulations. Interagency memorandum of understanding. Transfer of functions, powers, duties and personnel to department.

(b) With reasonable conformance to applicable federal statutes and administrative regulations of the Federal Emergency Management Agency and the requirements of the Connecticut emergency operations plan, the commissioner shall organize the department and the personnel of the department as may be necessary for the effective discharge of the authorized emergency management, civil preparedness and homeland security missions, including, but not limited to, the provisions of the Connecticut emergency operations plan and the national plan for civil preparedness. Any department personnel may be removed by the commissioner for security reasons or for incompetence, subject to reinstatement by the Employees' Review Board. The commissioner may enter into contracts for the furnishing by any person or agency, public or private, of services necessary for the proper execution of the duties of the department, in accordance with the provisions of this act; unless otherwise set forth in federal law. Any such contract that has a cost of three thousand dollars or more shall be subject to the approval of the Attorney General.

Sec. 221. (Repeal) (Effective July 1, 2008) Repeal of Sec. 31-57c.

Disqualification of certain contractors from bidding on, applying for or participating in public works contracts with the state; Disqualification by Commissioner of Public Works; Procedure;

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Causes. Exception permitting disqualified contractor to participate in contract or subcontract³³⁵.

[(a) As used in this section, the term "contractor" shall mean any person, firm or corporation which has contracted or seeks to contract with the state, or to participate in such a contract, in connection with any public works of the state or a political subdivision of the state.

(b) Disqualification of a contractor is a serious action that shall be used only in the public interest and for the state government's protection and not for purposes of punishment or in lieu of other applicable enforcement or compliance procedures. The causes for and consequences of disqualification under this section shall be separate from and in addition to causes for and consequences of disqualification under sections 4b-95, 31-53a, 31-57a and 31-57b.

(c) The Commissioner of Public Works may disqualify any contractor, for up to two years, from bidding on, applying for, or participating as a subcontractor under, contracts with the state, acting through any of its departments, commissions or other agencies, except the Department of Administrative Services, the Department of Transportation and the constituent units of the state system of higher education, for one or more causes set forth under subsection (d) of this section. The commissioner may initiate a disqualification proceeding only after consulting with the contract awarding agency, if any, and the Attorney General and shall provide notice and an opportunity for a hearing to the contractor who is the subject of the proceeding. The hearing shall be conducted in accordance with the contested case procedures set forth in chapter 54. The commissioner shall issue a written decision within ninety days of the last date of such hearing and state in the decision the reasons for the action taken and, if the contractor is being disqualified, the period of such disqualification. The existence of a cause for disqualification shall not be the sole factor to be considered in determining whether the contractor shall be disqualified. In determining whether to disqualify a contractor, the commissioner shall consider the seriousness of the contractor's acts or omissions and any mitigating factors. The commissioner shall send the decision to the contractor by certified mail, return receipt requested. The written decision shall be a final decision for the purposes of sections 4-180 and 4-183.

(d) Causes for disqualification from bidding on, or participating in, contracts shall include the following:

(1) Conviction or entry of a plea of guilty or nolo contendere for or admission to commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(2) Conviction or entry of a plea of guilty or nolo contendere or admission to the violation of any state or federal law for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving

³³⁵ Repeal of General Statutes, Sec.31-57c.

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stolen property or any other offense indicating a lack of business integrity or business honesty which affects responsibility as a state contractor;

(3) Conviction or entry of a plea of guilty or nolo contendere or admission to a violation of any state or federal antitrust, collusion or conspiracy law arising out of the submission of bids or proposals on a public or private contract or subcontract;

(4) A willful failure to perform in accordance with the terms of one or more public contracts, agreements or transactions;

(5) A history of failure to perform or of unsatisfactory performance of one or more public contracts, agreements or transactions; or

(6) A willful violation of a statutory or regulatory provision or requirement applicable to a public contract, agreement or transaction.

(e) For purposes of a disqualification proceeding under this section, conduct may be imputed as follows:

(1) The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor and the contractor knew of or had reason to know of such conduct. The term "other seriously improper conduct" shall not include advice from an attorney, accountant or other paid consultant if it was reasonable for the contractor to rely on such advice.

(2) The fraudulent, criminal or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee or other individual associated with the contractor who participated in, knew of or had reason to know of the contractor's conduct.

(3) The fraudulent, criminal or other seriously improper conduct of one contractor participating in a joint venture or similar arrangement may be imputed to other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangement and these contractors knew of or had reason to know of such conduct.

