

**POLICIES and PROCEDURES:**

**Administrative Hearing Process Regarding  
Revocation of Contractor’s Prequalification Classification**

- I. Statutory Authority for Hearings .....**
  - A. Uniform Administrative Procedures Act (UAPA) .....**
  - B. C.G.S. §4a-100**

**II. Categories of Hearings**

- A. Compliance Meetings .....**
  - (1) When they are held .....
  - (2) Purpose of Compliance Meetings .....
  - (3) Who may preside at Compliance Meetings .....
  - (4) Compliance Meetings are informal .....
  - (5) Possible outcomes .....
  - (6) Written decisions .....
  
- B. Show Cause Hearings.....**
  - (1) When they are held.....
  - (2) Who may preside at Show Cause Hearings .....
  - (3) Show Cause Hearings are formal proceedings
  - (4) Possible outcomes
  - (5) Written decisions .....

**III. General Procedures .....**

- A. Before Your First Hearing .....**
  - (1) Knowledge of applicable statutes and regulations .....
  - (2) Observe Hearings .....
  - (3) Questions .....
  
- B. Preparation for the Hearing.....**
  - (1) Review the file .....
  - (2) Hearing officer replacements .....
  - (3) No *ex parte* communications .....
  - (4) Parties and intervenors
  - (5) Enter the room last .....

**C. Conducting the Hearing** .....

- (1) Default .....
- (2) Start the hearing .....
- (3) Amended notice.....
- (4) Fairness .....
- (5) Decorum .....
- (6) Hearings are recorded .....
- (7) Notes .....
- (8) Attorneys .....
- (9) Evidence .....
- (10) Hearsay Evidence .....
- (11) Burden of proof .....
- (12) Stick to the issues .....
- (13) Briefs .....
- (14) Keeping the record open .....
- (15) Closing the hearing .....

**D. After the Hearing** .....

- (1) Hearing Officer file .....
- (2) No *ex parte* communications .....
- (3) Written decision .....
- (4) *Nolo Contendere* pleas .....
- (5) Commissioner approval .....

**E. Appeals** .....

- (1) Who may appeal .....
- (2) No automatic stay .....
- (3) Record .....
- (4) Possible outcomes .....
- (5) Superior Court .....

**IV. Personnel Listing** .....

**A. Administrative Assistants**

**B. Compliance Meeting Officers**

**C. Hearing Officers**

**D. Presenters/Witnesses**

**V. Glossary of Terms** .....

## **POLICIES and PROCEDURES:**

### **Administrative Hearing Process Regarding Revocation of Contractor's Prequalification Classification**

The purpose of this guide is to familiarize hearing officers and aggrieved contractors with the Department of Administrative Services' (DAS) policies and procedures for conducting administrative hearings regarding the (a) revocation or (b) reduction in prequalification classification or (c) reduction in aggregate work capacity ratings of a prequalification certification. In conducting these hearings, DAS adheres to the requirements set forth in the Uniform Administrative Procedures Act (UAPA) and C.G.S. §4a-100 (*Prequalification of Contractors. Fees. Application. Renewal. Revocation. Regulations. Notice to Commissioner of Public Works and Commissioner of Administrative Services re: Certain Contractors.*).

A contractor's prequalification certification may be revoked for any one of the following reasons:

- including any materially false statement in his/her application or update statement;
- conviction of a crime related to the procurement or performance of any public or private construction contract;
- engaging in fraud in obtaining or maintaining prequalification.

A contractor's prequalification certification also be revoked or his/her classification rating or aggregate work capacity rating reduced if the commissioner of DAS receives additional information that supports such revocation or reduction.

**NOTE:** Hearings are only available in the (a), (b) and (c) instances mentioned above. If the contractor does not prevail at hearing, he or she may appeal the decision of the hearing officer to Superior Court in accordance with C.G.S. §4-184.

If a contractor is aggrieved by the commissioner's (d) denial of initial certification or (e) non-renewal of certification, the contractor's only avenue for appeal is to the Superior Court in accordance with C.G.S. §4-183. In these instances, the contractor has no rights to an administrative hearing.

