
OLR Bill Analysis

sHB 6903 (as amended by House "A")*

AN ACT PROHIBITING CONSTRUCTION MANAGERS FROM SELF-PERFORMING PROJECT ELEMENTS OF QUASI-PUBLIC AGENCY CONSTRUCTION CONTRACTS AND SUCCESS FEES IN QUASI-PUBLIC AGENCY CONTRACTS.

SUMMARY

This bill makes several changes affecting the Connecticut Port Authority's (CPA) contracting procedures. It requires public bidding for any CPA project to construct, renovate, or alter buildings or facilities that it owns or leases that is overseen by a construction manager (e.g., a general contractor) and financed in whole or in part by the state. It prohibits the construction manager from bidding on these projects' elements.

The bill also prohibits CPA from paying success fees under any contract or agreement it enters into, amends, or extends on or after July 1, 2023, if it is financed in whole or in part by the state (including matching expenditures, grants, loans, insurance, or guarantees). A "success fee" is a commission paid by the authority to a person or entity for facilitating a transaction's completion only if the transaction is completed. It is separate from any payment for services performed.

The bill generally requires CPA to follow the same procedures as state agencies when entering into certain goods and services contracts. Generally, these procedures require (1) using competitive bidding or competitive negotiation when purchasing goods and services and (2) awarding contracts to the lowest responsible qualified bidder or highest-scoring bidder in a multiple-criteria bid. The bill's provisions generally mirror provisions in existing law that apply to executive branch state agencies (CGS §§ 4a-50, -57 & -59).

The bill also makes permanent the State Contracting Standards Board's (SCSB's) authority over CPA, which expires July 1, 2026, under

current law. Lastly, the bill makes technical and conforming changes.

*House Amendment “A” (1) makes the provisions on construction projects and success fees applicable to CPA only, rather than all quasi-public agencies as in the original bill; (2) limits these provisions’ applicability to state-funded projects only; and (3) adds the provisions on competitive bidding and SCSB’s authority over CPA.

EFFECTIVE DATE: October 1, 2023, for the provisions on goods and services contracts and SCSB authority and July 1, 2023, for the provisions on CPA construction projects and prohibiting success fees.

§ 1 — CPA CONSTRUCTION PROJECTS

Under the bill, the construction manager for a state-funded CPA project must invite bids for the various project elements and post notice of them on the State Contracting Portal, but may not bid on any project element. Bids must remain sealed until the public opening (as specified in the notice), and the construction manager must award contracts for project elements to the contractor submitting the lowest responsible qualified bid. The construction manager must consult with CPA and receive its approval before awarding contracts.

Under the bill, any contract that CPA enters into with a construction manager for a state-funded project must require the construction manager to keep accounting records for all state funds spent, including detailed support for cost allocations. The bill makes these accounting records subject to audit by the Auditors of Public Accounts.

Under the bill, a “project” is the construction, renovation, or alteration of buildings or facilities owned or leased by CPA and financed in whole or in part by the state (including matching expenditures, grants, loans, insurance, or guarantees). It includes all related planning, feasibility, environmental testing and assessment, permitting, engineering, technical, and other necessary development activities, such as site acquisition, site preparation, and infrastructure improvements.

A “construction manager” is a general contractor or other construction professional with primary responsibility for the day-to-day

management of all construction or engineering activities for a project pursuant to a contract or other agreement with CPA.

§ 3 — CPA GOODS AND SERVICES CONTRACTS

Procedures

The bill's requirements apply to CPA's purchases of supplies, materials, equipment, and specified contractual services (e.g., laundry and cleaning, equipment maintenance). With certain exceptions, it requires that purchases of these goods and services be made using competitive bidding or competitive negotiation (as defined in existing law) when possible. When using competitive negotiation, CPA must include price as an explicit criterion in the request for proposals and contract award.

The bill requires CPA to adopt procedures establishing standards and procedures for (1) using competitive negotiation, including criteria to be considered and each criterion's weight, and (2) making additional purchases from existing contracts. As under existing law, the bill establishes exceptions for (1) minor nonrecurring and emergency purchases of \$10,000 or less and (2) specified public utility services (i.e., electricity, water, gas, and certain related supply or generation services).

Solicitations

Under the bill, CPA must solicit competitive bids or proposals by noticing the planned purchase in a way that it determines to promote competition and maximize public participation, including by small contractors certified under the state set-aside program (see BACKGROUND). The notice must include the types of goods and services sought by CPA and the contract award's estimated value.

When applicable, the notice must also contain (1) a notice of state law's nondiscrimination and affirmative action requirements and (2) provisions for awarding contracts to entities certified under the state set-aside program.

The bill requires CPA to keep bids and proposals sealed or secured until publicly opened at the time stated in the solicitation notice.

Contract Awards

The bill requires that all open-market orders or contracts for the specified goods and services be awarded to the (1) lowest responsible qualified bidder, accounting for the good's or service's quality and suitability; (2) highest-scoring bidder in a multiple-criteria bid; or (3) proposer that CPA deems as having the most advantageous proposal, according to criteria in the proposal.

"Lowest responsible qualified bidder" refers to the lowest bidder that has the skill, ability, and integrity needed to perform the work. "Highest-scoring bidder in a multiple-criteria bid" refers to the bidder with the highest score for a combination of attributes, including price, skill, ability, and integrity based on objective criteria established in the bid solicitation. In both cases, CPA must base its evaluation on the bidder's fulfillment of past contract obligations and experience or lack of experience in delivering the specific goods or services sought in the bid solicitation.

§§ 4 & 5 — SCSB AUTHORITY

The bill makes permanent SCSB's authority over CPA, which was set by the 2021 implementer and expires July 1, 2026, under current law (PA 21-2, June Special Session, § 309). Like current law, the bill defines CPA as a "state contracting agency" under SCSB's authorizing statutes, except for the state's privatization law (CGS § 4e-16, which, among other things, subjects certain privatization contracts to SCSB's approval). The board's authority over CPA includes auditing CPA's compliance with procurement laws and regulations and reviewing CPA's contracts and procurement agreements (CGS §§ 4e-6 & -7).

BACKGROUND***Related Bills***

sHB 5692 (File 612), reported favorably by the Government Administration and Elections (GAE) Committee, contains identical provisions subjecting CPA's goods and services procurements to competitive bidding requirements and making permanent SCSB's authority over CPA (§§ 3-5 of this bill).

sSB 1223 (File 572), reported favorably by the Appropriations and GAE committees, (1) makes permanent SCSB's authority over CPA and subjects CPA to the privatization law and (2) subjects all quasi-public agencies to the board's full authority.

Set-Aside Program

The state set-aside program requires state agencies and certain political subdivisions (including quasi-public agencies) to set aside 25% of the total value of all contracts they let for construction, goods, and services each year for exclusive bidding by certified small contractors. The agencies must further reserve 25% of the set-aside value (6.25% of the total) for exclusive bidding by certified minority business enterprises (MBE).

By law, a "certified small contractor" is one that maintains its principal place of business in the state. The contractor must be (1) registered as a small business in the federal database maintained by the U.S. General Services Administration, as required to do business with the federal government, or (2) be a nonprofit entity that (a) had gross revenues of \$20 million or less during its most recent fiscal year and (b) is independent. MBEs are small contractors owned by women, minorities, or people with disabilities. The owner must have managerial and technical competence and experience directly related to his or her principal business activities (CGS § 4a-60g(a)).

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable

Yea 19 Nay 0 (03/27/2023)