(f) The commissioner may reduce the period or extent of disqualification, upon the contractor's request, supported by documentation, for the following reasons:

- (1) Newly discovered material evidence;
- (2) Reversal of the conviction upon which the disqualification was based;
- (3) Bona fide change in ownership or management;

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(4) Elimination of other causes for which the disqualification was imposed; or

(5) Other reasons the commissioner deems appropriate.

(g) The commissioner may grant an exception permitting a disqualified contractor to participate in a particular contract or subcontract upon a written determination by the head of the contract awarding agency that there is good cause, in the interest of the public, for such action.]

Sec. 222. (Repeal) (Effective July 1, 2008) Repeal of Sec. 31-57d.

Disqualification of certain contractors from bidding on, applying for or participating in public works contracts with the state; Disqualification by Commissioner of Transportation; Procedure; Causes. Exception permitting disqualified contractor to participate in contract or subcontract³³⁶.

[(a) As used in this section, the term "contractor" shall mean any person, firm or corporation which has contracted or seeks to contract with the state, or to participate in such a contract, in connection with any public works of the state or a political subdivision of the state.

(b) Disqualification of a contractor is a serious action that shall be used only in the public interest and for the state government's protection and not for purposes of punishment or in lieu of other applicable enforcement or compliance procedures. The causes for and consequences of disqualification under this section shall be separate from and in addition to causes for and consequences of disqualification under sections 4b-95, 31-53a, 31-57a and 31-57b.

(c) The Commissioner of Transportation may disqualify any contractor, for up to two years, from bidding on, applying for, or participating as a subcontractor under, contracts with the state, acting through the Department of Transportation, for one or more causes set forth under subsection (d) of this section. The commissioner may initiate a disqualification proceeding only after consulting with the Attorney General and shall provide notice and an opportunity for a hearing to the contractor who is the subject of the proceeding. The hearing shall be conducted in accordance with the contested case procedures set forth in chapter 54. The commissioner shall issue a written decision within ninety days of the last date of such hearing and state in the decision the reasons for the action taken and, if the contractor is being disqualified, the period of such disqualification. The existence of a cause for disqualification does not require that the contractor be disqualified. In determining whether to disqualify a contractor, the commissioner shall consider the seriousness of the contractor's acts or omissions and any mitigating factors. The commissioner shall send the decision to the contractor by certified mail, return receipt requested. The written decision shall be a final decision for the purposes of sections 4-180 and 4-183.

³³⁶ Repeal of General Statutes, Sec.31-57d.

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(d) Causes for disqualification from bidding on, or participating in, contracts shall include the following:

(1) Conviction or entry of a plea of guilty or nolo contendere for or admission to commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(2) Conviction or entry of a plea of guilty or nolo contendere or admission to the violation of any state or federal law for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which affects responsibility as a state contractor;

(3) Conviction or entry of a plea of guilty or nolo contendere or admission to a violation of any state or federal antitrust, collusion or conspiracy law arising out of the submission of bids or proposals on a public or private contract or subcontract;

(4) A willful failure to perform in accordance with the terms of one or more public contracts, agreements or transactions;

(5) A history of failure to perform or of unsatisfactory performance of one or more public contracts, agreements or transactions;
or

(6) A willful violation of a statutory or regulatory provision or requirement applicable to a public contract, agreement or transaction.

(e) For purposes of a disqualification proceeding under this section, conduct may be imputed as follows:

(1) The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor and the contractor knew of or had reason to know of such conduct. The term "other seriously improper conduct" shall not include advice from an attorney, accountant or other paid consultant if it was reasonable for the contractor to rely on such advice.

(2) The fraudulent, criminal or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee or other individual associated with the contractor who participated in, knew of or had reason to know of the contractor's conduct.

(3) The fraudulent, criminal or other seriously improper conduct of one contractor participating in a joint venture or similar arrangement may be imputed to other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangement and these contractors knew of or had reason to know of such conduct.

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(f) The commissioner may reduce the period or extent of disqualification, upon the contractor's request, supported by documentation, for the following reasons:

- (1) Newly discovered material evidence;
- (2) Reversal of the conviction upon which the disqualification was based;
- (3) Bona fide change in ownership or management;
- (4) Elimination of other causes for which the disqualification was imposed; or
- (5) Other reasons the commissioner deems appropriate.

(g) The commissioner may grant an exception permitting a disqualified contractor to participate in a particular contract or subcontract upon a written determination that there is good cause, in the interest of the public, for such action.]

Sec. 223. (NEW) (Effective July 1, 2008) Modification of Sec. 32-1c.

Sec. 32-1c Powers and Duties of Commissioner.