## **I. Statutory Authority for Hearings**

- *Uniform Administrative Procedures Act (Chapter 54 of the Connecticut General Statutes [specifically C.G.S. §4-8 and §4-182(c)]*
- *C.G.S. §4a-100*

### **A. Uniform Administrative Procedures Act (UAPA)**

According to the UAPA:

“No revocation, suspension, annulment or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license.” [C.G.S. §4-182(c)]

### **B. C.G.S. §4a-100**

C.G.S. §4a-100 allows the Commissioner of DAS to revoke a contractor’s prequalification classification, but only after presenting the contractor with an opportunity for a hearing. Specifically, *Section 2(j)* of the act states:

*“The commissioner may revoke a contractor’s prequalification or reduce the contractor’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.”*

Additionally, *Section 3(k)(2)* of the act states:

*“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 or within the past five years or has otherwise engaged in fraud in obtaining or maintaining prequalification....”*

Contractors apply for prequalification classification under penalty of false statement [“*The application shall be signed under penalty of false statement.*” C.G.S. §4a-100 (b)(2) and any materially false statement in the application may result in termination of any contract awarded, and by extension, to the certificate itself:

*“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 Workds and the Commissioner of Consumer Protection not later than thirty days after discovering such false statement or receiving such notice.” [C.G.S. §4a-100 Section (k)(1)]*

## II. Categories of Hearings

There are two levels of hearings:

- Compliance Meetings (*informal*)
- Show Cause Hearings (*formal*)

### A. Compliance Meetings

#### (1) When they are held

Compliance meetings are held when it is alleged that a contractor (1) has provided a materially false statement on his/her application for prequalification classification, (2) has been convicted of a crime related to the procurement or performance of any public or private construction contract, (3) has engaged in fraud in obtaining or maintaining prequalification, or (4) when derogatory information regarding the contractor is discovered.

#### (a) *Connecticut General Statutes 46a-80*

If prequalification certification is revoked because the agency has learned that the contractor has a prior criminal record, *C.G.S. §46a-80* outlines three elements that must be addressed:

- i. the nature of the crime and its relationship to the job for which the person applied;
- ii. information pertaining to the degree of rehabilitation of the convicted person; and
- iii. the time elapsed since the conviction or release, the state, or any of its agencies determines that the applicant is not suitable for the position of employment sought or the specific occupation, trade, vocation, profession or business for which the license, permit, certificate or registration is sought.

If the DAS presenter fails to address all three elements at a hearing, you must instruct the presenter to speak to whatever element was not addressed.

#### (2) Purpose of Compliance Meetings

The purpose of a compliance meeting is to allow the contractor to answer to the allegations and to attempt to resolve the issues at hand without having to proceed to a show cause hearing. Because they are intended to obviate the need for show cause hearings, compliance meetings are informal conferences and can be held at any time.

(3) Who may preside at Compliance Meetings

Compliance meeting officers may be anyone designated by the Commissioner of DAS in accordance with *C.G.S. §4-8*.

(4) Compliance Meetings are informal

Compliance meetings should be conducted in an informal manner. A relaxed atmosphere encourages open dialogue among the parties. Although compliance meetings may be recorded, there is no testimony given under oath. Documents may be reviewed at the discretion of the hearing officer, however, exhibits are not entered and there is no official record. Generally speaking, there are also no witnesses present.

(5) Possible outcomes

- (a) Issues remain in dispute and cannot be resolved, so the matter must proceed to a show cause hearing;
- (b) The contractor has shown compliance or has presented evidence to demonstrate that the action taken by the agency (revocation, reduction in prequalification classification, reduction in aggregate work capacity) should be reversed; or,
- (c) A consent decree is entered into between the contractor and DAS (the hearing officer and the commissioner). There should be agreement among all parties (hearing officer, agency presenter and contractor) in order to enter into a consent decree. Please note the commissioner may withdraw or dismiss allegations at any time.

(6) Written decisions

The written decision for a compliance meeting is either a compliance meeting recommendation or a consent decree. These are both generally very short.

**B. Show Cause Hearings**

(1) When they are held

Show cause hearings are held if a matter cannot be resolved at the compliance meeting. Show cause hearings are *de novo*, meaning as if the compliance meeting was never held.

