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## Description of Organization—Rules of Practice

### Article I

#### Description of Organization

##### Part 1

##### Introduction

#### **Sec. 4b-1-1. Creation and authority**

The Department of Public Works was established as an agency of the executive branch of state government by the provisions of Public Act 87-496, effective July 1, 1987. Prior to this date, the Department was a bureau within the Department of Administrative Services since 1977.

(Effective February 24, 1992)

#### **Sec. 4b-1-2. General powers and responsibilities**

The head of the Department is the Commissioner of Public Works as established by section 4-5 of the General Statutes of Connecticut. The general qualifications, powers, and duties of the Commissioner as a Department head are as provided by section 4-8 of the General Statutes. The duties of the Commissioner of Public Works are as provided by section 4b-1 of the General Statutes.

(Effective February 24, 1992)

#### **Sec. 4b-1-3. Principal duties**

The principal duties of the Department of Public Works are, except as otherwise provided by law, the planning, design and construction of capital improvements undertaken by the State except for highway, bridge, and mass transit related improvements; the purchase, lease and acquisition of real property and space to accommodate State agencies; the disposition of surplus real property; the rendering of technical assistance to State agencies in the planning, design, and development of plans for improvements to their physical plants; and the supervision, security, and care of buildings and grounds owned or leased by the State in the City of Hartford or designated by the Governor.

(Effective February 24, 1992)

#### **Sec. 4b-1-4. Location of principal office**

The principal office of the Department of Public Works is at Hartford, Connecticut. All communications should be addressed to Commissioner, Department of Public Works, State Office Building, 165 Capitol Avenue, Hartford, Connecticut, 06106. The offices of the Department are open from 8:30 A.M. to 4:30 P.M. each weekday except Saturdays, Sundays, and legal holidays.

(Effective February 24, 1992)

#### **Sec. 4b-1-5. Location of district offices**

The Department also has three district construction offices:

District #1 — 20 Jarvis Road  
Cheshire, 06410  
203-272-2913

District #2 — Russell Road  
Newington, 06111  
203-666-8481

District #3 — Mansfield Depot, 06251  
203-486-2392  
(Effective February 24, 1992)

## **Part 2**

### **Course and Method of Operation**

#### **Sec. 4b-1-6. Commissioner of public works**

The Commissioner is responsible for developing Departmental policy, providing strategic direction to all staff, and ensuring the effective and efficient operation of the Department. The Deputy Commissioners have been designated to exercise the powers and duties of the Department head in the absence or disqualification of the Commissioner, or upon his or her death, until he or she resumes the duties of office or until the vacancy is filled.

(Effective February 24, 1992)

#### **Sec. 4b-1-7. Office of the commissioner**

The Office of the Commissioner provides strategic management direction along with traditional personnel, affirmative action, internal auditing, communications, and public information services.

(Effective February 24, 1992)

#### **Sec. 4b-1-8. Deputy commissioners**

The Commissioner is authorized by law to appoint such deputies as may be required for the efficient conduct of business of the Department. The Department currently has two Deputy Commissioners.

(Effective February 24, 1992)

#### **Sec. 4b-1-9. Bureaus of the department**

In addition to the office of the Commissioner, the Department has two major bureaus. The Bureau of Design and Construction and the Bureau of Administration. Each Bureau is headed by a Deputy Commissioner.

(Effective February 24, 1992)

#### **Sec. 4b-1-10. Deputy commissioner bureau of design and construction**

The Deputy Commissioner of the Bureau of Design and Construction reports directly to the Commissioner. The Deputy Commissioner is responsible for the efficient management of the Bureau in a manner consistent with the strategic direction established by the Commissioner.

(Effective February 24, 1992)

#### **Sec. 4b-1-11. Bureau of design and construction**

The Bureau of Design and Construction directs the design, engineering, and construction of state capital improvements except for legislative facilities, transportation projects, small Judicial projects, and Connecticut Marketing Authority facilities. In this capacity, the Bureau is responsible for the selection of architects, engineers, project and construction managers, and landscape designers. The Bureau is also responsible for the supervision and inspection of all capital construction projects along with related energy construction, fire safety, and asbestos removal projects.

(Effective February 24, 1992)

**Sec. 4b-1-12. Deputy commissioner bureau of administration**

The Deputy Commissioner of the Bureau of Administration reports directly to the Commissioner. The Deputy Commissioner is responsible for the efficient management of the Bureau in a manner consistent with the strategic direction established by the Commissioner.

(Effective February 24, 1992)

**Sec. 4b-1-13. Bureau of administration**

The Bureau of Administration provides traditional services such as budgeting, accounting, purchasing, financial management, management information systems, bidding of Public Works projects, and facilities management. The Bureau also coordinates the preparation of capital facilities plans with state agencies; provides technical assistance for developing projects; purchases, leases, or otherwise acquires real property and space to accommodate state agencies; disposes of surplus real property; and is responsible for the maintenance, control, and security of state buildings in the Hartford area.

(Effective February 24, 1992)

**Sec. 4b-1-14. Contracting functions**

In order to discharge the principle duties of the Department, the Commissioner is authorized by law to enter into contractual agreements and to accept conveyances of real property or interests therein. Every contract for design professional services is governed by the provisions of sections 4b-55 through 4b-59, inclusive of the General Statutes, and by regulations adopted thereunder. Every contract for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building by the State, which is estimated to cost more than two hundred and fifty thousand (\$250,000) dollars, is awarded to the lowest responsible and qualified bidder, in accordance with the procedures established by Chapter 60 of the General Statutes. All leases of space and property acquisitions made by the Commissioner are subject to applicable provisions of the General Statutes, and to review and approval by the State Properties Review Board. The rights and remedies of all persons contracting with the State through the Commissioner of Public Works are as provided by applicable provisions of law and by the express terms of specific agreements.

(Effective February 24, 1992)

**Part 3****Public Information****Sec. 4b-1-15. Public inspection**

It is the avowed policy of the Department to make available for public inspection all files, records, documents and other materials within its possession, unless specifically exempt from public disclosure under the provisions of section 1-19 of the General Statutes, or unless otherwise prohibited by law. In addition to publication of regulations adopted, amended or repealed as required by Chapter 54 of the General Statutes as amended, a compilation of all Department regulations, policy statements, final orders, minutes, decisions, official opinions, and all forms and instructions used by the various divisions of the Department is available for public inspection in the Office of the Commissioner during normal business hours. The Department reserves the right to charge a monetary fee, for the furnishing to any person of

documents within its possession, as authorized and prescribed by section 1-15 of the General Statutes, as amended.

(Effective February 24, 1992)

**Sec. 4b-1-16. Request for information**

(a) Requests for information should be directed to the Commissioner, 165 Capitol Avenue, Hartford, Connecticut 06106.

(b) There is no prescribed form for requests for information directed to the Department. Requests should be sufficiently specific to permit easy identification of the information requested, and may be made in writing, in person, or by telephone.

(Effective February 24, 1992)

**Article II**

**Rules of Practice**

**Part 1**

**Scope and Definitions**

**Sec. 4b-1-17. Procedure governed**

This article sets forth the nature and requirements of all formal and informal procedures available to persons having business with the Department of Public Works or otherwise legally affected by any decision or discharge of any function of the Department. The rules set forth herein shall govern practice before the Department under the applicable laws of the State of Connecticut, and except as otherwise provided by statute or contracts entered into by the Commissioner or an authorized employee of the Commissioner pursuant to the General Statutes.

(Effective February 24, 1992)

**Sec. 4b-1-18. Definitions**

As used in sections 4b-1-1 to 4b-1-30, inclusive, and sections 4b-24-1 to 4b-24-9, inclusive, and sections 4b-100-1 to 4b-100-10, inclusive, of the Regulations of Connecticut State Agencies:

- (1) "Advertisement" means the advertisement posted on the department web site that corresponds to the legal notice requesting bids for specific work;
- (2) "Commissioner" means the Commissioner of Public Works;
- (3) "Department" means the Department of Public Works;
- (4) "Employee" means an employee of the department or the client agency;
- (5) "Legal notice" means the notice published in the newspaper pursuant to section 4b-24(4) or 4b-91 of the Connecticut General Statutes; and
- (6) "Party," "person," "regulation," and "proposed regulation," shall have the same meaning as set forth in section 4-166 of the Connecticut General Statutes.

