



Substitute House Bill No. 6903

Public Act No. 23-91

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:

Section 1. (NEW) (*Effective July 1, 2023*) (a) As used in this section, (1) "authority" means the Connecticut Port Authority established under section 15-31a of the general statutes; (2) "project" means the construction, renovation or alteration of buildings or facilities owned or leased by the authority, including 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 which is financed in whole or in part by the state, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees; and (3) "construction manager" means 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 in accordance with a contract or other agreement with the authority.

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

Substitute House Bill No. 6903

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

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

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

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

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

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

Substitute House Bill No. 6903

under section 15-31a of the general statutes;

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

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

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

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

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

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

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

(9) "Highest scoring bidder in a multiple criteria bid" means the

Substitute House Bill No. 6903

bidder whose bid receives the highest score for a combination of attributes, including, but not limited to, price, skill, ability and integrity necessary for the faithful performance of the work, based on multiple criteria considering quality of product, warranty, life-cycle cost, past performance, financial responsibility and other objective criteria that are established in the bid solicitation for the contract.

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

(c) The authority may waive the requirement of competitive bidding or competitive negotiation in the case of minor nonrecurring or

Substitute House Bill No. 6903

emergency purchases of ten thousand dollars or less in amount.

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

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

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

Substitute House Bill No. 6903

(g) Notwithstanding any provision of the general statutes, when awarding a contract through competitive negotiation, the authority shall include price as an explicit factor in the criteria in the request for proposals and for the contract award. In considering past performance of a bidder for the purpose of determining the lowest responsible qualified bidder or the highest scoring bidder in a multiple criteria bid, the authority shall evaluate the skill, ability and integrity of the bidder in terms of the bidder's fulfillment of past contract obligations and the bidder's experience or lack of experience in delivering supplies, materials, equipment or contractual services of the size or amount for which bids have been solicited.

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

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

(1) Have perpetual succession as a body politic and corporate and to

Substitute House Bill No. 6903

adopt bylaws for the regulation of its affairs and the conduct of its business;

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

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

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

(5) Develop an organizational and management structure that will best accomplish the goals of the authority concerning Connecticut ports and harbors;

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

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

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

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

(10) Enter into joint ventures and invest in, and participate with, any person or entity, including, without limitation, governmental or private business entities in the formation, ownership, management and operation of business entities, including stock and nonstock corporations, limited liability companies and general and limited partnerships, formed to advance the purposes of the authority. The officers, employees and members of the board of directors of the authority may serve, without compensation, as directors or officers of any such business entities formed and such service shall be deemed to

Substitute House Bill No. 6903

be within the discharge of the duties of such officers, employees or directors to the authority;

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

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

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

(14) Employ such assistants, agents and other employees as may be necessary or desirable to carry out its purposes. (A) The executive director and such employees shall be exempt from the classified service and, except as provided in subparagraph (B) of this subdivision, shall not be employees, as defined in subsection (b) of section 5-270. The authority shall fix appropriate compensation for such employees and establish all necessary or appropriate personnel practices and policies, including those relating to hiring, promotion, compensation, retirement and collective bargaining, which need not be in accordance with chapter 68, and the authority shall not be an employer, as defined in subsection (a) of section 5-270, and may engage consultants, attorneys and appraisers as may be necessary or desirable to carry out its purposes in accordance with sections 15-31a to 15-31i, inclusive. (B) For purposes of group welfare benefits and retirement, including, but not limited to, those provided under chapter 66 and sections 5-257 and 5-259, the

Substitute House Bill No. 6903

officers and all other employees of the authority shall be state employees. The authority shall reimburse the appropriate state agencies for all costs incurred by such designation;

(15) Invest in, acquire, lease, purchase, own, manage, hold and dispose of real property and lease, convey or deal in or enter into agreements with respect to such property on any terms necessary or incidental to carrying out the purposes of sections 15-31a to 15-31i, inclusive, provided such transactions shall not be subject to approval, review or regulation by any state agency pursuant to title 4b or any other provision of the general statutes, except (A) the authority shall not convey fee simple ownership in any property associated with the ports or harbors under its jurisdiction and control without the approval of the State Properties Review Board and the Attorney General, and (B) as provided in subsection (c) of this section; and

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

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

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

Sec. 5. Subdivision (28) of section 4e-1 of the general statutes is

Substitute House Bill No. 6903

repealed and the following is substituted in lieu thereof (*Effective October 1, 2023*):

(28) "State contracting agency" means any executive branch agency, board, commission, department, office, institution or council. "State contracting agency" does not include the judicial branch, the legislative branch, the offices of the Secretary of the State, the State Comptroller, the Attorney General, the State Treasurer, with respect to their constitutional functions, any state agency with respect to contracts specific to the constitutional and statutory functions of the office of the State Treasurer. For the purposes of every provision of this chapter other than section 4e-16, "state contracting agency" includes the Connecticut Port Authority, for the purposes of section 4e-16, "state contracting agency" includes any constituent unit of the state system of higher education and for the purposes of section 4e-19, "state contracting agency" includes the State Education Resource Center, established under section 10-4q;