(2) Who may preside at Show Cause Hearings

Pursuant to *C.G.S. §4-8*, the commissioner may act as a hearing officer or may appoint someone to act in his/her stead. The hearing officer should have no prior knowledge of what occurred at the compliance meeting nor should it be discussed at the show cause hearing. [*C.G.S. §4-176e*]

(3) Show Cause Hearings are formal proceedings

Unlike compliance meetings, show cause hearings are considered formal proceedings and, as such, formal written notice must be given. The hearing officer may administer oaths, take testimony under oath, subpoena witnesses and require the production of records, physical evidence, papers and documents. In a show cause hearing, any oral or documentary evidence may be received, but irrelevant, immaterial or unduly repetitious evidence must be excluded. Both the contractor and DAS may conduct cross-examinations required for a full and true disclosure of the facts. Exhibits may be entered and there is an official record.

(a) *Notice*

DAS may notify the contractor either by certified first class mail directed to the business address listed on the contractor's prequalification application or by personal delivery. The notice shall contain:

- a statement of the time, place and nature of the hearing;
- a statement of the legal authority and jurisdiction under which the hearing is to be held;
- a reference to the particular sections of the statutes and regulations involved; and
- a short and plain statement of the matter(s) asserted.

(b) *Oaths, Subpoenas, Production of Records, Evidence*

DAS may appeal to superior court to seek compliance from any person who disobeys a subpoena or refuses to answer any question put to him/her or to produce any records, physical evidence, papers and documents required by the presiding officer.

(4) Possible outcomes

(a) Issues remain in dispute and cannot be resolved. In this event, the contractor may elect to appeal the revocation or reduction in prequalification classification or aggregate work capacity directly to superior court;

- (b) The contractor has presented evidence to demonstrate that the action taken by the agency (revocation, reduction in prequalification classification, reduction in aggregate work capacity) should be reversed;
  - (c) A consent decree, stipulation, or agreed settlement is entered into between the contractor and DAS;
  - (d) The contractor defaults and the revocation or reduction in prequalification classification or reduction in aggregate work capacity stands.
- (5) Written decisions

The hearing officer must prepare a written decision that includes his/her analysis and reasoning, and

- written notices related to the case;
- all petitions, pleadings, motions and intermediate rulings;
- evidence received or considered;
- questions and offers of proof, objections and rulings thereon;
- the official transcript, if any, of proceedings relating to the case, or if not transcribed, any recording or stenographic record of the proceedings;
- proposed final decisions and exceptions; and
- the final decision.

In addition to the above, any party may request a transcription of the record and DAS must provide it. However, the requesting party shall pay the cost of such transcript. Should the aggrieved contractor file an appeal with superior court, pursuant to *C.G.S. §4-183(g)*, DAS must transcribe any portion of the record that has not been transcribed and send either the original or a certified copy of the entire record to the reviewing court. This must be done within 30 days after appeal has been served, or within such further time as the court may allow.

All final decisions are indexed and made available for public inspection and copying, to the extent required by the Freedom of Information Act, as defined in *C.G.S. §1-200*.

### **III. General Procedures**

#### **A. Before Your First Hearing**

(1) Knowledge of applicable statutes and regulations

To be effective as a hearing officer, you must be familiar with the following in order to understand both the hearing process and the subject matter of the hearing:

- (a) The *Uniform Administrative Procedures Act* (UAPA), which is found in Chapter 54 of the Connecticut General Statutes. The UAPA addresses the conduct of contested cases, as well as outlines the proper procedures for state agencies to follow in drafting regulations and issuing declaratory rulings;
- (b) C.G.S. §4a-100, (*Prequalification of Contractors. Fees. Application. Renewal. Revocation. Regulations. Notice to Commissioner of Public Works and Commissioner of Administrative Services re: Certain Contractors.*);
- (c) C.G.S. §4b-91, (*Formerly Sec. 4-137a*). *Bidding for Public Building Contracts. Prequalification Requirements.*;
- (d) *Connecticut General Statutes §46a-80*, which concerns license denial based upon a criminal record.

(2) Observe Hearings

It is important to observe as many hearings as possible before you begin conducting hearings yourself. This is the best way to acquaint yourself with the process.

(3) Questions

Any procedural questions you may have before, during or after a hearing can be directed to one of the attorneys in the Business Advisory Group (Procurement) unit.

#### **B. Preparation for the Hearing**

(1) Review the file

You should receive a file from the attorney in the Procurement unit the day before the scheduled hearing. Review the notice (See section II.B.(3)(a) above.) and any other pertinent documentation in the file before the hearing to familiarize yourself with the allegations. Make sure you

know the applicable statutes and legal authorities. (See III.A.(1) above.) Also check to see that the return receipt (green) card has come back to the agency, or a copy of the hand delivery is in the file, so that proper service of notice can be verified. If neither of these are included in the file, talk with the Procurement attorney assigned to the case.

