



# Senate

General Assembly

**File No. 482**

January Session, 2013

Substitute Senate Bill No. 889

*Senate, April 15, 2013*

The Committee on Higher Education and Employment Advancement reported through SEN. BYE of the 5th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING THE UNIVERSITY OF CONNECTICUT AND COMPETITIVE BIDDING FOR AGRICULTURAL PURCHASES BY THE CONSTITUENT UNITS OF HIGHER EDUCATION.***

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

1 Section 1. Subsection (c) of section 10a-109n of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective July*  
3 *1, 2013*):

4 (c) (1) Any construction contract to which the university is a party  
5 may include a provision that the design professional who designed the  
6 project, or an architect or professional engineer or construction  
7 manager retained or employed specifically for the purpose of  
8 supervision, may supervise the work to be performed through to  
9 completion and ensure that the materials furnished and the work  
10 performed are in accordance with the drawings, plans, specifications  
11 and contracts therefor.

12 (2) (A) Except as provided in subparagraph (B) of this subdivision,  
13 any total cost basis contract or other contract for the construction of a  
14 university project which is estimated to cost more than five hundred  
15 thousand dollars, shall be publicly let by the university. The university  
16 shall give notice to contractors interested in prequalifying to submit a  
17 project proposal or bid, by [advertising, at least once, in one or more  
18 newspapers having general circulation in the state and by posting the  
19 advertisement on the university web site] posting on the Internet. The  
20 notice to prequalify shall contain the requirement that contractors be  
21 prequalified pursuant to section 4a-100, a statement of the time and  
22 place where the responses shall be received and such additional  
23 information as the university deems appropriate. Upon receipt of such  
24 responses, the university shall select each contractor who has been  
25 prequalified pursuant to section 4a-100 and has shown itself able to  
26 post surety bonds required by such contract and has demonstrated  
27 that it possesses the financial, managerial and technical ability and the  
28 integrity necessary and without conflict of interest for faithful and  
29 efficient performance of the work provided for therein. The university  
30 shall evaluate whether each such contractor is responsible and  
31 qualified based on its experience with projects similar to that for which  
32 the bid or proposal is to be submitted and based on objective written  
33 criteria included in the application to request prequalification with  
34 respect to such contract. The university shall also consider whether a  
35 contractor, and any subcontractor on the contractor's previous projects,  
36 has been in compliance with the provisions of part III of chapter 557  
37 and chapter 558 during the previous five calendar years.

38 (B) Notwithstanding the provisions of subparagraph (A) of this  
39 subdivision, the board of trustees may approve a total cost basis  
40 contract or other contract for the construction of a university project  
41 which is estimated to cost more than five hundred thousand dollars  
42 that has not been publicly let pursuant to the provisions of said  
43 subparagraph (A), provided the board deems the contract to address  
44 an emergency.

45 (3) The university shall thereafter give notice to those so

46 prequalified by the university pursuant to subdivision (2) of this  
47 section of the time and place where the public letting shall occur and  
48 shall include in such notice such information of the work required as  
49 appropriate. Each bid or proposal shall be kept sealed until opened  
50 publicly at the time and place as set forth in the notice soliciting such  
51 bid or proposal. The university shall not award any construction  
52 contract, including, but not limited to, any total cost basis contract,  
53 after public letting, except to the responsible qualified contractor,  
54 submitting the lowest bid or proposal in compliance with the bid or  
55 proposal requirements of the solicitation document. The university  
56 may, however, waive any informality in a bid or proposal, and may  
57 either reject all bids or proposals and again advertise for bids or  
58 proposals or interview at least three responsible qualified contractors  
59 and negotiate and enter into with any one of such contractors that  
60 construction contract which is both fair and reasonable to the  
61 university.

62 (4) The notice to each contractor prequalified to submit a proposal  
63 or bid and the construction contract, including each total cost basis  
64 contract, awarded by the university shall contain such other terms and  
65 conditions, and such provisions for penalties as the university may  
66 deem appropriate.

67 (5) No payments shall be made by the university on account of any  
68 contract for the project awarded by or for the university until the bills  
69 or estimates presented for such payment shall have been duly certified  
70 to be correct by the university. No payments shall be made from any  
71 other fund on account of any contract for any project awarded by or  
72 for the university until the bills or estimates presented for such  
73 payment shall have been duly certified to be correct by the university.

