



House of Representatives

File No. 803

General Assembly

January Session, 2023

(Reprint of File No. 624)

Substitute House Bill No. 6903
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
May 19, 2023

AN ACT CONCERNING OVERSIGHT OF AND REQUIREMENTS FOR CERTAIN CONTRACTS OF THE CONNECTICUT PORT AUTHORITY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2023*) (a) As used in this section, (1)
2 "authority" means the Connecticut Port Authority established under
3 section 15-31a of the general statutes; (2) "project" means the
4 construction, renovation or alteration of buildings or facilities owned or
5 leased by the authority, including all related planning, feasibility,
6 environmental testing and assessment, permitting, engineering,
7 technical and other necessary development activities, such as site
8 acquisition, site preparation and infrastructure improvements which is
9 financed in whole or in part by the state, including, but not limited to,
10 matching expenditures, grants, loans, insurance or guarantees; and (3)
11 "construction manager" means a general contractor or other
12 construction professional with primary responsibility for the day-to-day
13 management of all construction or engineering activities for a project in
14 accordance with a contract or other agreement with the authority.

15 (b) Any project of the Connecticut Port Authority that is overseen by
16 a construction manager shall be subject to the provisions of this section.

17 (c) The construction manager for a project of the authority shall invite
18 bids and give notice of opportunities to bid on project elements on the
19 State Contracting Portal. Each bid shall be kept sealed until opened
20 publicly at the time and place as set forth in the notice soliciting such
21 bid. The construction manager shall, after consultation with and
22 approval by the authority, award any related contracts for project
23 elements to the responsible qualified contractor submitting the lowest
24 bid in compliance with the bid requirements, provided the construction
25 manager shall not be eligible to submit a bid for any project element.

26 (d) Any contract entered into by the authority with a construction
27 manager related to the construction of a project shall require the
28 construction manager to maintain complete accounting records relating
29 to all expenditures of state funds, including detailed support for all cost
30 allocations, and such records shall be subject to audit by the Auditors of
31 Public Accounts.

32 Sec. 2. (NEW) (*Effective July 1, 2023*) (a) As used in this section,
33 "success fee" means a commission that is (1) paid by the Connecticut
34 Port Authority to a person or business entity for such person's or
35 business entity's role in facilitating the finalization of a transaction, (2)
36 not paid if such transaction is not finalized, and (3) separate from any
37 payment for services performed.

38 (b) No contract or other agreement entered into, amended or
39 extended on or after July 1, 2023, by the Connecticut Port Authority
40 which is financed in whole or in part by the state, including, but not
41 limited to, matching expenditures, grants, loans, insurance or
42 guarantees, may include a provision in such contract or other agreement
43 for the payment of a success fee to any person or business entity.

44 Sec. 3. (NEW) (*Effective October 1, 2023*) (a) As used in this section:

45 (1) "Authority" means the Connecticut Port Authority established

46 under section 15-31a of the general statutes;

47 (2) "Supplies", "materials" and "equipment" mean any and all articles
48 of personal property furnished to or used by the authority;

49 (3) "Contractual services" means any laundry and cleaning service,
50 pest control service, janitorial service, security service, the rental and
51 repair, or maintenance, of equipment, machinery and other state-owned
52 personal property, advertising and other service arrangements where
53 the service is provided by persons other than employees of the
54 authority;

55 (4) "Competitive bidding" means the submission of prices by persons,
56 firms or corporations competing for a contract to provide supplies,
57 materials, equipment or contractual services, under a procedure in
58 which the authority does not negotiate prices;

59 (5) "Competitive negotiation" means a procedure for contracting for
60 supplies, materials, equipment or contractual services, in which (A)
61 proposals are solicited from qualified suppliers by a request for
62 proposals, and (B) changes may be negotiated in proposals and prices
63 after being submitted;

64 (6) "Bidder" means a person, firm or corporation submitting a
65 competitive bid in response to a solicitation;