(2) Hearing officer replacements

If you will be unavailable for a hearing for which you are scheduled, it is your responsibility to find a replacement and notify the Procurement attorney assigned to the case.

(3) No *ex parte* communications

In order to have a fair hearing, the hearing officer must be unbiased. For this reason, no *ex parte* communications (where only one side participates) are allowed before, during or after a hearing. The importance of this cannot be stressed enough. If anyone attempts to engage in *ex parte* communications with you, stop him/her immediately and remind the person of this very important rule. Engaging in any *ex parte* communications will nullify the final decision you issue in a case.

(4) Parties and intervenors

Everyone who participates in a hearing must have some type of status, such as a party, intervenor, or a lawyer or witness for a party or intervenor. "Parties" are defined as those persons whose legal rights, duties or privileges are being determined in a contested case and who are named or admitted as a party; a "party" is also any person whose participation is required by law to be a party in an agency proceeding because his/her presence is deemed necessary to the proper disposition of the proceeding.

Although rare, an individual may file a written petition to be designated a party. This must be done at least five (5) days prior to the scheduled hearing with copies mailed to all parties. The petition must state the facts that demonstrate that the petitioner's legal rights, duties or privileges will be affected by DAS' decision in the case. It is your responsibility as hearing officer to consider the petition, and to designate or admit the individual as a party.

A person may seek status as an "intervenor" to participate in the hearing. An "intervenor" is any person, other than a party, whom you determine will furnish assistance in making a decision. The intervenor must submit a petition (five [5] days prior to the hearing with copies sent to all parties) stating facts demonstrating that his/her participation is in the interest of justice and will not impair the orderly conduct of the proceedings. The

extent to which an intervenor participates in the proceeding is in your sole discretion. In order to promote the orderly conduct of the hearing, you may limit the intervenor's participation to designated issues in which the intervenor has a particular interest as demonstrated by the petition. You may define his/her rights to inspect and copy records, physical evidence, papers and documents, as well as to introduce evidence, argue and cross-examine.

(5) Enter the hearing room last

You should always enter the hearing room last. This way, it does not appear to the contractor that you have been discussing the case with agency presenters or witnesses before he or she entered the room.

**C. Conducting the Hearing.**

(1) Default

In the event a contractor does not appear for the hearing, do not postpone the proceeding. Wait approximately 20 minutes past the scheduled hearing time and then begin. With the tape recorder on, state for the record:

- (a) the scheduled hearing time, as well as
- (b) the current time.

Take administrative notice of the hearing file and state on the record that the signed return receipt card (or proof of hand delivery) is in the file. This indicates actual or constructive knowledge of the proceeding, and therefore, you are entering a default against the contractor for failure to appear.

(2) Start the hearing

Make sure you have started running the tape. Once the tape is started, identify yourself to the individuals present, state the date and time, the name and address of the contractor (taken off the notice) and the allegations. Mark the notice as DAS' Exhibit #1. Next, ask the DAS presenter and the contractor to identify themselves for the record. Ask those offering testimony to stand to be sworn in. Finally, give a brief overview of how the hearing will proceed. Explain that the DAS presenter will present testimony and evidence first. Let the contractor know that he/she may ask questions of the presenter and that once the presenter has finished, it will be his/her opportunity to present testimony and evidence. Let the contractor know that the DAS presenter and you may ask questions also. Finally, ask the contractor if he/she understands how the

hearing is to proceed. If there are no questions, ask the DAS presenter to begin. (See also Appendix Exhibit No. 4, an outline of this introduction)

(3) Amended notice

Make sure that the allegations the DAS presenter testifies to match what is on the notice. If there have been any changes or corrections to the allegations since the notice was mailed (or hand delivered) and no amended notice was sent out, have the notice amended on the record. Check with the contractor to see if he/she is prepared to go forward with the hearing in light of the new or corrected allegations.

(4) Fairness

Fairness must always be maintained. As hearing officer, you are not an advocate for DAS. You are an impartial evaluator. Make sure that each party is given the opportunity to state and defend his/her position and to rebut the opposing point of view. Listen to all the testimony carefully. This sounds obvious, but it is the most important thing to do in order to get the facts straight, to have a fair hearing and to make an informed decision. Keep an open mind throughout the proceeding so that your decision is based solely upon the evidence and testimony. Do not allow considerations such as the personality of a party or attorney to cloud your judgment. Try not to show strong emotions or your impressions of how you believe either side is presenting their case. It is also inappropriate to wear any political pins, etc. that may offend someone at the hearing.