74 (6) Provision shall be made in each contract to the effect that  
75 payment is limited to the amount provided therein and that no liability  
76 of the university or state shall and may be incurred beyond such  
77 amount.

78 (7) The university shall require, for the protection of the state and

79 the university, such deposits, bonds and security in connection with  
80 the submission of bids or proposals, the award of construction  
81 contracts and the performance of work as the university shall  
82 determine to be appropriate and in the public interest of the state.

83 (8) Any contract awarded by the university shall be a contract with  
84 the state acting through the university.

85 (9) The university shall not enter into a construction manager at-risk  
86 project delivery contract that does not provide for a maximum  
87 guaranteed price for the cost of construction which shall be  
88 determined not later than the time of the receipt and approval by the  
89 university of the trade contractor bids. Each construction manager at-  
90 risk shall invite bids and give notice of opportunities to bid on project  
91 elements, by [advertising, at least once, in one or more newspapers  
92 having general circulation in the state] posting on the Internet. Each  
93 bid shall be kept sealed until opened publicly at the time and place as  
94 set forth in the notice soliciting such bid. The construction manager at-  
95 risk shall, after consultation with and approval by the university,  
96 award any related contracts for project elements to the responsible  
97 qualified contractor, who shall be prequalified pursuant to section 4a-  
98 100, submitting the lowest bid in compliance with the bid  
99 requirements, provided (A) the construction manager at-risk shall not  
100 be eligible to submit a bid for any such project element, and (B)  
101 construction shall not begin prior to the determination of the  
102 maximum guaranteed price, except for the project elements of site  
103 preparation and demolition that have been previously put out to bid  
104 and awarded.

105 (10) If the university designates a project as suitable for a design-  
106 build contract, the university may enter into a single contract with the  
107 design-builder whom the university may select from among the  
108 design-builders selected and recommended by a selection panel. The  
109 contract shall (A) include, but not be limited to, such project elements  
110 as site acquisition, permitting, engineering, design and construction,  
111 and (B) be based on competitive proposals received by the university,

112 which shall give notice of the project and specifications for the project  
113 by posting on the Internet. Award of the design-build contract shall be  
114 based on a predetermined metric provided to each proposer in  
115 advance of such proposer's development of a technical proposal. Such  
116 metric may be unique to each project, but shall consist of a combined  
117 score of qualifications and past performance of the proposer, technical  
118 merit of the proposal and project cost. The university shall establish a  
119 selection panel for each project to score the qualifications and past  
120 performance of the proposer and the technical portion of the proposal  
121 using the predefined scoring metric. No such contract for which the  
122 total cost is estimated to be more than five hundred thousand dollars  
123 may be awarded to a design-builder who is not prequalified for the  
124 work in accordance with section 4a-100. The university shall determine  
125 all other requirements and conditions for such proposals and awards  
126 and shall have sole responsibility for all other aspects of such contracts.  
127 Such contracts shall state the responsibilities of the design-builder to  
128 deliver a completed and acceptable project or product on a date certain  
129 and the maximum cost of the project or product and, if applicable, as a  
130 separate item, the cost of site acquisition.

131 Sec. 2. Subsection (a) of section 1-217 of the general statutes is  
132 repealed and the following is substituted in lieu thereof (*Effective July*  
133 *1, 2013*):

134 (a) No public agency may disclose, under the Freedom of  
135 Information Act, from its personnel, medical or similar files, the  
136 residential address of any of the following persons employed by such  
137 public agency:

138 (1) A federal court judge, federal court magistrate, judge of the  
139 Superior Court, Appellate Court or Supreme Court of the state, or  
140 family support magistrate;

141 (2) A sworn member of a municipal police department, a sworn  
142 member of the Division of State Police within the Department of  
143 Emergency Services and Public Protection or a sworn law enforcement  
144 officer within the Department of Energy and Environmental

145 Protection;

146 (3) An employee of the Department of Correction;

147 (4) An attorney-at-law who represents or has represented the state  
148 in a criminal prosecution;

149 (5) An attorney-at-law who is or has been employed by the Division  
150 of Public Defender Services or a social worker who is employed by the  
151 Division of Public Defender Services;

