



General Assembly

Amendment

January Session, 2023

LCO No. 8053



Offered by:

REP. BLUMENTHAL, 147th Dist.

REP. CONLEY, 40th Dist.

SEN. FLEXER, 29th Dist.

SEN. OSTEN, 19th Dist.

REP. CANDELORA V., 86th Dist.

REP. MASTROFRANCESCO, 80th Dist.

To: Subst. House Bill No. 6903

File No. 624

Cal. No. 409

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

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

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

13 "construction manager" means a general contractor or other
14 construction professional with primary responsibility for the day-to-day
15 management of all construction or engineering activities for a project in
16 accordance with a contract or other agreement with the authority.

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

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

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

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

40 (b) No contract or other agreement entered into, amended or
41 extended on or after July 1, 2023, by the Connecticut Port Authority
42 which is financed in whole or in part by the state, including, but not
43 limited to, matching expenditures, grants, loans, insurance or
44 guarantees, may include a provision in such contract or other agreement

45 for the payment of a success fee to any person or business entity.

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

47 (1) "Authority" means the Connecticut Port Authority established
48 under section 15-31a of the general statutes;

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

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

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

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

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

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

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

74 (9) "Highest scoring bidder in a multiple criteria bid" means the
75 bidder whose bid receives the highest score for a combination of
76 attributes, including, but not limited to, price, skill, ability and integrity
77 necessary for the faithful performance of the work, based on multiple
78 criteria considering quality of product, warranty, life-cycle cost, past
79 performance, financial responsibility and other objective criteria that are
80 established in the bid solicitation for the contract.

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

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

107 (d) The authority shall adopt procedures, in accordance with the
108 provisions of section 1-121 of the general statutes, establishing (1)
109 standards and procedures for using competitive negotiation for
110 purchases and contracts, including, but not limited to, criteria which
111 shall be considered in making purchases by competitive negotiation and
112 the weight which shall be assigned to each such criterion, and (2)
113 standards and procedures under which additional purchases may be
114 made under existing contracts.

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

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

137 (g) Notwithstanding any provision of the general statutes, when
138 awarding a contract through competitive negotiation, the authority
139 shall include price as an explicit factor in the criteria in the request for

140 proposals and for the contract award. In considering past performance
141 of a bidder for the purpose of determining the lowest responsible
142 qualified bidder or the highest scoring bidder in a multiple criteria bid,
143 the authority shall evaluate the skill, ability and integrity of the bidder
144 in terms of the bidder's fulfillment of past contract obligations and the
145 bidder's experience or lack of experience in delivering supplies,
146 materials, equipment or contractual services of the size or amount for
147 which bids have been solicited.

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

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

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

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

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

- 172 (4) Sue and be sued in its own name, and plead and be impleaded;
- 173 (5) Develop an organizational and management structure that will
174 best accomplish the goals of the authority concerning Connecticut ports
175 and harbors;
- 176 (6) Create a code of conduct for the board of directors of the authority
177 consistent with part I of chapter 10;
- 178 (7) Adopt rules for the conduct of its business, which shall not be
179 considered regulations as defined in section 4-166;
- 180 (8) Adopt an annual budget and plan of operations, including a
181 requirement of board approval before the budget or plan may take
182 effect;
- 183 (9) Make and enter into all contracts and agreements that are
184 necessary, desirable or incidental to the conduct of its business, subject
185 to the requirements of section 3 of this act and chapter 62;
- 186 (10) Enter into joint ventures and invest in, and participate with, any
187 person or entity, including, without limitation, governmental or private
188 business entities in the formation, ownership, management and
189 operation of business entities, including stock and nonstock
190 corporations, limited liability companies and general and limited
191 partnerships, formed to advance the purposes of the authority. The
192 officers, employees and members of the board of directors of the
193 authority may serve, without compensation, as directors or officers of
194 any such business entities formed and such service shall be deemed to
195 be within the discharge of the duties of such officers, employees or
196 directors to the authority;
- 197 (11) Receive and accept, from any source, aid or contributions,
198 including money, property, labor and other things of value;
- 199 (12) Award grants and subsidies, make loans and provide other
200 forms of financial assistance to any person or entity under a written
201 policy, adopted in accordance with the provisions of section 1-121,

202 setting forth the eligibility criteria, application process, and such other
203 provisions as may be necessary or desirable to carry out the purposes of
204 this section;

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

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

228 (15) Invest in, acquire, lease, purchase, own, manage, hold and
229 dispose of real property and lease, convey or deal in or enter into
230 agreements with respect to such property on any terms necessary or
231 incidental to carrying out the purposes of sections 15-31a to 15-31i,
232 inclusive, provided such transactions shall not be subject to approval,
233 review or regulation by any state agency pursuant to title 4b or any other
234 provision of the general statutes, except (A) the authority shall not

235 convey fee simple ownership in any property associated with the ports
236 or harbors under its jurisdiction and control without the approval of the
237 State Properties Review Board and the Attorney General, and (B) as
238 provided in subsection (c) of this section; and

239 (16) Adopt any policies and procedures necessary to carry out the
240 provisions of this section in accordance with the provisions of section 1-
241 121.

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

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

253 Sec. 5. Subdivision (28) of section 4e-1 of the general statutes is
254 repealed and the following is substituted in lieu thereof (*Effective October*
255 *1, 2023*):

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

267 education and for the purposes of section 4e-19, "state contracting
268 agency" includes the State Education Resource Center, established
269 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)