66 (7) "Proposer" means a person, firm or corporation submitting a
67 proposal in response to a request for proposals;

68 (8) "Lowest responsible qualified bidder" means the bidder whose bid
69 is the lowest of those bidders possessing the skill, ability and integrity
70 necessary to faithful performance of the work based on objective criteria
71 considering past performance and financial responsibility; and

72 (9) "Highest scoring bidder in a multiple criteria bid" means the
73 bidder whose bid receives the highest score for a combination of
74 attributes, including, but not limited to, price, skill, ability and integrity
75 necessary for the faithful performance of the work, based on multiple

76 criteria considering quality of product, warranty, life-cycle cost, past
77 performance, financial responsibility and other objective criteria that are
78 established in the bid solicitation for the contract.

79 (b) Notwithstanding any provision of the general statutes, any
80 purchases of, and contracts for, supplies, materials, equipment and
81 contractual services by the Connecticut Port Authority, except
82 purchases and contracts made pursuant to the provisions of subsection
83 (c) of this section and public utility services as provided in subsection
84 (e) of this section, shall be based, when possible, on competitive bids or
85 competitive negotiation. The authority shall solicit competitive bids or
86 proposals by providing notice of the planned purchase in a form and
87 manner that the authority determines will maximize public
88 participation in the competitive bidding or competitive negotiation
89 process, including participation by small contractors, as defined in
90 section 4a-60g of the general statutes, and promote competition. Each
91 notice of a planned purchase under this subsection shall indicate the
92 type of goods and services to be purchased and the estimated value of
93 the contract award. The notice shall, when applicable, also contain a
94 notice of contract requirements concerning nondiscrimination and
95 affirmative action pursuant to section 4a-60 of the general statutes and
96 requirements concerning the awarding of contracts to small contractors,
97 minority business enterprises, individuals with a disability and
98 nonprofit corporations pursuant to section 4a-60g of the general
99 statutes. Each bid and proposal shall be kept sealed or secured until
100 opened publicly at the time stated in the notice soliciting such bid or
101 proposal.

102 (c) The authority may waive the requirement of competitive bidding
103 or competitive negotiation in the case of minor nonrecurring or
104 emergency purchases of ten thousand dollars or less in amount.

105 (d) The authority shall adopt procedures, in accordance with the
106 provisions of section 1-121 of the general statutes, establishing (1)
107 standards and procedures for using competitive negotiation for
108 purchases and contracts, including, but not limited to, criteria which

109 shall be considered in making purchases by competitive negotiation and
110 the weight which shall be assigned to each such criterion, and (2)
111 standards and procedures under which additional purchases may be
112 made under existing contracts.

113 (e) The purchase of or contract for the following public utility services
114 shall not be subject to competitive bidding or competitive negotiation:
115 (1) Electric distribution services; (2) water services; (3) gas distribution
116 services; (4) electric generation services if such services are provided by
117 an electric municipal utility other than a participating electric municipal
118 utility, as defined in section 16-1 of the general statutes, in the service
119 area of such electric municipal utility; and (5) gas supply services until
120 the date such services are competitive pursuant to legislative act or
121 order of the Public Utilities Regulatory Authority, provided gas supply
122 services shall be exempt from competitive bidding and competitive
123 negotiation after such date if such services are provided by a gas
124 municipal utility in the service area of such gas municipal utility.

125 (f) All open market orders or contracts of the authority shall be
126 awarded to (1) the lowest responsible qualified bidder, while taking into
127 consideration the qualities of the articles to be supplied, their conformity
128 with the specifications, their suitability to the requirements of the
129 authority and the delivery terms, (2) the highest scoring bidder in a
130 multiple criteria bid, in accordance with the criteria set forth in the bid
131 solicitation for the contract, or (3) the proposer whose proposal is
132 deemed by the authority to be the most advantageous, in accordance
133 with the criteria set forth in the request for proposals, including price
134 and evaluation factors.