(Effective February 24, 1992; amended October 5, 2005)

**Part 2**

**Petitions Concerning Adoption of Regulations**

**Sec. 4b-1-19. General rule**

These rules set forth the procedure to be followed by the Commissioner in the disposition of petitions concerning the promulgation, amendment, or repeal of a regulation.

(Effective February 24, 1992)

**Sec. 4b-1-20. Form of petitions and procedure for submission**

Any interested person may at any time petition the Commissioner to promulgate, amend or repeal any regulation. The petition shall set forth clearly and concisely the text of the proposed regulation, amendment or repeal. Such petition shall also state the facts and arguments that favor the action it proposes by including such data, facts, and arguments either in the petition or in a brief annexed thereto. The petition shall be addressed to the Commissioner and sent to him by mail or delivered in person during normal business hours. The petition shall be signed by the petitioner and shall furnish the address of the petitioner and the name of the petitioner's attorney, if applicable.

(Effective February 24, 1992)

**Sec. 4b-1-21. Procedure after petition filed**

(a) **Decision on Petition.** Upon receipt of the petition the Commissioner shall within thirty days determine whether to deny the petition or to initiate regulation-making proceedings in accordance with the provisions of Chapter 54 of the General Statutes.

(b) **Procedure on denial.** If the Commissioner denies the petition, he shall give the petitioner notice in writing stating the reasons for the denial based upon such additional data, facts, and arguments as the Commissioner shall deem appropriate.

(Effective February 24, 1992)

**Part 3****Requests for Declaratory Rulings****Sec. 4b-1-22. General rule**

These rules set forth the procedure to be followed by the department in the disposition of requests for declaratory rulings as to the applicability of any statutory provision or any regulation or order of the department.

(Effective February 24, 1992)

**Sec. 4b-1-23. Form of petition for declaratory ruling**

Any interested person may at any time request a declaratory ruling of the department with respect to (1) the validity of any regulation or (2) the applicability to such person of any statute, regulation or final decision enforced, administered, or promulgated by the department. Such request shall be addressed to the department and sent to the Commissioner by mail or delivered in person during normal business hours. The request shall be signed by the person in whose behalf the inquiry is made. It shall give the address of the person inquiring and the name and address of such person's attorney, if applicable. The request shall state clearly and concisely the substance and nature of the request; it shall identify the statute, regulation, or decision concerning which the inquiry is made and shall identify the particular aspect thereof to which the inquiry is directed. The request for a declaratory ruling shall be accompanied by a statement of any supporting data, facts, and arguments that support the position of the person making the inquiry.

(Effective February 24, 1992)

**Sec. 4b-1-24. Procedure after petition filed**

(a) **Notice to other persons.** The Commissioner may give notice to any person that such a declaratory ruling has been requested and may receive and consider

data, facts, arguments, and opinions from persons other than the person requesting the ruling.

(b) **Provision for hearing.** If the Commissioner deems a hearing necessary or helpful in determining any issue concerning the request for a declaratory ruling, the Commissioner shall schedule such hearing and give notice of such hearing to the person making the request and to any other persons as the Commissioner deems appropriate.

(c) **Decision on petition, ruling denied.** If the Commissioner determines that a declaratory ruling will not be rendered, the Commissioner shall within ten days thereafter notify the person so inquiring that the request has been denied and furnish a statement of the reasons on which the Commissioner relied in so deciding.

(d) **Decision on petition, ruling granted.** If the Commissioner renders a declaratory ruling, a copy of the ruling shall be sent to the person requesting it and to that person's attorney, if applicable, and to any other person who has filed a written request for a copy with the Commissioner.

(Effective February 24, 1992)

## Part 4

### General Provisions

#### Sec. 4b-1-25. Computation of time

Computation of any period of time referred to in these rules begins with the first day following that on which the act which initiates such period of time occurs. The last day of the period so computed is to be included unless it is a day on which the office of the Department is closed, in which event the period shall run until the end of the next following business day.

(Effective February 24, 1992)

#### Sec. 4b-1-26. Extension of time

At the discretion of the Commissioner, for good cause shown, any time limit prescribed or allowed by these rules may be extended insofar as such extension is not precluded by statute. All requests for extension shall be made before the expiration of the period originally prescribed or as previously extended. The Commissioner shall notify all parties of the Department's action upon such motion.

(Effective February 24, 1992)

#### Sec. 4b-1-27. Rejection for incompleteness

Any application, proposal or petition may be rejected by the Department if it is incomplete or otherwise inadequate to permit processing or disposition thereof, unless prohibited by law. Any rejection under this section shall lapse any period of time prescribed by statute or by rule which begins to run when a person files a petition or application with the Department.

(Effective February 24, 1992)

#### Sec. 4b-1-28. Date of filing

All correspondence, petitions, applications and any other documents governed by these rules, shall be deemed to have been filed or received on the date on which they are issued or received by the Department at its principal offices.

(Effective February 24, 1992)

**Sec. 4b-1-29. Identification of communications**

Communications should embrace only one matter, should contain the name and address of the communicator and the subject of the communication, and shall be dated.

(Effective February 24, 1992)

**Sec. 4b-1-30. Formal requirements as to documents and other papers filed**

(a) **Copies.** Except as may be otherwise required by these rules or by any other rules or regulations of the Department or ordered or expressly requested by the Department, at the time petitions, applications, documents or other papers are filed with the Department, there shall be furnished to the Department an original of such papers.

(b) **Form.** Except for such forms as may from time to time be provided by the Department and used where appropriate petitions, applications, documents or other papers filed for the purpose of any proceeding before the Department shall be printed or typewritten on paper cut or folded to either letter or legal size. Width of margins shall be not less than one inch. The impression shall be only one side of the papers, unless printed, and shall be double spaced, except that quotations in excess of five (5) typewritten lines shall be single spaced and indented.

(Effective February 24, 1992)



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## **Appeals Concerning Compensation for Outdoor Advertising Structures**

### **Sec. 4b-3(f)-1. Definitions**

(a) For the purposes of section 4b-3(f)-2 to section 4b-3(f)-11, inclusive, of the Regulations of State Agencies:

(1) “Contested case” means “contested case” as defined in section 4-166 of the Connecticut General Statutes.

(2) “Final decision” means “final decision” as defined in section 4-166 of the Connecticut General Statutes.

(3) “Hearing officer” means “hearing officer” as defined in section 4-166 of the Connecticut General Statutes.

(4) “Intervenor” means “intervenor” as defined in section 4-166 of the Connecticut General Statutes.

(5) “Party” means “party” as defined in section 4-166 of the Connecticut General Statutes.

(6) “Person” means “person” as defined in section 4-166 of the Connecticut General Statutes.

(7) “Presiding officer” means “presiding officer” as defined in section 4-166 of the Connecticut General Statutes.

(8) “Proposed final decision” means “proposed final decision” as defined in section 4-166 of the Connecticut General Statutes.

(9) “Petitioner” means any person aggrieved by determination of the amount of compensation paid pursuant to subsection (b) of section 8-273a of the Connecticut General Statutes for the acquisition of an outdoor advertising structure.

(10) “Board” means the State Properties Review Board, and unless the context indicates otherwise, including a designee appointed by the Board to conduct a hearing.

(11) “Commissioner” means the Commissioner of Transportation as defined in section 13a-1 of the Connecticut General Statutes.

(12) “Determination” means a determination by the Commissioner of the amount of compensation to be paid pursuant to subsection (b) of section 8-273a of the Connecticut General Statutes for the acquisition of an outdoor advertising structure.

(Adopted effective May 11, 2009)

### **Sec. 4b-3(f)-2. Scope and applicability**

(a) Unless otherwise provided by law, this regulation governs all appeals, pursuant to section 8-273a(b) and section 4b-3(f) of the Connecticut General Statutes, to be heard by the Board in the disposition of an appeal by any Petitioner aggrieved by a Determination made by the Commissioner.

