
OLR Bill Analysis

sSB 391

AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE STATE CONTRACTING STANDARDS BOARD.

SUMMARY

This bill makes several changes that expand the State Contracting Standards Board's (SCSB) powers and duties. It grants the board certain protections against modifications to its budget request and reductions in its allotments. It also subjects quasi-public agencies to the board's full authority, including the law on privatization contracts, by making them "state contracting agencies" under the board's authorizing statutes. Additionally, it makes other changes to the privatization law (e.g., adding to the analyses that agencies must conduct for a proposed privatization).

Separately, the bill requires agency procurement officers to advise bidders, proposers, and contractors about certain rights enforced by SCSB (e.g., the right to contest a contract solicitation or award). It also requires contracting agencies to (1) post information on their websites about certain emergency procurements they enter into and (2) evaluate bidders' and proposers' financial condition before selecting one to perform a contract or subcontract (§ 41). It also broadens the reasons for which SCSB may disqualify contractors, bidders, and proposers.

The bill specifies that the provisions of the law on state contracting (Title 4e) supersede any contrary provision about a state contracting agency or quasi-public agency in the general statutes (§ 42). Among other things, state law includes provisions on state agency personal services agreements (CGS § 4-212 et seq.); goods and services purchases (CGS § 4a-50 et seq.); and capital projects (CGS § 4b-51 et seq.).

Lastly, the bill makes other minor, technical, and conforming changes

(e.g., § 40).

EFFECTIVE DATE: July 1, 2024, except that the provision on budget request modifications and allotment reductions is effective upon passage.

§§ 1 & 3 — SCSB BUDGET AND STAFFING

The bill requires the Office of Policy and Management (OPM) secretary to include the SCSB executive director's estimates of the board's expenditure requirements and recommended adjustments and revisions in the proposed budget documents that OPM submits to the legislature, without altering them. It also prohibits the governor from reducing SCSB's allotment requisitions or allotments in force. Existing law grants these same protections to the (1) Office of State Ethics (CGS § 1-81a), (2) Freedom of Information Commission (CGS § 1-205a), and (3) State Elections Enforcement Commission (CGS § 9-7c).

Separately, the bill requires that SCSB employ at least five full-time employees, subject to the State Personnel Act.

§§ 2-39 — SCSB AUTHORITY OVER QUASI-PUBLIC AGENCIES

Under current law, SCSB has limited authority over quasi-public agencies, as, with one exception, SCSB's authorizing statutes generally exclude them from the definition of "state contracting agency." (Most of SCSB's powers and duties apply to state contracting agencies only, see BACKGROUND.)

The bill instead subjects quasi-public agencies to SCSB's full authority, with limited exceptions. It does so by adding quasi-public agencies to the definition of "state contracting agency" (see § 2) and making conforming changes throughout the bill. Under existing law, the state has 16 quasi-public agencies (CGS § 1-120).

The table below lists a selection of SCSB statutes applicable to state contracting agencies that the bill extends to quasi-public agencies. However, the bill does not extend provisions on contractor, bidder, or proposer suspensions issued by state agencies (§§ 22-24).

Table: Selected SCSB Statutes Applicable to Quasi-Public Agencies Under the Bill

<i>Bill Section (if applicable)</i>	<i>Statute</i>	<i>Description</i>
4	CGS § 4e-3	SCSB may exercise quasi-public agencies' contracting-related powers, rights, and duties
5	CGS § 4e-4	SCSB must review, certify, and periodically recertify quasi-public agency procurement processes
6	CGS § 4e-5	Quasi-public agencies must appoint a procurement officer
—	CGS § 4e-6	SCSB must audit each quasi-public agency's compliance with procurement laws and regulations every three years
7	CGS § 4e-7	SCSB may, under specified conditions, (1) review and terminate quasi-public agency contracts and procurement agreements or (2) restrict or terminate the quasi-public agency's ability to enter into contracts or procurement agreements
10	CGS § 4e-14	Quasi-public agency contracts must contain provisions ensuring accountability, transparency, and results-based outcomes, as prescribed by SCSB (it appears SCSB has not prescribed these standards for state contracting agencies to date)
11-13	CGS § 4e-16	Quasi-public agencies must comply with the privatization law (see below)
—	CGS § 4e-19	Quasi-public agencies must use specified procurement methods when purchasing goods and services (these provisions require SCSB to adopt implementing regulations before they become operative, but the board has not adopted them to date)
—	CGS § 4e-39	Quasi-public agency solicitations or proposed awards are subject to cancellation if SCSB finds that a violation of the law has occurred
21	CGS § 4e-34	SCSB may disqualify contractors from bidding on, applying for, or participating in state contracts with quasi-public agencies for up to five years if certain violations occur (see below)
25	CGS § 4e-40	SCSB may, after a quasi-public agency contract is awarded, take certain actions, including terminating the contract, if SCSB finds it violates the law

Separately, the bill adds four representatives of quasi-public agencies to the Contracting Standards Advisory Council, two each appointed by the House speaker and Senate president (§ 8). By law, the council must meet at least four times per year and make recommendations to SCSB for improving procurement processes.

§§ 2 & 11-14 — PRIVATIZATION LAW***Application to Quasi-Public Agencies***

The bill applies the privatization law to quasi-public agencies. Under the privatization law, if a state contracting agency seeks to enter into a contract that privatizes services performed by state employees, it generally must do a cost-benefit analysis and submit a business case to SCSB for its approval. The business case must include, among other things, the cost-benefit analysis and 11 other analyses (the bill adds two more, see below) relating to the privatized service, such as its goals and their rationale, and options for achieving them (CGS § 4e-16(d)). An agency may publish notice soliciting bids for a privatization contract only after the board approves the business case (CGS § 4e-16(i)).