(a) In addition to any other powers, duties and responsibilities provided for in this chapter, chapter 131, chapter 579 and section 4-8 and subsection (a) of section 10-409, the commissioner shall have the following powers, duties and responsibilities:

- (1) To administer and direct the operations of the Department of Economic and Community Development;
- (2) to report annually to the Governor, as provided in section 4-60;
- (3) to conduct and administer the research and planning functions necessary to carry out the purposes of said chapters and sections;
- (4) to encourage and promote the development of industry and business in the state and to investigate, study and undertake ways and means of promoting and encouraging the prosperous development and protection of the legitimate interest and welfare of Connecticut business, industry and commerce, within and outside the state;
- (5) to serve, ex officio as a director on the board of Connecticut Innovations, Incorporated;

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(6) to serve as a member of the Committee of Concern for Connecticut Jobs;

(7) to promote and encourage the location and development of new business in the state as well as the maintenance and expansion of existing business and for that purpose to cooperate with state and local agencies and individuals both within and outside the state;

(8) to plan and conduct a program of information and publicity designed to attract tourists, visitors and other interested persons from outside the state to this state and also to encourage and coordinate the efforts of other public and private organizations or groups of citizens to publicize the facilities and attractions of the state for the same purposes;

(9) to advise and cooperate with municipalities, persons and local planning agencies within the state for the purpose of promoting coordination between the state and such municipalities as to plans and development;

(10) to provide all necessary staff, services, accounting and office space and equipment required by the Connecticut Development Authority subject to the provisions of section 4b-23, where real estate acquisitions are involved;

(11) to aid minority businesses in their development;

(12) to appoint such assistants, experts, technicians and clerical staff, subject to the provisions of chapter 67, as are necessary to carry out the purposes of said chapters and sections;

(13) to employ other consultants and assistants on a contract or other basis, in accordance with the provisions of this act, for rendering financial, technical or other assistance and advice, provided in implementing the Connecticut economic information system the commissioner shall to the maximum extent feasible contract with private vendors for software, certain data sets and data updating services;

(14) to acquire or lease facilities located outside the state subject to the provisions of section of this act **[4b-23]**;

(15) to advise and inform municipal officials concerning economic development and collect and disseminate information pertaining thereto, including information about federal, state and private assistance programs and services pertaining thereto;

(16) to inquire into the utilization of state government resources and coordinate federal and state activities for assistance in and solution of problems of economic development and to inform and advise the Governor about and propose legislation concerning such problems;

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(17) to conduct, encourage and maintain research and studies relating to industrial and commercial development;

(18) to prepare and review model ordinances and charters relating to these areas;

(19) to maintain an inventory of data and information and act as a clearinghouse and referral agency for information on state and federal programs and services relative to the purpose set forth herein. The inventory shall include information on all federal programs of financial assistance for defense conversion projects and other projects consistent with a defense conversion strategy and shall identify businesses which would be eligible for such assistance and provide notification to such business of such programs;

(20) to conduct, encourage and maintain research and studies and advise municipal officials about forms of cooperation between public and private agencies designed to advance economic development;

(21) to promote and assist the formation of municipal and other agencies appropriate to the purposes of this chapter;

(22) to require notice of the submission of all applications by municipalities and any agency thereof for federal and state financial assistance for economic development programs as relate to the purposes of this chapter;

(23) with the approval of the Commissioner of Administrative Services, to reimburse any employee of the department, including the commissioner, for reasonable business expenses, including but not limited to, mileage, travel, lodging, and entertainment of business prospects and other persons to the extent necessary or advisable to carry out the purposes of subdivisions (4), (7), (8) and (11) of this subsection and other provisions of this chapter;

(24) to assist in resolving solid waste management issues; and

(25) to develop and implement the Connecticut economic information system, in consultation with the Connecticut Economic Information System Steering Committee established under section 32-6i.

56. Sec. 224. (NEW) (Effective July 1, 2008) Modification of Sec. 46a-

Sec. 46a-56. Commission duties.

(a) The commission shall:

(1) Investigate the possibilities of affording equal opportunity of profitable employment to all persons, with particular reference to job training and placement;

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(2) Compile facts concerning discrimination in employment, violations of civil liberties and other related matters;

(3) Investigate and proceed in all cases of discriminatory practices as provided in this chapter and noncompliance with the provisions of section 169 or 170 of this act [4a-60 or 4a-60a] or sections 46a-68c to 46a-68f, inclusive and report such findings to the State Contracting Standards Board and the affected state contract agency;

(4) From time to time, but not less than once a year, report to the Governor as provided in section 4-60, making recommendations for the removal of such injustices as it may find to exist and such other recommendations as it deems advisable and describing the investigations, proceedings and hearings it has conducted and their outcome, the decisions it has rendered and the other work it has performed;

(5) Monitor state contracts to determine whether they are in compliance with sections 169 or 170 of this act [4a-60 or 4a-60a], and those provisions of the general statutes which prohibit discrimination and report such findings to the State Contracting Standards Board and the affected state contract agency ; and

(6) Compile data concerning state contracts with female and minority business enterprises and submit a report annually to the General Assembly concerning the employment of such business enterprises as contractors and subcontractors and report such findings to the State Contracting Standards Board and the affected state contract agency.