(b) Notwithstanding the action of any person acting as its agent, the Board shall retain its authority to take any action authorized by law, including the authority to take any action a presiding officer may take. Any action of the Board shall preempt the action of a hearing officer or other agent of the Board.

(Adopted effective May 11, 2009)

### **Sec. 4b-3(f)-3. Powers and duties of the board**

(a) The Board shall conduct a fair and impartial hearing, assure that the relevant facts are fully elicited, adjudicate issues of law and fact, and prevent delay and harassment.

(b) Pursuant to section 4-176e of the Connecticut General Statutes, the Board shall have the authority to appoint one or more persons to serve as a hearing officer in a contested case.

(c) In addition to any other powers provided by law, the Board or its designee shall have the power to:

- (1) determine the scope of the hearing;
- (2) dispose of motions and requests and make all necessary or appropriate rulings;
- (3) administer oaths and affirmations;
- (4) subpoena witnesses and evidence, examine witnesses, and control the examination of witnesses;
- (5) admit or exclude evidence and rule on objections to evidence;
- (6) impose sanctions in accordance with subsection (d) of this section;
- (7) consolidate proceedings or portions thereof;
- (8) issue final decisions, or as appropriate, proposed final decisions; and
- (9) take other measures appropriate to administer this section, expedite proceedings, and maintain order.

(d) **Sanctions**

If a party or intervenor or the attorney or other representative of a party or intervenor fails to comply with section 4b-3(f)-1 to section 4b-3(f)-10, inclusive governing the conduct of hearings or with a ruling of the Board, the Board may, on motion or on its own initiative, impose the following sanctions: continue or terminate the proceeding, exclude testimony or other evidence, and draw an adverse inference against the non-complying party or intervenor.

(e) **Preservation of evidence**

The Board may provide by any appropriate means, including the taking of oral testimony by deposition, for the preservation of relevant and material evidence when the Board determines that there is a serious likelihood that such evidence will be unavailable at the time of a hearing.

(Adopted effective May 11, 2009)

**Sec. 4b-3(f)-4. Commencement and conclusion of proceedings**

(a) Pursuant to section 8-273a(4) of the Connecticut General Statutes, a proceeding commences when the Board receives an appeal from a person aggrieved by a Determination of the Commissioner. An appeal to the Board shall constitute a contested case.

(b) An appeal shall state specifically any findings to which the Petitioner objects and any other grounds for contesting the Commissioner's determination. An appeal shall also include a copy of any written determination made by the Commissioner, and any exhibits made a part thereof. The Board may require a more particular statement from the Petitioner if an appeal does not give adequate information concerning the grounds for contesting the Commissioner's determination.

(c) **Filing, service, and form of appeal**

(1) The original of any appeal which is required or allowed to be filed under this section shall be filed with the Board. The original and any subsequent information regarding an appeal shall be either hand delivered or sent to the Board by certified mail, return receipt requested.

(2) The first page of every appeal shall contain a caption identifying the Petitioner and the location of the outdoor advertising structure or any other designation prescribed by the Board.

(3) Every appeal shall be signed by the Petitioner filing or by his attorney or other representative, if any. The signature constitutes a representation by the signer that he has read the appeal, that to the best of his knowledge, information and belief the statements made therein are true and complete, and that the appeal is not filed for the purpose of delay or harassment.

(4) An appeal filed by any Petitioner shall contain the name, address, telephone number, facsimile and email address of the person filing and of his attorney or other representative, if any. Any change in this information shall, within seven days after such person becomes aware of such change, be communicated in writing to the Board and to all persons upon whom an appeal shall be served under subdivision (5) of this subsection.

(5) A copy of every appeal shall be served personally or by mail upon the Commissioner. Every appeal filed shall be accompanied by a certification in substantially the following form:

I [name of Petitioner or representative] hereby certify that a copy hereof was [personally delivered] [mailed in a properly addressed, first-class postage pre-paid envelope] on [date] to the Commissioner of Transportation at the following address:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

[signature of person making service]

(6) Service of a copy of an appeal shall be complete upon personal delivery or mailing.

(7) The date of the filing of any appeal required or allowed under this section shall be the date such appeal is received by the Board.

(8) The Board may reject any filing for failure to comply with any requirement of this subsection.

**(d) Commissioner’s response**

Within fifteen (15) days of receipt of a copy of an appeal being delivered to the Commissioner, the Commissioner shall respond and answer the allegations contained in the appeal.

(Adopted effective May 11, 2009)

**Sec. 4b-3(f)-5. Scheduling hearings and settlement conferences**

(a) The Board may, upon the filing of an appeal under section 4b-3(f)-3(c), solicit comments from the parties and intervenors concerning an appropriate date and location for a hearing. Upon receipt of comments, the Board shall set a date for hearing within a reasonable time, giving the Board such time as is necessary and convenient, depending upon the nature, purpose, and circumstances of each appeal.

(b) Upon scheduling the hearing, the Board shall mail notice of the time, place, and nature of the hearing to all parties and intervenors and to any person who has filed a request for status as a party or intervenor but whose request has not yet been disposed of.

(c) Upon scheduling the hearing, the Board may schedule a settlement conference. The purpose of a settlement conference shall be to determine whether an appeal can be resolved without a hearing and to facilitate such a resolution.

(d) If the Board determines during the settlement conference that resolution of the dispute without a hearing is likely, it may reschedule the hearing.

(e) Each party and intervenor shall appear at any settlement conference which is scheduled. If any party fails without good cause to appear, the Board may proceed with the conference.

(f) At least one of the attorneys or other representatives for each party and intervenor participating in the settlement conference shall have authority to enter

into agreements and stipulations regarding all matters that the participants should reasonably anticipate may be discussed at the settlement conference.

(g) Nothing in this subsection shall preclude the Board from meeting, whether on request or on its own initiative, with the parties and intervenors at any time for the purpose of facilitating settlement.

(h) Neither a settlement conference nor a hearing shall be continued at the request of a party or intervenor except upon motion demonstrating that there is good cause for a continuance. Any continuance granted shall be for a specific length of time.

(Adopted effective May 11, 2009)

### **Sec. 4b-3(f)-6. Intervention**

(a) A person shall be granted status as an intervening party if:

(1) a statute confers a right to such status, provided that any conditions for party status specified in such statute have been satisfied; or

(2) such person has filed a written request stating facts which demonstrate that:

(A) such person's legal rights, duties or privileges will or may reasonably be expected to be affected by the decision in the proceeding;

(B) such person will or may reasonably be expected to be significantly affected by the decision in the proceeding; or

(C) such person's participation is necessary to the proper disposition of the proceeding.

(b) A person may be granted status as an intervenor if such person has filed a written request stating facts which demonstrate that such person's participation is in the interests of justice and will not impair the orderly conduct of the proceeding.

(c) A request for status as a party or intervenor under this subsection shall be filed no later than five days before the date of the first scheduled hearing, if one has been scheduled, except that such five-day requirement may be waived by the Board at any time before or after the commencement of the hearing for good cause shown. The request shall be served upon all parties and intervenors and any person known to have filed a request for status as a party or intervenor but whose request has not yet been disposed of.

(d) Unless otherwise provided by the Board, any objections to a request for party or intervenor status shall be filed within seven days of the service of the request for party or intervenor status.

(e) A ruling on a request for status as a party or intervenor shall be provided to the person filing the request, all parties and intervenors, and any person who has filed a request for status as a party or intervenor but whose request has not yet been disposed of.

(f) The Board may restrict the participation of a person granted intervenor status under subdivision (b) of this subsection, although only to the extent necessary to promote justice and the orderly conduct of the proceeding. If a request for intervenor status under subdivision (b) of this subsection is granted, the Board shall in its ruling on the request define (1) the issues with respect to which the intervenor may participate and (2) the intervenor's rights to introduce evidence and offer argument, and to cross-examine witnesses. The Board may at any time amend its initial ruling concerning an intervenor's participation.