For privatization contracts not subject to this requirement (i.e., contracts for services that are currently privatized), contracting agencies must instead evaluate the contract to determine if entering into or renewing it is the most cost-effective way to deliver the service. (The bill also expands SCSB's role in this evaluation, see below.)

Other Changes

Business Case. As described above, existing law requires contracting agencies to develop a business case, consisting of multiple analyses, for a service it seeks to privatize. The bill requires that the business case additionally include analyses of a proposed contract's (1) potential impact on workers of color or workers who are women, including whether it will lessen or increase historical patterns that produce inequities between these workers and other workers, and (2) qualitative impact on the existing state workforce. (The bill does not further specify what factors comprise a "qualitative impact.")

Employee Opportunity to Reduce Costs. Under current law, if a proposed privatization contract would result in the layoff, transfer, or reassignment of at least 100 state agency employees, then the agency generally must give the employees (1) an opportunity to reduce the costs of conducting the potentially privatized operations and (2) reasonable resources to encourage and help them to organize and submit a bid to

provide the potentially privatized services. The bill decreases, from 100 to 25, the number of employees who must potentially be affected by a privatization to trigger this requirement. As under current law, the state agency retains sole discretion over whether to proceed with the privatization as long as SCSB approves the business case.

Core Governmental Function. The bill expands the definition of “core governmental function” under the privatization statute to include providing essential human services to state residents who would otherwise lack the support necessary to assure basic human needs. The privatization statute establishes a rebuttable presumption that “core governmental functions” should not be privatized.

Cost-Effectiveness Evaluation. For privatization contracts not subject to the business case requirement (i.e., contracts for services that are currently privatized), current law requires contracting agencies to evaluate the contract, using a template the OPM secretary prescribes, to determine if entering into or renewing it is the most cost-effective way to deliver the service. The bill requires that the (1) evaluation be submitted to the board, rather than being subject to the secretary’s verification and (2) secretary consult with (a) SCSB when prescribing the evaluation template and (b) the chief procurement officer when deciding whether to waive the evaluation requirement because of exigent or emergent circumstances.

§ 6 — AGENCY PROCUREMENT OFFICERS

Existing law requires the head of each state contracting agency to appoint an agency procurement officer who must, among other things, (1) assure that contractors are properly screened before a contract award and (2) evaluate contractor performance during and at the conclusion of a contract. (The bill extends this requirement to quasi-public agencies.)

The bill additionally requires procurement officers to advise bidders, proposers, and contractors about their right to contest a contract solicitation or award. Specifically, procurement officers must ensure that (1) each bid, RFP (request for proposals), or other solicitation for goods and services contains a notice about these rights; (2) contractors

are advised about these rights before entering a contract; and (3) unsuccessful bidders, proposers, and respondents are advised about these rights when the contract is awarded.

§§ 17 & 18 — EMERGENCY PROCUREMENTS

Purchases of \$10,000 or Less (§ 17)

The law allows SCSB, in consultation with the Department of Administrative Services (DAS) commissioner, to waive competitive bidding or negotiation requirements for minor, nonrecurring, or emergency purchases of \$10,000 or less. The bill allows it to do so upon application by a contracting agency. It requires contracting agencies that get this waiver to post notice of the emergency purchase on their websites before making the purchase. (Existing law also allows the DAS commissioner to waive these requirements for purchases of \$25,000 or less for similar reasons without consulting the board (CGS § 4a-57(b)).)

Threats to Public Health, Welfare, or Safety (§ 18)

Current law requires SCSB to adopt regulations allowing emergency procurements when a threat to public health, welfare, or safety exists. (In practice, the board has not done so.) The bill instead directly allows contracting agencies to enter into these procurements and makes the board's adoption of regulations permissive.

The bill requires contracting agencies to (1) notify SCSB about the need for the procurement and (2) post on their websites their written determination of the basis for the emergency and selection of the particular contractor. As under existing law, this determination must also be in the contract file and sent to the governor and legislative leaders.

Existing law allows the DAS commissioner or the state's chief information officer to allow emergency procurements, subject to the Standardization Committee's approval if the cost is \$100,000 or more (CGS § 4a-58).

§ 21 — DISQUALIFICATION BY SCSB

The law generally allows SCSB to disqualify a contractor (including

bidders and proposers) from bidding on, applying for, or participating in state contracts for up to five years if it finds that certain violations occurred. Under current law, the board may do this for the fraudulent or criminal conduct of any officer, director, shareholder, partner, employee, or other individual associated with the contractor, if the (1) conduct occurred in connection with the person performing their duties on the contractor's behalf and (2) contractor knew or had reason to know about it. The bill more broadly allows the board to impose the disqualification for any of these individuals' fraudulent or criminal conduct, regardless of whether it occurred on the contractor's behalf or the contractor knew about it. It also applies the disqualification provisions to contracts with quasi-public agencies.

BACKGROUND

SCSB Authority Over Quasi-Public Agencies

Attorney General Opinion. In a 2021 opinion (Attorney General Opinion 2021-01), the attorney general concluded that most SCSB statutes give the board authority over state contracting agencies only, with only limited authority over quasi-public agencies. He noted that although the board has authority over certain bid contests involving quasi-public agencies, generally its authority over quasi-public agencies "is much more limited and circumscribed relative to its authority over state contracting agencies."

Exceptions. Under current law, the (1) State Education Resource Center is a state contracting agency under an SCSB statute governing procurement methods (CGS § 4e-19) and (2) Connecticut Port Authority is a state contracting agency under all SCSB authorizing statutes except the privatization law (CGS § 15a-31b).

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 13 Nay 6 (03/22/2024)