(b) The commission may, when it is deemed in the best interests of the state, exempt a contractor from the requirements of complying with any or all of the provisions of section 169 or 170 of this act [4a-60 or 4a-60a], 46a-68c, 46a-68d or 46a-68e in any specific contract. Exemptions under the provisions of this section may include, but not be limited to, the following instances: (1) If the work is to be or has been performed outside the state and no recruitment of workers within the limits of the state is involved; (2) those involving less than specified amounts of money or specified numbers of workers; (3) to the extent that they involve subcontracts below a specified tier. The commission may also exempt facilities of a contractor which are in all respects separate and distinct from activities of the contractor related to the performance of the contract, provided such an exemption shall not interfere with or impede the effectuation of the purposes of this section and sections 169 and 170 of this act, [4a-60, 4a-60a, 4a-60g, 4a-62 and 46a-68b to 46a-68k, inclusive. All such exemptions shall be reported to the State Contracting Standards Board and the affected state contracting agency

(c) If the commission determines through its complaint procedure that a contractor or subcontractor is not complying with antidiscrimination statutes or contract provisions required under section 169 or 170 of this act [4a-60 or 4a-60a] or the provisions of section 46a-68c, 46a-68d, 46a-68e or 46a-68f, (A) the state shall retain two per cent of the total contract price per month on any existing contract with such contractor and (B) the contractor shall be prohibited from

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participation in any further contracts with state agencies until: (i) The expiration of a period of two years from the date of the finding of noncompliance or (ii) the commission determines that the contractor has adopted policies consistent with such statutes. The commission shall make such a determination as to whether the contractor has adopted such policies within forty-five days of its determination of noncompliance. In addition, the commission may do one or more of the following: (1) Publish or cause to be published, the names of contractors or unions which it has found to be in noncompliance with such provisions; (2) notify the Attorney General that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in section 169 or 170 of this act [4a-60 or 4a-60a], appropriate proceedings should be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of said section 169 or 170 of this act [4a-60 or 4a-60a]; (3) recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964, when necessary; (4) recommend to the appropriate prosecuting authority that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the commission as the case may be; (5) order the contracting agency to refrain from entering into further contracts, or extension or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the commission that such contractor has established and will carry out personnel and employment policies in compliance with antidiscrimination statutes and provisions of section 169 and 170 of this act [4a-60 or 4a-60a] and sections 46a-68c to 46a-68f, inclusive. All such findings shall be reported to the State Contracting Standards Board and the affected state contracting agency. The commission shall adopt regulations in accordance with chapter 54 to implement the provisions of this section.

(d) If the commission determines through its complaint procedure and after a hearing held in accordance with chapter 54 that, with respect to a state contract, a contractor, subcontractor or supplier of materials has (1) fraudulently qualified as a minority business enterprise or (2) performed services or supplied materials on behalf of another contractor, subcontractor or supplier of materials knowing (A) that such other contractor, subcontractor or supplier has fraudulently qualified as a minority business enterprise in order to comply with antidiscrimination statutes or contract provisions required under section 169 or 170 of this act [4a-60 or 4a-60a], and (B) that such services or materials are to be used in connection with a contract entered into pursuant to subsection (b) of section 4a-60g it shall assess a civil penalty of not more than ten thousand dollars upon such contractor, subcontractor or supplier of materials. The Attorney General, upon complaint of the commission, shall institute a civil action in the superior court for the judicial district of Hartford to recover such penalty. Any penalties recovered shall be deposited in a special fund and shall be held by the Treasurer separate and apart from all other moneys, funds and accounts. The resources in such fund shall, pursuant to regulations adopted by the commission in accordance with the provisions of chapter 54, be used to assist minority business enterprises. As used in this section, "minority business enterprise" means any contractor, subcontractor or supplier of materials fifty-one per cent or

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more of the capital stock, if any, or assets of which is owned by a person or persons: (1) Who are active in the daily affairs of the enterprise; (2) who have the power to direct the management and policies of the enterprise; and (3) who are members of a minority, as such term is defined in subsection (a) of section 32-9n. All such findings shall be reported to the State Contracting Standards Board and the affected state contracting agency