(g) Except for good cause shown, a person granted status as a party or intervenor under this subsection is bound by the Board's rulings issued as of the time such person files a request for party or intervenor status. Unless otherwise restricted pursuant to section 4b-3(f)-6, after a person's request for party or intervenor has

been granted, such person shall have the same rights, obligations, and privileges as all other parties and intervenors.

(Adopted effective May 11, 2009)

### **Sec. 4b-3(f)-7. Hearings**

#### **(a) Media**

Any hearing conducted pursuant to this section which is open to the public may be recorded, photographed, broadcast, or recorded for broadcast in accordance with the provisions of subsection (a) of section 1-226 of the Connecticut General Statutes, provided the hearing is not so disturbed as to impair any person's ability to hear or be heard or to present evidence or argument. In order to minimize disruption of a hearing, the hearing officer or Board may impose reasonable limits on any person engaged in recording, photographing, broadcasting, or recording for broadcast.

#### **(b) Attendance**

Any person who attends a hearing conducted pursuant to this section but who is not a party or a witness for a party and who does not intend to speak shall not be required to give his name or any other information or to satisfy any condition precedent to his attending the hearing.

#### **(c) Recording of hearings**

Hearings conducted pursuant to this section shall be recorded either stenographically or electronically. The recording of a hearing or any part thereof shall be transcribed by or through the Board on request of any person, provided such person shall pay the cost of transcription and recording. Subject to the reasonable control of the Board, a party or an intervenor may record any portion of a hearing in which the Board participates. Settlement discussions conducted under section 4b-3(f)-4(c) do not constitute a portion of a hearing under this section and shall not be recorded unless all of the participants in such discussions consent to recording, and the Board concurs.

#### **(d) Suspension and reconvening of hearings**

Except as provided in section 4b-3(f)-4(h) and section 4b-3(f)-9(b)(3)(B), the Board, as it deems appropriate, may continue a hearing to another time and place.

#### **(e) Disruption of hearings**

If any person disrupts a hearing or otherwise interferes with the orderly conduct of such hearing, the Board may order such person to leave such hearing or may suspend the hearing and reconvene it at an appropriate place and time.

#### **(f) Representatives**

A party or intervenor may appear in person or by an attorney or other representative. Attorneys shall conform to the standards of conduct and ethics required of practitioners before the courts of Connecticut.

#### **(g) Motions**

(1) A motion is any request to the Board.

(2) All motions shall (A) be in writing unless made orally on the record, (B) state with particularity the grounds therefore, and (C) set forth the relief or ruling sought.

(3) Within seven days of service of a written motion or such other time as the Board may prescribe, any party or intervenor may file a response supporting or opposing the motion. The movant shall have no right to reply except as permitted by the Board.

#### **(h) Notices to appear and subpoenas for hearing**

(1) A party or intervenor may compel the appearance at a hearing of, or the production of documents at a hearing by, another party or intervenor by serving upon such party or intervenor a notice to appear or produce. The notice, if a notice

to produce, shall state with particularity the documents which are to be produced. A copy of a notice served under this subdivision shall be filed concurrently with the Board. Except for good cause shown, a notice under this subdivision shall be ineffective unless it is received by the Board or the person to whom it is directed at least five days before the time designated in the notice to appear or produce.

(2) A party or intervenor may compel the appearance at a hearing of, or the production of documents at a hearing by, any person who is not a party or intervenor by the issuance of a subpoena in accordance with the following:

(A) If the party or intervenor is represented by an attorney, the attorney may issue such subpoena pursuant to section 51-85 of the Connecticut General Statutes. To prevent harassment or unnecessary inconvenience to a subpoenaed witness, the Board may exclude the testimony of such a witness if he or she did not receive the subpoena at least five days before the time designated therein to appear or produce.

(B) If the party or intervenor is not represented by an attorney, he or she may move the Board or, if the Board has designated another person to conduct the hearing, he or she may move such other person to issue a subpoena requiring the appearance of the person or the production of the documents at the hearing. Except for good cause shown, such a motion shall be filed no later than 14 days before the hearing commences. Such a motion shall include the name and address of the person and a description of any documents to be subpoenaed, and shall state the reason for the motion. Unless the requested subpoena would be subject to quashing under subdivision (9) of this subsection and unless the Board or its designee finds that the testimony or documents sought are clearly inadmissible, he or she shall issue the subpoena and mail or deliver it to the party or intervenor requesting it, which party or intervenor shall arrange for its service. Except for good cause shown, a subpoena issued under this subparagraph shall be ineffective unless it is received by the person to whom it is directed no later than five days before the hearing commences.

(3) A subpoena issued by the Board or its designee shall contain the name of the Board and the title and docket number of the proceeding, and shall command the person to whom it is directed to appear and/or to produce specified documents at a designated time and place.

(4) Upon notice to the parties and intervenors, the Board or its designee may on its own initiative issue a notice or subpoena requiring the appearance of a party, intervenor, or other person or the production of documents at a hearing. The form and service of such notice or subpoena shall be as described in subdivision (1) or (3), as the case may be, of this subsection, and such notice or subpoena shall be subject to the provisions of subdivision (5) of this subsection.

(5) On motion made or on his or her own initiative, the Board or its designee may: (A) quash, modify, or issue a protective order with respect to a subpoena to appear or produce if such notice or subpoena is unreasonable or requests evidence that is irrelevant or immaterial or (B) condition denial of the motion on such terms as the Board or its designee deems appropriate.

(6) A subpoena to appear or produce issued by the Board or its designee shall advise that such subpoena may be quashed, modified, or subjected to a protective order in accordance with subdivision (5) of this subsection.

(7) A notice to appear or produce shall be personally served by a sheriff or other indifferent person or by certified mail, return receipt requested. A subpoena to appear or produce issued by the Board or its designee shall be personally served by a sheriff or other indifferent person.

(8) If any party or intervenor fails to comply with a notice to appear or produce, the Board or its designee may impose sanctions in accordance with subsection (d) of section 4b-3(f)-2. If any person fails to comply with a subpoena issued by the Board, the Board may apply to the superior court for enforcement of the subpoena in accordance with section 4-177b of the Connecticut General Statutes.

(9) A subpoena or notice to appear directed to any member of the Board shall be quashed unless there is a clear showing by the party or intervenor who served the notice to appear or on whose behalf the subpoena was issued that such member of the Board has personal knowledge of relevant and material facts, that no other person has knowledge of such facts, and that it would work an injustice if such member of the Board did not testify.

(i) **Prehearing conferences**

(1) The Board may encourage prehearing conferences to simplify the hearing and aid in a speedy and fair disposition of the proceeding. To those ends, the Board may, on motion or on its own initiative, schedule and hold a prehearing conference among the parties and intervenors to:

(A) clarify and simplify the factual issues for hearing, identify the legal issues in dispute, and determine whether any legal issues should be briefed before the hearing;

(B) stipulate to facts and the admissibility of testimony and other evidence;

(C) identify and, as appropriate, limit witnesses to be called and documents to be offered at the hearing, and identify the matters about which each witness will testify;

(D) mark exhibits to be admitted or offered into evidence; and

(E) take such other actions as may aid in the orderly and expeditious disposition of the proceeding.

(2) The prehearing conference shall, unless impracticable, be held at least fourteen (14) days before the hearing commences.

(3) Each party and intervenor shall appear at the prehearing conference. If any party or intervenor fails without good cause to appear, the Board may proceed with the conference and may make decisions concerning all matters for which the conference was scheduled, which decisions shall bind all parties and intervenors.

(4) At least one of the attorneys or other representatives for each party and intervenor participating in the prehearing conference shall have authority to enter into stipulations and to make admissions regarding all matters that the participants should reasonably anticipate may be discussed at the prehearing conference.

(5) After the prehearing conference, the Board may, and at the request of any party or intervenor shall, issue a prehearing conference order reciting the actions taken at the prehearing conference. The prehearing conference order shall, unless modified by the Board on the record, control the subsequent course of the proceeding. A prehearing conference order shall be modified only for good cause.

(6) If no appearance is made by or on behalf of a party or intervenor at a prehearing conference, or if a party or intervenor or his attorney or other representative is substantially unprepared or is unauthorized to participate fully in the conference or fails to participate in good faith, or if a party or intervenor or his attorney or other representative fails to obey a prehearing conference order, the Board may impose sanctions in accordance with subsection (d) of section 4b-3(f)-2 or may grant an appropriate continuance to any party or intervenor prejudiced by the disobedience, or both.