(5) Decorum

As hearing officer, you are in charge of the proceedings much as a judge is in a court room. It is your responsibility to see that the proceedings are conducted in an orderly and professional manner at all times. Do not allow anyone present to conduct himself/herself in an unprofessional manner. You may admonish any individuals who conduct themselves inappropriately.

Every effort should also be made to keep the hearings as informal as possible. This encourages open dialogue between the parties. If an attorney is representing the contractor, an informal atmosphere encourages cooperation and helps keep the attorney from acting as if he/she is in a court room. An attorney may attempt to intimidate those present by raising various unnecessary legal objections during the proceedings. This can be avoided if the atmosphere is kept as casual as possible while you remain in complete control of the proceedings.

Always refer to any individual at the hearing by their last name. Any reference by a first name to someone representing DAS in particular may give the appearance of unfairness to the contractor. Also, always refer to DAS in third-person (i.e., do not use "we" when speaking of the agency).

(6) Hearings are recorded

Be cognizant of the fact that the proceedings are being recorded and may later be transcribed. For this reason, it is important that only one person speak at a time. Remind participants of this if they begin speaking out of turn. Remind participants to use verbal answers; no nodding of the head as a response. Also, if at any time you have a question or for some other reason must temporarily halt the proceedings, call a recess and stop the taping.

(7) Notes

It is helpful to take notes during the hearing. You probably will not make a decision on the case right away, and these notes will be helpful later on when you do render a decision. In fact, it is usually better to hold off from making a decision right away. It is easier to think objectively after some time has passed.

(8) Attorneys

If the contractor is represented by counsel, do not allow the attorney to testify to facts to which the contractor can testify. Remember you always have the right to directly question the contractor. If an attorney raises legal issues that you do not know how to resolve, you can always stop the proceeding to seek advice from the Procurement attorney assigned to the case.

(9) Evidence

- (a) It is your responsibility as hearing officer to rule on questions regarding the admission or exclusion of evidence. Strict judicial rules of evidence do not apply to administrative proceedings. Again, remember that if you are unsure about how to rule on a procedural matter, you may at any time adjourn the hearing to talk with Procurement attorney assigned to the case.
- (b) In accordance with the UAPA, any oral or documentary evidence may be received. However, you must exclude irrelevant, immaterial or unduly repetitious evidence. In addition:

- i. The UAPA gives effect to the rules of privilege recognized by law, such as husband-wife, attorney-client, doctor-patient, priest-penitent, etc.
  - ii. When a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence maybe received in written form.
  - iii. Documentary evidence may be received in the form of copies or excerpts and, upon request, opportunity given to compare the copy and the original.
  - iv. You may conduct cross-examination at any time if you find it to be required for a full and true disclosure of the facts; in other words, at administrative hearings, cross-examination does not have to be limited to the initial testimony of the contractor. (**Note:** In contested cases, a party may also conduct cross-examinatons if required for a full and true disclosure of the facts.)
  - v. You may take notice of generally recognized technical or scientific facts within DAS' experience, technical competence and specialized knowledge as long as parties are notified in a timely manner (before or during the hearing, or by an appropriate reference in preliminary reports or otherwise) of any matter so noticed and afforded the opportunity to contest such material.
  - vi. You may also take notice of judicially cognizable facts, including the records and the prior decisions of DAS prequalification hearing officers.
- (c) When any party seeks to enter exhibits during the proceedings, be sure that the opposing party has a chance to see and read the submittal before it is entered. Wait to see if there are any objections, such as the evidence is irrelevant, immaterial or unduly repetitious. If there are any objections to the submission of evidence, ask what the grounds or basis of the objection is. Allow the party offering the evidence to rebut the objection. If you are on the fence as to whether to allow the evidence into the record, it should be let in if the evidence has relevance to the proceeding. Afford it the weight you believe it deserves depending upon the degree of relevance to the issues.

Have the exhibit marked and state on the record the exhibit number and whether it is a DAS or contractor exhibit. If the contractor enters exhibits, make sure he/she has retained their own copies, or copies can be made after the hearing ends.