152 (6) An inspector employed by the Division of Criminal Justice;

153 (7) A firefighter;

154 (8) An employee of the Department of Children and Families;

155 (9) A member or employee of the Board of Pardons and Paroles;

156 (10) An employee of the judicial branch;

157 (11) An employee of the Department of Mental Health and  
158 Addiction Services who provides direct care to patients; [or]

159 (12) A member or employee of the Commission on Human Rights  
160 and Opportunities; [.] or

161 (13) An employee of The University of Connecticut Health Center  
162 who provides direct patient care to inmates in the custody of the  
163 Department of Correction or psychiatric or mental health inpatient or  
164 outpatient services to the general public.

165 Sec. 3. Subdivision (28) of section 10a-109c of the general statutes is  
166 repealed and the following is substituted in lieu thereof (*Effective July*  
167 *1, 2013*):

168 (28) "Total cost basis contract" means a design-build contract or a  
169 construction manager at-risk project delivery contract between The  
170 University of Connecticut and a contractor to accomplish multiple  
171 elements of a project, including, but not limited to, site acquisition,

172 architectural design, preconstruction activities, project management  
173 and construction.

174 Sec. 4. Subsection (c) of section 10a-151b of the general statutes is  
175 repealed and the following is substituted in lieu thereof (*Effective July*  
176 *1, 2013*):

177 (c) Notwithstanding the provisions of subsection (b) of this section  
178 to the contrary, competitive bidding or competitive negotiation is not  
179 required in the case of (1) minor purchases of ten thousand dollars or  
180 less in amount, (2) purchases made pursuant to subsection (k) of this  
181 section, [or] (3) emergency purchases, or (4) agricultural purchases of  
182 dairy products, poultry, seafood, beef, eggs, fruits, vegetables or other  
183 farm products in an amount of fifty thousand dollars or less.  
184 Whenever an emergency exists by reason of extraordinary conditions  
185 or contingencies that could not reasonably be foreseen and guarded  
186 against, or because of unusual trade or market conditions, the chief  
187 executive officer may, if it is for the best interest of the state, make  
188 purchases without competitive bidding. A statement of all emergency  
189 purchases made under the provisions of this subsection shall be set  
190 forth in the annual report of the chief executive officer. The chief  
191 executive officer, when making an agricultural purchase in accordance  
192 with subdivision (4) of this subsection, shall give preference to dairy  
193 products, poultry, eggs, fruits or vegetables grown or produced in this  
194 state when such products, poultry, eggs, fruits or vegetables are  
195 comparable in cost to other dairy products, poultry, eggs, fruits or  
196 vegetables being considered for purchase by the chief executive officer  
197 that have not been grown or produced in this state.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2013	10a-109n(c)
Sec. 2	July 1, 2013	1-217(a)
Sec. 3	July 1, 2013	10a-109c(28)
Sec. 4	July 1, 2013	10a-151b(c)

**HED**      *Joint Favorable Subst.*

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:**

Agency Affected	Fund-Effect	FY 14 \$	FY 15 \$
UConn	GOBonds - Savings	Potential Significant	Potential Significant
UConn	GF - Cost	Potential Minimal	Potential Minimal
UConn	GF - Savings	Less than 1,000	Less than 1,000

**Municipal Impact:** None

**Explanation**

The bill results in a potential significant savings to UConn by allowing the use of a design-build method for the administration of construction projects. Studies have shown that costs for design-build projects can result in unit cost savings in excess of six percent. Any savings would be dependent upon the number and size of projects UConn chose to do with a design-build process.

The bill also results in a potential minimal cost to UConn by exempting purchases of \$50,000 or less of certain agricultural products from competitive bidding. In general competitive bidding results in lower costs and as such this change results in a cost to UConn.

Finally the bill results in a savings of less than \$1,000 per year to UConn by eliminating a requirement that UConn advertise in one or more newspapers of general circulation for certain construction projects. UConn would continue offering opportunities for such projects on the on-line State Contracting Portal.