**(j) Advance submission of proposed evidence**

(1) In a proceeding on an appeal, the Petitioner shall, regardless whether a prehearing conference is held and unless an earlier filing is required by the Board or a later filing is allowed for good cause shown, file no later than fifteen (15) days before the hearing:

(A) a copy of all documents which the Petitioner plans to offer into evidence at the hearing;

(B) a list of witnesses the Petitioner plans to call at the hearing and a summary of the matters about which each witness will testify; and

(C) for each expert witness the Petitioner plans to call, a resume and a statement of the facts and opinions about which the expert will testify and a summary of the grounds for each opinion.

At the time the Petitioner files the foregoing papers, he or she shall serve a copy thereof on all parties and intervenors.

(2) Prior to any hearing the Board may, on motion or its own initiative, direct any party or intervenor to file before the hearing the following materials, provided that a party or intervenor planning to offer written testimony on direct examination shall be required to file such testimony no later than ten days before the hearing:

(A) a copy of all documents which the party or intervenor plans to offer into evidence at the hearing;

(B) a list of witnesses the party or intervenor plans to call at the hearing and a summary of the matters about which each witness will testify;

(C) for each expert witness the party or intervenor plans to call, a resume and a statement of the facts and opinions about which the expert will testify and a summary of the grounds for each opinion; and

(D) any other or additional material.

(3) Upon objection by a party or intervenor, the Board shall not admit into evidence any document or testimony which was not submitted or identified before the hearing in accordance with subdivision (1) or a ruling under subdivision (2) of this subsection unless the party or intervenor offering the document or testimony demonstrates good cause for the failure to submit or identify it earlier. If the Board admits such document or testimony, he or she may grant an appropriate continuance to any party or intervenor prejudiced thereby.

**(k) Oaths**

The Board shall administer an oath or affirmation, in accordance with Chapter 4 of the Connecticut General Statutes, to each witness before any evidence is taken from such witness.

**(l) Evidence, objections, offers of proof**

(1) Evidence shall be received in accordance with section 4-178 of the Connecticut General Statutes. The Board shall not admit any evidence which is irrelevant, immaterial, unduly repetitious, untrustworthy, or unreliable.

(2) Subject to the reasonable control of the Board, all parties shall have the right to cross-examine any witness.

(3) The Board may admit into evidence, in lieu of oral testimony on direct examination, a written statement of fact or opinion prepared by a witness, provided that any requirements for prehearing submission of documents have been satisfied. The admissibility of the contents of the statement shall be subject to the same evidentiary rules as if such contents were presented as oral testimony. Before any such statement is read or admitted into evidence, the witness shall provide a copy of the statement to the Board, the court reporter if there is one, and all parties and

intervenors. The witness presenting the statement shall swear to or affirm the statement and shall be subject to cross-examination on the contents thereof.

(4) Any objection to the admission of evidence shall be supported by a concise statement of the grounds therefore. The Board's ruling on the objection shall be part of the record.

(5) Whenever evidence is excluded, the party or intervenor offering the evidence may make an offer of proof. An offer of proof for excluded testimony shall consist, at the discretion of the Board, of either the excluded testimony or a summary thereof. An offer of proof for excluded documents shall consist of the insertion in the record of the documents excluded. At the discretion of the Board, an offer of proof may be subject to cross-examination.

**(m) Failure to appear**

If a Petitioner fails to appear at a scheduled hearing, the Board shall at its discretion deem an appeal to be withdrawn and any right to hearing waived, or alternatively, make its final decision on the basis of information previously submitted by the Petitioner. The Petitioner may, within no more than fourteen (14) days after the scheduled hearing date, move the Board to reopen the proceeding. Any such motion shall be denied unless the movant demonstrates that there was compelling reason for his or her failure to appear.

(Adopted effective May 11, 2009)

**Sec. 4b-3(f)-8. The record**

(a) In addition to the items specified in section 4-177(d) of the Connecticut General Statutes, for the purposes of a Board proceeding the record shall include:

(1) a copy of the appeal and all appearances,

(2) any briefs or exceptions filed before or after issuance of the proposed final decision, and

(3) any correspondence between the Board and any party, intervenor, or other person concerning the proceeding.

(b) The evidentiary record shall be maintained separately from the rest of the record. The evidentiary record shall consist, in addition to the recording of the hearing, of all documents offered into evidence (exhibits), regardless whether they are admitted. Exhibits which are not admitted shall be marked "for identification."

(c) The Board shall not deem a transcript of a hearing to be part of the record, and shall not transmit a transcript of a hearing to the superior court in the event of an appeal from a Board proceeding, unless such transcript was prepared by or through the Board and the sealed original of such transcript, if not prepared by the Board, was delivered directly by the transcriber to the Board.

**(d) New evidence**

Unless the Board rules otherwise, after all evidentiary hearings have concluded, no further evidence shall be admitted unless it is relevant and material and there was good cause for the failure to offer it at a hearing. Whenever new evidence is admitted after hearings have concluded, the other parties and intervenors shall be allowed an opportunity to respond to the evidence, including, if appropriate, an opportunity to cross-examine the person offering the evidence. Nothing in this subsection shall affect the provisions and requirements of section 4b-3(f)-9.

**(e) Post-hearing legal submissions**

The Board may require or allow the parties and intervenors to file post-hearing briefs and proposed findings of fact and conclusions of law. Any assertions of fact

in such briefs and findings should be supported by reference to specific portions of the evidentiary record supporting any such assertion(s).

(Adopted effective May 11, 2009)

### **Sec. 4b-3(f)-9. Final decision**

#### **(a) Conclusion of appeal**

For purposes of section 4b-3(f) of the Connecticut General Statutes, the Board shall be deemed to have heard an appeal, or an appeal shall be deemed concluded on the latter of (1) the date on which the last item of evidence is admitted into the record, (2) the date on which any post hearing legal submissions are accepted by the Board, or (3) the date by which the Board has heard all parties in connection with a proposed final decision.

(b) Within thirty (30) days after the conclusion of an appeal, as defined subsection (a) of this section, the Board shall issue a final decision, and the written decision of the Board shall be a final decision for the purposes of sections 4-180 and 4-183 of the Connecticut General Statutes.

#### **(c) Orders, rulings and decisions**

(1) Unless otherwise provided by law, the final decision of the Board regarding an appeal shall be served by personal delivery, or by certified mail, return receipt requested on all parties and intervenors. All other written rulings shall be issued by first-class mail, unless distributed to all parties and intervenors at the hearing, pre-hearing conference, or oral argument.

(2) Unless otherwise provided by law, a ruling, proposed final decision, or final decision shall be deemed issued upon mailing or personal delivery.

(Adopted effective May 11, 2009)

### **Sec. 4b-3(f)-10. Proposed final decisions**

(a) If a designee of the Board conducted the hearing, within twenty-one (21) days of the conclusion of all hearings on an appeal, the designee shall issue a proposed final decision in accordance with section 4-179 of the Connecticut General Statutes.

(b) When a majority of the members of the Board who are to render the final decision have not heard the matter or read the record, the decision, if adverse to a party, shall not be rendered until a proposed final decision is served upon the parties, and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the members of the agency who are to render the final decision.

(c) A proposed final decision shall be in writing and contain a statement of the reasons for the decision and a finding of facts and conclusion of law on each issue of fact or law necessary to the decision.

(d) Not later than 30 days after the latter of the issuance of the proposed final decision, the filing of any exceptions and briefs with respect thereto, and presentation of any oral argument on a proposed final decision, the Board shall issue a written final decision in accordance with section 4-180 of the Connecticut General Statutes. In its final decision the Board may affirm, modify, or reverse the proposed final decision, in whole or in part, or may remand for further proceedings, including the taking of further evidence. Any such further proceedings shall be governed by section 4b-3(f)-1 to section 4b-3(f)-10, inclusive. Any final decision by the Board may contain whatever conditions the Board deems appropriate.