- (d) If the hearing involves a materially false statement on the application for prequalification certification, be sure the DAS presenter submits the relevant pages of the application.
- (e) At a hearing for a revocation based upon a criminal record, do not allow the DAS presenter to testify regarding arrest information, only actual convictions. Also, if someone is currently involved in accelerated rehabilitation, the conviction cannot be considered because it will be erased after successful completion of the program.

(10) Hearsay Evidence

One of the most common objections raised at hearings is to the admissibility of hearsay evidence. Hearsay is defined as a statement, other than one made by the person testifying at the hearing, offered in evidence to prove the truth of the matter asserted. In court proceedings, there are numerous exceptions to the hearsay exclusion, but for administrative hearing purposes, hearsay evidence is admissible. However, a decision cannot be based solely on hearsay evidence. For that reason, you have the latitude to require the presence of additional witnesses or documents.

(11) Burden of proof

The burden of proof, i.e., the responsibility for persuading the hearing officer with substantial evidence that his or her position is justified, is with the DAS presenter. Once a contractor has been prequalified, certain rights attach to the prequalification certificate that cannot be casually taken away. That is why in an action to revoke a prequalification certificate or reduce a prequalification classification or an aggregate work capacity rating, the burden rests with the DAS.

(12) Stick to the issues

Do not allow anyone to raise questions or testimony beyond the scope of the subject matter of the hearing.

(13) Briefs

In addition to the testimony and evidence given at a hearing, you may wish to have written briefs prepared by the contractor and the DAS presenter. Although this is within your discretion to request, it is usually only appropriate when attorneys are involved and a significant legal issue arises during the hearing. On occasion, counsel for the contractor may wish to submit a brief subsequent to the hearing.

(14) Keeping the record open

Sometimes during a hearing additional documentation or information is needed or requested that cannot be produced at the hearing. You may leave the hearing record open for a stated amount of time and when the documentation is received by DAS, it is made part of the record.

(15) Closing the hearing

After all the testimony has been given and exhibits entered, let the contractor know that he/she will be receiving the decision in the mail. Also inform the contractor that by statute, DAS has 90 days to issue a decision, but that every effort is made to have decisions completed as soon as possible. Never promise a decision within a stated time. Special consideration should not be given to one respondent over others unless special circumstances are involved.

**D. After the Hearing**

(1) Hearing officer file

Immediately after the hearing, give the file back to the Procurement attorney assigned to the case. Keep your notes to help you with making your decision later. The file, the attorney's notes and the tape of the hearing are always available if necessary to refresh your memory before making a decision. You may also decide to keep the file until giving your decision to the attorney – the choice is up to you.

(2) No *ex parte* communications

It cannot be emphasized enough that *ex parte* communications are prohibited. Until a decision is approved by the Commissioner, no discussion of the matter at hand can be had with any party, witness, presenter, intervenor, attorney, or other person directly involved with the hearing. Any discovered *ex parte* communication is cause for reversal of any DAS action.

(3) Written decision

You must provide a written decision to the Procurement attorney handling the case unless the decision is given on the record at the hearing. Give the attorney your written decision that includes your analysis and reasoning for the decision. Remember that your decision must be:

- (a) complete. (For example, if the decision is revocation based upon a criminal record, all three elements of *C.G.S. §46a-80* must be addressed.)

- (b) based exclusively on the evidence in the record and on matters noticed.
- (c) state the name of each party and his/her most recent mailing address (or that of the party's authorized representative).
- (d) rendered within 90 days following the close of evidence, in accordance with *C.G.S. Sec. §4-180*. (When possible, you should try to provide the Procurement attorney with your decision no later than 45 days after the hearing.)
- (e) delivered promptly to each party or his authorized representative, personally or by United States mail, certified or registered, postage prepaid, return receipt requested.

The final decision shall be effective when personally delivered or mailed or on a later date specified by the agency.

All prior hearing decisions, by hearing type, are kept within the Contractor Prequalification unit.

(4) *Nolo Contendere* pleas

While *nolo contendere* pleas are considered criminal convictions in criminal proceedings, such pleas may not be considered convictions in civil proceedings, including administrative hearings. Therefore, a revocation of a prequalification certification or reduction in classification or aggregate work capacity rating cannot be based on crimes where there was a *nolo* plea. However, for the purpose of listing criminal convictions, failure to reveal a conviction with a *nolo* plea is cause for the allegations of falsification and failure to disclose and is grounds for revocation or reduction in classification or rating.