135 (g) Notwithstanding any provision of the general statutes, when
136 awarding a contract through competitive negotiation, the authority
137 shall include price as an explicit factor in the criteria in the request for
138 proposals and for the contract award. In considering past performance
139 of a bidder for the purpose of determining the lowest responsible
140 qualified bidder or the highest scoring bidder in a multiple criteria bid,
141 the authority shall evaluate the skill, ability and integrity of the bidder

142 in terms of the bidder's fulfillment of past contract obligations and the
143 bidder's experience or lack of experience in delivering supplies,
144 materials, equipment or contractual services of the size or amount for
145 which bids have been solicited.

146 Sec. 4. Section 15-31b of the general statutes is repealed and the
147 following is substituted in lieu thereof (*Effective October 1, 2023*):

148 (a) The purposes of the Connecticut Port Authority shall be to
149 coordinate the development of Connecticut's ports and harbors, with a
150 focus on private and public investments, pursue federal and state funds
151 for dredging and other infrastructure improvements to increase cargo
152 movement through the ports and maintain navigability of all ports and
153 harbors, market the economic development of such ports and harbors,
154 work with the Department of Economic and Community Development
155 and other state, local and private entities to maximize the economic
156 potential of the ports and harbors, support and enhance the overall
157 development of the state's maritime commerce and industries,
158 coordinate the planning and funding of capital projects promoting the
159 development of the ports and harbors, develop strategic entrepreneurial
160 initiatives that may be available to the state, coordinate the state's
161 maritime policy activities, serve as the Governor's principal maritime
162 policy advisor and undertake such other responsibilities as may be
163 assigned to it. To accomplish the purposes of the authority, the authority
164 shall have the duty and power to:

165 (1) Have perpetual succession as a body politic and corporate and to
166 adopt bylaws for the regulation of its affairs and the conduct of its
167 business;

168 (2) Adopt an official seal and alter the same at pleasure;

169 (3) Maintain an office at such place or places as it may designate;

170 (4) Sue and be sued in its own name, and plead and be impleaded;

171 (5) Develop an organizational and management structure that will

172 best accomplish the goals of the authority concerning Connecticut ports
173 and harbors;

174 (6) Create a code of conduct for the board of directors of the authority
175 consistent with part I of chapter 10;

176 (7) Adopt rules for the conduct of its business, which shall not be
177 considered regulations as defined in section 4-166;

178 (8) Adopt an annual budget and plan of operations, including a
179 requirement of board approval before the budget or plan may take
180 effect;

181 (9) Make and enter into all contracts and agreements that are
182 necessary, desirable or incidental to the conduct of its business, subject
183 to the requirements of section 3 of this act and chapter 62;

184 (10) Enter into joint ventures and invest in, and participate with, any
185 person or entity, including, without limitation, governmental or private
186 business entities in the formation, ownership, management and
187 operation of business entities, including stock and nonstock
188 corporations, limited liability companies and general and limited
189 partnerships, formed to advance the purposes of the authority. The
190 officers, employees and members of the board of directors of the
191 authority may serve, without compensation, as directors or officers of
192 any such business entities formed and such service shall be deemed to
193 be within the discharge of the duties of such officers, employees or
194 directors to the authority;

195 (11) Receive and accept, from any source, aid or contributions,
196 including money, property, labor and other things of value;

197 (12) Award grants and subsidies, make loans and provide other
198 forms of financial assistance to any person or entity under a written
199 policy, adopted in accordance with the provisions of section 1-121,
200 setting forth the eligibility criteria, application process, and such other
201 provisions as may be necessary or desirable to carry out the purposes of

202 this section;

203 (13) Charge reasonable fees for the services it performs and waive,
204 suspend, reduce or otherwise modify such fees in accordance with
205 written criteria established by the authority, and provided, that no
206 change may be made in fees without at least thirty days prior notice,
207 published in accordance with the provisions of section 1-121;