(e) Pursuant to section 4-179(d) of the Connecticut General Statutes, the parties and the Board may, by written stipulation, waive compliance with subsections (a), (b) and (c) of this section.

(Adopted effective May 11, 2009)

**Sec. 4b-3(f)-11. Reconsideration**

(a) On motion made or its own initiative, the Board may reconsider, reverse, modify, or correct a final decision in accordance with section 4-181a of the Connecticut General Statutes. In addition, the Board may open a final decision upon a showing that (1) the final decision was prejudiced by fraud, misrepresentation, or other misconduct of a party or intervenor, or (2) there is other compelling reason for opening the final decision.

(b) Any further proceedings required by a ruling under subsection (a) of this section shall be conducted in accordance with section 4-181a of the Connecticut General Statutes, and the applicable provisions of section 4b-3(f)-1 to section 4b-3(f)-10, inclusive.

(Adopted effective May 11, 2009)



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## **Selection Panels for Design-Build Teams and Special Legislation Contractors**

### **Sec. 4b-24-1. Applicability**

Sections 4b-24-1 to 4b-24-8, inclusive, of the Regulations of Connecticut State Agencies shall be applicable to the award of contracts for projects pursuant to sections 4b-24(4) and 4b-91(g) of the Connecticut General Statutes.

(Adopted effective October 5, 2005)

### **Sec. 4b-24-2. Definitions**

As used in sections 4b-24-1 to 4b-24-9, inclusive, of the Regulations of Connecticut State Agencies:

(1) “Design-build team” means design and construction professionals that join together to submit a proposal for the department’s consideration pursuant to section 4b-24(4) of the Connecticut General Statutes;

(2) “DPW chairperson” means the person designated by the commissioner or the commissioner’s designee, pursuant to subsection (d) of section 4b-100a of the Connecticut General Statutes;

(3) “DPW selection administrator” means the employee or employees at the department designated by the commissioner, or the commissioner’s designee, to provide administration of the selection process set forth in sections 4b-24-1 to 4b-24-8, inclusive, of the Regulations of Connecticut State Agencies;

(4) “Interview panel” means a construction services award panel set forth in section 4b-100a of the Connecticut General Statutes, that submits a list of recommended design-build teams or special legislation contractors to the commissioner;

(5) “Performance form” means the form set forth in section 4b-24-8(b) of the Regulations of Connecticut State Agencies;

(6) “Prequalification certificate” means the certificate issued by the Commissioner of Administrative Services pursuant to section 4a-100 of the Connecticut General Statutes;

(7) “Screening panel” means a construction services award panel set forth in section 4b-100a of the Connecticut General Statutes that screens all submitted proposals; and

(8) “Special legislation contractor” means a firm submitting a proposal pursuant to section 4b-91(g) of the Connecticut General Statutes.

(Adopted effective October 5, 2005)

### **Sec. 4b-24-3. Communications and conduct**

(a) Except for communications authorized by sections 4b-24-4 and 4b-24-7 of the Regulations of Connecticut State Agencies, no other communications shall occur between employees of the State of Connecticut, interview panel members or screening panel members with substantive information concerning the work for which proposals are being solicited under sections 4b-24(4) or 4b-91(g) of the Connecticut General Statutes, and any member of a design-build team or special legislation contractor, or anyone on behalf of such teams or contractors. Nothing in this section prohibits communication with regard to nonsubstantive communications, such as directions to the department to pick up construction plans or information about the hours the department is open.

(b) Each screening and interview panel member shall submit to the commissioner a written certification attesting to the facts set forth in section 4b-100a(e)(3) of the Connecticut General Statutes, and that the panel member:

(1) has not communicated with any member of a design-build team or special legislation contractor, or anyone on their behalf, prior to the panel member's final scoring of each such team or contractor, except as provided in sections 4b-24-4 and 4b-24-7 of the Regulations of Connecticut State Agencies; and

(2) has no financial, personal or other interest in the outcome of the selection process.

(c) No employee shall participate in the selection of a design-build team or special legislation contractor or the award of a contract thereto if there is a conflict of interest, including, but not limited to the employee, the employee's spouse, child, child's spouse, brother, sister, mother, father, in-law or step children or their spouse, or fiancé or fiancée having a financial, personal or other interest in a person, firm, or other entity that is a design-build team member or a member of a special legislation contractor's construction team being considered for the contract award. For the purposes of this section, "financial, personal or other interest" shall include, but not be limited to, the receipt or promise of gifts, favors, services, or anything of value from such person, firm or entity.

(d) Panel members involved in the selection of a design-build team or special legislation contractor and employees involved in the selection process or the award of a contract shall neither accept nor solicit gifts, favors, services or anything of value from a person, firm, or other entity that is seeking to do business or is doing business with the department.

(e) All requests for additional information or an interpretation of the meaning of plans, specifications, proposal requirements and other documents shall be submitted in writing to the department's designated representative. The request shall be received at least five (5) business days prior to the deadline for submitting a proposal. No interpretations of the meaning of plans, specifications, proposal requirements and other contract documents shall be made orally to anyone who may submit a proposal or anyone on their behalf. All responses to such inquiries or requests shall be posted on the department's web site or be in the form of written addenda to the plans, specifications or other contract documents that shall be transmitted by mail, e-mail or fax to the lead firm of each design-build team or to the special legislation contractors.

(Adopted effective October 5, 2005)

#### **Sec. 4b-24-4. Submissions**

Design-build teams and special legislation contractors shall submit information, in addition to what is required in the legal notice and advertisement for design-build teams or in the invitation by the commissioner for a special legislation contractor, for consideration by the interview panel pursuant to any request from the DPW selection administrator.

(Adopted effective October 5, 2005)

#### **Sec. 4b-24-5. Assistance to panels**

The department may provide technical resource assistance to the screening and interview panels.

(Adopted effective October 5, 2005)

#### **Sec. 4b-24-6. Screening panel**

(a) No later than six (6) weeks after the deadline for proposal submission, unless extended in writing by the commissioner, each screening panel member shall:

(1) independently evaluate the proposals in accordance with the criteria set forth on the proposal evaluation form created pursuant to section 4b-24-8 of the Regulations of

Connecticut State Agencies and any information available pursuant to subsection (b) of this section;

(2) rate each proposal on the criteria specified on the proposal evaluation form;

(3) sign the completed proposal evaluation form and submit it to the DPW chairperson.

(b) Past performance of the design-build team, design-build team members, special legislation contractor or a member of a special legislation contractor's construction team shall be considered by the screening panel and the panel members' scores shall reflect such past performance. The information contained in any completed performance form for such team, member, or contractor; any information available pursuant to section 4a-101 of the Connecticut General Statutes; and any information or documents from department staff or contained within state agency files concerning the quality, workmanship, and performance regarding a design-build team, design-build team member, special legislation contractor, or a member of a special legislation contractor's construction team on prior work shall be considered by the panel members.

(c) The DPW chairperson and the DPW selection administrator shall tabulate the scores of all panel members and no more than the four (4) highest rated design-build teams or special legislation contractors shall be recommended for interview. Notwithstanding the provisions of this subsection, no such team or contractor shall be recommended for interview if such team or contractor failed to submit an affidavit or certification required pursuant to sections 4-251 and 4-252 of the Connecticut General Statutes.

(d) Each panel member shall submit to the commissioner the signed certification form required under section 4b-24-3(b) of the Regulations of Connecticut State Agencies.

(Adopted effective October 5, 2005)

### **Sec. 4b-24-7. Interview panel**

(a) Each member of the interview panel shall review all documents concerning each proposal and design-build team or special legislation contractor, including, but not limited to, the original proposal, any documents submitted pursuant to section 4b-24-4 of the Regulations of Connecticut State Agencies, and any information regarding past performance.

(b) Prior to the start of the interviews, the panel members shall convene for a meeting for the purpose of ensuring that the members have a common understanding of the project, selection criteria, and the weights and rating scale to be applied in evaluating each design-build team or special legislation contractor. A maximum of two representatives from the agency, institution, school, or academy for which the project is being undertaken, who are not members of the panel, may be present for that meeting for the purpose of explaining the project and important design or construction factors. In no case shall such representatives comment specifically on any design-build team, design-build team member, special legislation contractor, or member of the special legislation contractor's construction team.