(5) Commissioner approval

Your written recommendation must be approved by the commissioner. If he or she does not approve it, you may be asked by the commissioner to more fully explain the reasoning behind the decision. In some cases you may wish to re-consider the testimony and evidence presented during the hearing.

**E. Appeals**

(1) Who may appeal

Any contractor who is aggrieved by a final decision of the hearing officer in a show cause hearing may request reconsideration of the final decision. Any such appeal must be in writing and made to the commissioner of DAS within fifteen (15) days of the date notice of the final decision was mailed or hand delivered. The petition for appeal must be made on one of three grounds:

- (a) An error of fact or law that should be corrected.
- (b) New evidence has been discovered which materially affects the merits of the case and which for good reasons was not presented in the agency proceeding.
- (c) Other good cause for reconsideration has been shown

The agency must decide within 25 days of the filing whether or not it will reconsider the final decision. Failure to make that determination within such time constitutes a denial of the petition.

(2) No automatic stay

The filing of an appeal does not automatically stay, or in other words, suspend, the enforcement of the hearing officer's decision. Upon application, the Commissioner may grant a stay. Generally, however, applicants are allowed to continue to work or operate until the appeal process is completed.

(3) Record

Appeals are limited to the record made at the show cause hearing. Proof of alleged procedural irregularities at the hearing may be taken into account by the commissioner of DAS. The commissioner, however, cannot substitute his/her judgment for that of the hearing officer as to the weight of the evidence on questions of fact, or as to the credibility of witnesses as determined by the hearing officer.

(4) Possible outcomes

The commissioner may affirm, modify, reverse or remand the hearing officer's decision.

The reversal of the hearing officer's decision can only occur if substantial rights of the appellant have been prejudiced because of the hearing officer's findings, inferences or conclusions, or if the hearing officer's decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the division;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole, record; or
- (b) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(5) Superior Court

A contractor who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision may appeal to Superior Court in accordance with *C.G.S. §4-183*. This appeal must be made within forty-five days after mailing or personal delivery of the final decision.

**Note:** The filing of a petition for reconsideration is not a prerequisite to the filing of an appeal to the court.

#### IV. **Personnel Listing**

- A. Administrative Assistants:
- B. Compliance Meeting Officers:
- C. Hearing Officers:
- D. Presenters/Witnesses:

#### V. Glossary of Terms

**“Aggregate Work Capacity Rating”**

The maximum amount of work a company is capable of undertaking for any and all projects.

**"Contested Case"**

A proceeding in which the legal rights, duties or privileges of a party are required by statute to be determined by the agency after an opportunity for a hearing or in which a hearing is in fact held.

**"De Novo"**

Trying a matter anew; the same as if it had not been heard before and as if no decision had been previously rendered.

**"Evidence"**

Proof or probative matter, presented at a hearing through witnesses, records, documents, exhibits, etc., to prove the existence or non-existence of a fact and for the purpose of inducing belief in the mind of the hearing officer.

**"Ex Parte"**

One side only; by or for one party; ex parte communications are when a hearing officer communicates in connection with any issue of fact, with any person or party, without notice and opportunity for all parties to participate.

**"Final Decision"**

The agency determination in a contested case or an agency decision made after reconsideration. The term does not include a preliminary or intermediate ruling or order of an agency, or a ruling of any agency granting or denying a petition for reconsideration.

**"Hearing Officer"**

An individual appointed by an agency to conduct a hearing in an agency proceeding. Such individual may be a staff employee of the agency.

**"Hearsay"**

A statement, other than one made by the person testifying at the hearing, offered in evidence to prove the truth of the matter asserted.

**"Intervenor"**

A person admitted by the presiding hearing officer as a participant in a contested case who is not a party.

**"Party"**

Each person named or admitted by the agency as a party to a contested case, whose legal rights, duties or privileges will be determined by the hearing officer's decision.

**"Petitioner"**

A person who has filed a petition for a declaratory ruling or for a patron reinstatement hearing.

**"Prequalification"**

03/29/06

Prequalification issued by the commissioner of the Department of Administrative Services to bid on contract for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building for work by the state or a municipality.

**“Prequalification Classification”**

Classifications established by the commissioner of the Department of Administrative Services pursuant to (7) (f) (2) of C.G.S. §4a-100 .