208 (14) Employ such assistants, agents and other employees as may be
209 necessary or desirable to carry out its purposes. (A) The executive
210 director and such employees shall be exempt from the classified service
211 and, except as provided in subparagraph (B) of this subdivision, shall
212 not be employees, as defined in subsection (b) of section 5-270. The
213 authority shall fix appropriate compensation for such employees and
214 establish all necessary or appropriate personnel practices and policies,
215 including those relating to hiring, promotion, compensation, retirement
216 and collective bargaining, which need not be in accordance with chapter
217 68, and the authority shall not be an employer, as defined in subsection
218 (a) of section 5-270, and may engage consultants, attorneys and
219 appraisers as may be necessary or desirable to carry out its purposes in
220 accordance with sections 15-31a to 15-31i, inclusive. (B) For purposes of
221 group welfare benefits and retirement, including, but not limited to,
222 those provided under chapter 66 and sections 5-257 and 5-259, the
223 officers and all other employees of the authority shall be state
224 employees. The authority shall reimburse the appropriate state agencies
225 for all costs incurred by such designation;

226 (15) Invest in, acquire, lease, purchase, own, manage, hold and
227 dispose of real property and lease, convey or deal in or enter into
228 agreements with respect to such property on any terms necessary or
229 incidental to carrying out the purposes of sections 15-31a to 15-31i,
230 inclusive, provided such transactions shall not be subject to approval,
231 review or regulation by any state agency pursuant to title 4b or any other
232 provision of the general statutes, except (A) the authority shall not
233 convey fee simple ownership in any property associated with the ports
234 or harbors under its jurisdiction and control without the approval of the

235 State Properties Review Board and the Attorney General, and (B) as
236 provided in subsection (c) of this section; and

237 (16) Adopt any policies and procedures necessary to carry out the
238 provisions of this section in accordance with the provisions of section 1-
239 121.

240 (b) The authority shall continue as long as it has bonds or other
241 obligations outstanding and until its existence is terminated by law,
242 provided no such termination shall affect any outstanding contractual
243 obligation of the authority and the state shall succeed to the obligations
244 of the authority under any contract. Upon the termination of the
245 existence of the authority, all its rights and properties shall pass to and
246 be vested in the state of Connecticut.

247 (c) On and after June 23, 2021, [until July 1, 2026,] the authority shall
248 be a state contracting agency for the purposes of chapter 62, except for
249 the provisions of section 4e-16, and shall be subject to the authority of
250 the State Contracting Standards Board established under section 4e-2.

251 Sec. 5. Subdivision (28) of section 4e-1 of the general statutes is
252 repealed and the following is substituted in lieu thereof (*Effective October*
253 *1, 2023*):

254 (28) "State contracting agency" means any executive branch agency,
255 board, commission, department, office, institution or council. "State
256 contracting agency" does not include the judicial branch, the legislative
257 branch, the offices of the Secretary of the State, the State Comptroller,
258 the Attorney General, the State Treasurer, with respect to their
259 constitutional functions, any state agency with respect to contracts
260 specific to the constitutional and statutory functions of the office of the
261 State Treasurer. For the purposes of every provision of this chapter other
262 than section 4e-16, "state contracting agency" includes the Connecticut
263 Port Authority, for the purposes of section 4e-16, "state contracting
264 agency" includes any constituent unit of the state system of higher
265 education and for the purposes of section 4e-19, "state contracting
266 agency" includes the State Education Resource Center, established

267 under section 10-4q;

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2023</i>	New section
Sec. 2	<i>July 1, 2023</i>	New section
Sec. 3	<i>October 1, 2023</i>	New section
Sec. 4	<i>October 1, 2023</i>	15-31b
Sec. 5	<i>October 1, 2023</i>	4e-1(28)

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill makes various changes to the contracting-related provisions applicable to the Connecticut Port Authority (CPA). No fiscal impact is expected given current contract levels.

House "A" eliminates the original bill and its associated fiscal impact, and results in the impact described above.

The Out Years

State Impact: None

Municipal Impact: None

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)