(c) Following the pre-meeting set forth in subsection (b) of this section, the panel members shall interview each design-build team or special legislation contractor.

(d) At the completion of each interview, each interview panel member shall independently evaluate the design-build team or special legislation contractor on the interview evaluation form, created pursuant to section 4b-24-8 of the Regulations of Connecticut State Agencies, and indicate his or her scoring of such team or contractor for each of the selection criteria. No one other than a panel member may

enter scores or comments on the form. Such forms shall be signed and given to the DPW chairperson after each interview.

(e) If, for any criteria, there is any score that is not within one letter grade of all the other scores, or there is any score of "F," a discussion may occur between panel members. The panel members may adjust their scores following such discussion. If a score is adjusted, the panel member shall initial the change and state in writing on his or her form the reasons for changing the score. In no case shall a panel member change a score based on coercion or pressure.

(f) After all interviews have been concluded, and all forms have been completed, signed and given to the DPW chairperson, the DPW chairperson shall tabulate the scores of all panel members and rank them according to their total scores, from highest to lowest; which ranking shall constitute the panel's recommendation to the commissioner. In the event of a tie, the tying design-build team or special legislation contractor given the highest total score by the user agency shall be ranked higher than the other tying team or contractor.

(g) Each panel member shall submit to the commissioner the signed certification form required under section 4b-24-3(b) of the Regulations of Connecticut State Agencies

(h) The commissioner may reject any recommendation from a selection panel if all forms required to be submitted pursuant to section 4b-24-3(b) of the Regulations of Connecticut State Agencies have not been submitted.

(Adopted effective October 5, 2005)

### **Sec. 4b-24-8. Forms**

(a) The commissioner, or the commissioner's designee, shall develop a proposal evaluation form to be used by members of the screening panel, and an interview evaluation form to be used by members of the interview panel. The forms may contain criteria specific to the project for which design-build teams or special legislation contractors are being evaluated. Nothing in this subsection shall preclude the agency, institution, school, or academy for which the project is being undertaken from having input into what such criteria should be. The forms shall include the scoring scale of "A," "B," "C," and "F"; signifying the best to the worst score, respectively.

(b) The commissioner, or the commissioner's designee, shall develop a performance form or forms on which employees may report on the past performance and experience of consultants or contractors. Documents relevant to the performance may be attached to the performance form.

(Adopted effective October 5, 2005)

### **Sec. 4b-24-9. Other requirements applicable to special legislation contractors**

(a) At the time of interview, each special legislation contractor shall submit an affidavit, on a form provided by the commissioner, attesting that the project proposal was not developed by fraud or by collusion with any person, and that such contractor did not receive any information from a public official or from an employee, as defined in section 4b-1-18 of the Regulations of Connecticut State Agencies, which information was not available to the general public, concerning the project for which the proposal was submitted.

(b) The criteria upon which special legislation contractors shall be evaluated by the panel members includes the following:

- (1) The contractor's prequalification classification;
- (2) The contractor's aggregate work capacity rating and single project limits;

(3) Information contained in the contractor's update statement, as required by section 4b-91(d) of the Connecticut General Statutes;

(4) The contractor's numerical rating pursuant to section 4a-100(f) of the Connecticut General Statutes;

(5) The responsiveness of the proposal to the requirements in sections 4b-91 to 4b-95a, inclusive, of the Connecticut General Statutes;

(6) The contractor's performance history, including any suspensions, disqualifications, or debarments, and experience, capacity, compliance with statutory requirements, including, but not limited to, any information available pursuant to section 4a-101 of the Connecticut General Statutes; and

(7) The contractor's ability to successfully perform projects of a similar size and scope.

(Adopted effective October 5, 2005)



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## Purchases for State Building Works of Art Account

### Sec. 4b-53-1. Portion of one percent allocation

(a) Except as provided under subsection (b) of this section, ten percent of the one percent allocation shall be apportioned to the State Building Works of Art Account from all projects bonded under the one percent statute.

(b) The State Commission on the Arts retains the flexibility, however, to raise the allotted amount to the full 25% of the one percent allowed by statute, when it determines that the interests of the State can best be served by the application of 25% to the State Building Works of Art Account and 75% to the one percent account for that particular project. In that instance, the State Commission on the Arts shall give written notification to the Commissioner of Public Works of the specific amount to be allocated to the State Buildings Works of Art Account.

(Effective April 26, 1990)

### Sec. 4b-53-2. Allocation and expenditure

At the beginning of each fiscal year, the State Commission on the Arts shall determine the allocation of expenditures between the distinguished Connecticut Artists Collection and the bank of Major Works of Art.

(Effective April 26, 1990)

### Sec. 4b-53-3. Purchase of works of art

(a) Works of art will be selected by the State Commission on the Arts for both a bank of major works of art and for the collection of works by distinguished Connecticut artists in accordance with the provisions of this section.

(b) (1) There shall be a five member committee of visual arts professionals, e.g., critics, museum directors, artists from varied disciplines and art historians. The Committee will be appointed by the State Commission on the Arts and will be named the Connecticut Artists Collection Advisory Committee;

(2) Nomination of members for appointment to the Connecticut Artists Collection Advisory Committee will be made by the staff to the Board of the State Commission on the Arts for its approval;

(3) Within 30 days of adoption of this regulation, the State Commission on the Arts will appoint to the Connecticut Artists Collection Advisory Committee the following:

(A) two members for two years;

(B) three members for three years;

(C) thereafter, Connecticut Artists Collection Advisory Committee members will be appointed for a term of three years;

(D) no member may serve more than two full three-year terms and the two members mentioned in (A) may serve no more than five years;

(E) vacancies shall be filled by the State Commission on the Arts for the unexpired portion of the term;

(4) the Connecticut Artists Collection Advisory Committee will be chaired by a Board member of the State Commission on the Arts to be appointed by the Chairman of the State Commission on the Arts. The Chair of the Committee will be a non-voting member.

(c) (1) the Connecticut Artists Collection Advisory Committee will identify distinguished artists whose work shall be considered for selection for the collection by the State Commission on the Arts; identify works of art to be considered for the

bank and recommend purchase of specific works by distinguished Connecticut artists for selection the State Commission on the Arts;

(2) upon recommendation of the Connecticut Artists Collection Advisory Committee final approval for the selection of artists and specific works shall be made by the State Commission on the Arts.

(d) For the purposes of this section, *distinguished Connecticut artists* shall have their primary residence in Connecticut and meet one or more of the following criteria:

(1) widely recognized by peers and visual arts professionals for distinguished contributions to the visual arts or their art forms;

(2) work is represented in major public and private collections.

(e) For the purposes of this section, a “major work of art” shall mean a work of art that is recognized by peers and visual arts professionals as a major work of art in its media by either distinguished or emerging artists.

(Effective April 26, 1990)

#### **Sec. 4b-53-4. Use of allocated funds**

**Allocated funds**—May be expended for any of the following purposes:

(1) costs of purchase of an existing work of art;

(2) the costs of the proper presentation of the work of art including: framing, lighting, security and installation, conservation and repair; transportation;

(3) the costs of plaques, labels and signage identifying the works of art.

(Effective April 26, 1990)

#### **Sec. 4b-53-5. Exhibition, circulation, inventory, storage and maintenance, gifts, ownership**

(a) **Exhibition**—The State Commission on the Arts shall be responsible for selecting public exhibition locations for works of art by distinguished Connecticut artists.

(b) **Circulation of the Collection**—The State Commission on the Arts shall be responsible for circulating works of arts purchased for the bank of major works of art.

(c) **Inventory**—The State Commission on the Arts shall keep and maintain an inventory of all works of art in state buildings purchased under this collection.

(d) **Storage and Maintenance**—When not on exhibition, works of art will be stored in a manner consistent with accepted museum practice. It will be the responsibility of the State Commission on the Arts to hire appropriate professionals to provide care and repair of works of art.