**The Out Years**

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

**OLR Bill Analysis****sSB 889*****AN ACT CONCERNING THE UNIVERSITY OF CONNECTICUT AND COMPETITIVE BIDDING FOR AGRICULTURAL PURCHASES BY THE CONSTITUENT UNITS OF HIGHER EDUCATION.*****SUMMARY:**

This bill allows UConn to administer construction projects using the design-build method, an approach where the owner (in this case, UConn) contracts with a single entity that both designs and builds the project. It establishes criteria the university must follow when using this approach. It eliminates a requirement that UConn and certain general contractors administering UConn construction projects advertise project bidding opportunities in newspapers.

The bill exempts purchases of \$50,000 or less of certain agricultural products from competitive bidding requirements for public higher education institutions. It also requires these institutions to give preference to specified agricultural products grown or produced in Connecticut when they are comparable in cost to those produced outside the state.

Lastly, the bill limits disclosure, under the Freedom of Information Act (FOIA), of certain UConn Health Center (UCHC) employees' residential addresses.

EFFECTIVE DATE: July 1, 2013

**UCONN CONTRACTING*****Design-Build Contracts***

The bill allows UConn to enter into a single contract with a design-builder, whom it may select from a selection panel's recommendations.

UConn must advertise the project and its specifications on the Internet.

The contract must (1) include such project elements as site acquisition, permitting, engineering design and construction and (2) be based on competitive proposals. UConn must award the contract based on a predetermined "metric" (measurement) provided to design-build contractors before they develop technical proposals. This metric may be unique to a project, but must consist of a score combining the (1) proposer's qualifications and past performance, (2) proposal's technical merit, and (3) cost. UConn must establish a selection panel for each project to score the first two elements according to the applicable metric.

UConn must determine all criteria, requirements, and conditions for the proposals and award, and is solely responsible for other aspects of the contract. The contract must clearly state (1) the design-builder's responsibility to deliver a complete and acceptable project on a particular date; (2) the project's maximum cost; and (3) if applicable, the cost of acquiring the property as a separate item.

As with other UConn-administered construction projects, the design-builder must be prequalified by the Department of Administrative Services (DAS) if the project is estimated to cost more than \$500,000. UConn must also prequalify design-builders based on their (1) financial, technical, and managerial ability; (2) ability to post surety bonds; (3) integrity; (4) experience in similar projects; and (5) compliance record in the past five years with state wage and hour laws and those relating to state contracts.

By law, UConn must award a contract to the responsible qualified contractor submitting the lowest bid or proposal in compliance with the bid or proposal requirements and may award contracts without public bidding in an emergency. The bill extends these provisions to design-build contracts.

### ***Advertisements***

The bill eliminates a requirement that UConn advertise, in one or

more newspapers having general circulation in the state, bidding opportunities for construction projects that are estimated to cost more than \$500,000. It continues to require that such opportunities be posted online (the law requires that they appear on the State Contracting Portal), but eliminates a requirement that they appear on the UConn website specifically.

The bill similarly eliminates a requirement that a construction manager at-risk (CMR) for a UConn project advertise, in one or more newspapers having general circulation in the state, bidding opportunities for project elements (i.e., trade packages) of a CMR project. It instead requires that such opportunities be posted online (presumably on the State Contracting Portal). In a CMR project, the owner (in this case UConn) generally contracts with a construction manager who works with the designer and provides labor, material, and project management during construction.

### **PURCHASES OF AGRICULTURAL PRODUCTS**

By law, most goods and services purchases of more than \$10,000 by public higher education institutions must be made through competitive bidding. The bill exempts purchases of \$50,000 or less of certain agricultural products from this requirement. The exemption applies to dairy products, poultry, seafood, beef, eggs, fruits, vegetables, or other farm products.

The bill additionally requires public higher education institutions to give preference to dairy products, poultry, eggs, fruits, or vegetables grown or produced in Connecticut (but not other farm products, beef, or seafood) when their cost is comparable to those grown or produced outside the state. The law already requires DAS to give this preference.

### **FOIA**

The bill prohibits UConn from disclosing from personnel, medical, or similar files, under FOIA, the residential address of any UCHC employee who provides (1) direct patient care to inmates in Department of Correction custody or (2) psychiatric or mental health

inpatient or outpatient services to the general public. It allows these employees to request, in writing, address confidentiality from other public agencies.

**COMMITTEE ACTION**

Higher Education and Employment Advancement Committee

Joint Favorable Substitute

Yea 20 Nay 0 (03/26/2013)