(e) **Gifts**—Artwork by Connecticut artists may be accepted for the distinguished Connecticut Artists Collection and for the Bank of Major Works of Art. Determination of acceptance will be made by the Connecticut Artists Collection Advisory Committee recommendation to the State Commission on the Arts.

(f) **Ownership**—The State of Connecticut, acting through the State Commission on the Arts, shall be the sole owner of all works of art purchased through these funds. Title shall vest in the state on final acceptance of the work of art.

(Effective April 26, 1990)

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## **Procedure for Alleged Violation or Violations of Part II Chapter 60 of Connecticut General Statutes**

### **Sec. 4b-100-1. Statement of purpose**

The purpose of sections 4b-100-1 through 4b-100-10 of the Regulations of Connecticut State Agencies is to establish grievance procedures in accordance with the requirements of Section 5 of Public Act No. 89-367 for promptly hearing and ruling on claims alleging a violation or violations of the contract bidding provisions of Part II of Chapter 60 of the Connecticut General Statutes (hereinafter "Chapter 60"). In view of the fact that time is normally of the essence in awarding construction contracts under Chapter 60, the grievance procedures are intended to be quick, informal and conclusive so as to avoid delays which can increase costs and jeopardize the very ability of the State to proceed with needed public works projects.

(Effective March 31, 1992)

### **Sec. 4b-100-2. Definitions**

As used in sections 4b-100-1 through 4b-100-10:

- (a) "Commissioner" means the Commissioner of Public Works;
- (b) "Department" means the Department of Public Works;
- (c) "Petitioner" means the party filing a claim with the Commissioner of Public Works alleging a violation or violations of Chapter 60;
- (d) "Presiding Officer" means the person designated by the Commissioner of Public Works to conduct the informal conference at which the alleged violation(s) of Chapter 60 is heard and ruled upon;
- (e) "Respondent" means the party or parties alleged to have violated a provision of Chapter 60.

(Effective March 31, 1992)

### **Sec. 4b-100-3. Who may file a petition**

Pursuant to the provisions of Chapter 60, the Commissioner of Public Works is authorized to award contracts for the construction, reconstruction, alteration, remodeling, repair or demolition of public buildings for the State of Connecticut. Any party whose financial interests may be affected by a decision on a claim alleging a violation(s) of the contract bidding procedures set forth in Chapter 60 may file a petition with the Commissioner seeking a ruling on whether there has been a violation. The Department may also file a petition if it has reason to believe that there has been a violation or violations.

(Effective March 31, 1992)

### **Sec. 4b-100-4. Contents of petition**

(a) Any party wishing to file a petition with the Commissioner must use the standardized form prepared by the Department of Public Works. Blank copies of the petition form may be obtained from the Department's Bidding and Contracts Division.

(b) In order to be able to quickly determine whether there has been a violation(s) of the Chapter 60 contract bidding provisions and, if so, what would be an appropriate remedy, the Petitioner must provide the Commissioner with the following information:

(1) A detailed description of the nature of the alleged violation or violations, including but not limited to the specific statutory provision(s) that were allegedly violated, a factual narrative of how the specified statutory provisions were violated,

and the name and address of the person(s) who allegedly committed the violation(s) and all persons believed to have personal knowledge or information on the alleged violation(s);

(2) An explanation as to how the Petitioner's financial interests may be affected by a decision on the alleged violation(s) in order to show that he has the requisite standing to file a petition under these grievance procedures;

(3) A copy of all documents in the possession of the Petitioner, or to which he has access, regarding the alleged violation(s);

(4) A complete citation to all legal authority known to the Petitioner which he believes supports his claim that there has been a violation of the contract bidding provisions of Chapter 60, including case law citations;

(5) A statement of what specific relief the Petitioner is seeking;

(6) A certification by the Petitioner attesting to the fact that Petitioner has provided the Respondent with a copy of the completed petition being filed with the Commissioner.

(c) Failure to comply with the requirements of this section shall be grounds for rejecting a petition.

(Effective March 31, 1992)

#### **Sec. 4b-100-5. Time limit for petition**

(a) If the contract has not as yet been awarded, the completed petition must be filed in the Office of the Commissioner of Public Works, State Office Building, 165 Capitol Avenue, Hartford, Connecticut, no later than ten (10) calendar days after the opening of bids on the contract on which the Petitioner claims there have been a violation(s) of the provisions of Chapter 60. Failure to comply with this 10-day filing period shall be grounds for rejecting a petition.

(b) If the contract has been awarded, the completed petition must be filed in the Office of the Commissioner no later than ten (10) calendar days after the cause or event giving rise to the claim has occurred and become known to the petitioner. Failure to comply with this 10-day filing period shall be grounds for rejecting a petition.

(c) For good cause shown by the petitioner, the Commissioner may in his discretion waive the 10-day time limitation set forth in subsections (a) and (b) where doing so will not prejudice the interests of the State of Connecticut.

(Effective March 31, 1992)

#### **Sec. 4b-100-6. Scheduling of informal conference**

(a) Following receipt of a completed petition, the Commissioner of Public Works, or his designee, will schedule an informal conference to provide both the Petitioner and the Respondent with an opportunity to argue their respective positions regarding the alleged violation(s). Written notice will be sent to the Petitioner and Respondent setting forth the time, date and location of the informal conference.

(b) At least forty-eight (48) hours prior to the scheduled informal conference, the Respondent shall file in the Office of the Commissioner a written response to the Petitioner's claim(s), together with any documentation and citations of legal authority that Respondent believes supports his position. The Respondent shall certify to the Commissioner that he has provided the Petitioner with a copy of his response and documentation prior to the filing with the Commissioner.

(c) Since time is of the essence, no postponements or extensions of time will be granted, except for extraordinary circumstances.

(Effective March 31, 1992)

**Sec. 4b-100-7. Presiding officer**

The Commissioner shall designate a person to act as presiding officer at the informal conference. The presiding officer shall be responsible for conducting the informal conference, reviewing all documents presented to the Department of Public Works in accordance with sections 4b-100-4, 4b-100-6, and 4b-100-8, reviewing the oral arguments of Petitioner and Respondent, and shall thereafter issue a ruling on the Petitioner's claim(s).

(Effective March 31, 1992)

**Sec. 4b-100-8. Procedures at informal conference**

(a) The presiding officer shall be responsible for conducting the informal conference and insuring that the Petitioner and Respondent have a fair opportunity to present their respective arguments relative to the alleged violation(s) set forth in the petition.

(b) The Petitioner shall proceed first, and the Respondent shall thereafter be provided with an opportunity to rebut Petitioner's claims. The presiding officer may ask questions or request the production of any additional documents he deems necessary to make an informed decision in the matter.

(c) Because time is of the essence and because the Petitioner and Respondent are required to file their supportive documentation with the Department prior to the informal conference, additional documents may not be presented at the informal conference, except where good cause is shown for the failure to provide the document prior to the informal conference or where the presiding officer determines that the document is necessary to make an informed decision and the parties will not be substantially prejudiced by the introduction of the document.

(Effective March 31, 1992)

**Sec. 4b-100-9. Ruling**

The presiding officer shall issue a ruling in the matter within fifteen (15) calendar days of the conclusion of the informal conference. The ruling shall be in writing and shall set forth the facts and conclusions found by the presiding officer with respect to the alleged violation(s) of Chapter 60. A copy of the ruling shall be sent by registered or certified mail, postage prepaid, to the Petitioner and Respondent.

(Effective March 31, 1992)

**Sec. 4b-100-10. Administrative appeal**

(a) Any party adversely affected by a ruling issued under these grievance procedures may file a written appeal with the Commissioner of Public Works. This appeal shall contain a statement of the reasons why the party believes that the ruling is erroneous. (If the Commissioner issued the ruling in question, this ruling shall be final and these appeal provisions shall not apply.)

(b) The written appeal must be filed in the Office of the Commissioner within five (5) days of the receipt of the ruling, including Saturday and Sunday. A copy must also be sent to the other party or parties in the matter.

(c) Thereafter, the Commissioner shall issue a written decision on the ruling and this decision shall be final and conclusive in the matter.

(Effective March 31, 1992)