



# House of Representatives

General Assembly

**File No. 612**

January Session, 2023

Substitute House Bill No. 5692

*House of Representatives, April 17, 2023*

The Committee on Government Administration and Elections reported through REP. BLUMENTHAL of the 147th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## ***AN ACT CONCERNING OVERSIGHT OF 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 October 1, 2023*) (a) As used in this section:

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

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

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

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

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

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

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

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

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

36 (b) Notwithstanding any provision of the general statutes, any  
37 purchases of, and contracts for, supplies, materials, equipment and  
38 contractual services by the Connecticut Port Authority, except  
39 purchases and contracts made pursuant to the provisions of subsection  
40 (c) of this section and public utility services as provided in subsection  
41 (e) of this section, shall be based, when possible, on competitive bids or  
42 competitive negotiation. The authority shall solicit competitive bids or

43 proposals by providing notice of the planned purchase in a form and  
44 manner that the authority determines will maximize public  
45 participation in the competitive bidding or competitive negotiation  
46 process, including participation by small contractors, as defined in  
47 section 4a-60g of the general statutes, and promote competition. Each  
48 notice of a planned purchase under this subsection shall indicate the  
49 type of goods and services to be purchased and the estimated value of  
50 the contract award. The notice shall, when applicable, also contain a  
51 notice of contract requirements concerning nondiscrimination and  
52 affirmative action pursuant to section 4a-60 of the general statutes and  
53 requirements concerning the awarding of contracts to small contractors,  
54 minority business enterprises, individuals with a disability and  
55 nonprofit corporations pursuant to section 4a-60g of the general  
56 statutes. Each bid and proposal shall be kept sealed or secured until  
57 opened publicly at the time stated in the notice soliciting such bid or  
58 proposal.

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

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

70 (e) The purchase of or contract for the following public utility services  
71 shall not be subject to competitive bidding or competitive negotiation:  
72 (1) Electric distribution services; (2) water services; (3) gas distribution  
73 services; (4) electric generation services if such services are provided by  
74 an electric municipal utility other than a participating electric municipal  
75 utility, as defined in section 16-1 of the general statutes, in the service

76 area of such electric municipal utility; and (5) gas supply services until  
77 the date such services are competitive pursuant to legislative act or  
78 order of the Public Utilities Regulatory Authority, provided gas supply  
79 services shall be exempt from competitive bidding and competitive  
80 negotiation after such date if such services are provided by a gas  
81 municipal utility in the service area of such gas municipal utility.

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

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

103 Sec. 2. Section 15-31b of the general statutes is repealed and the  
104 following is substituted in lieu thereof (*Effective October 1, 2023*):

105 (a) The purposes of the Connecticut Port Authority shall be to  
106 coordinate the development of Connecticut's ports and harbors, with a  
107 focus on private and public investments, pursue federal and state funds  
108 for dredging and other infrastructure improvements to increase cargo

109 movement through the ports and maintain navigability of all ports and  
110 harbors, market the economic development of such ports and harbors,  
111 work with the Department of Economic and Community Development  
112 and other state, local and private entities to maximize the economic  
113 potential of the ports and harbors, support and enhance the overall  
114 development of the state's maritime commerce and industries,  
115 coordinate the planning and funding of capital projects promoting the  
116 development of the ports and harbors, develop strategic entrepreneurial  
117 initiatives that may be available to the state, coordinate the state's  
118 maritime policy activities, serve as the Governor's principal maritime  
119 policy advisor and undertake such other responsibilities as may be  
120 assigned to it. To accomplish the purposes of the authority, the authority  
121 shall have the duty and power to:

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

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

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

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

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

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

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

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

138 (9) Make and enter into all contracts and agreements that are  
139 necessary, desirable or incidental to the conduct of its business, subject  
140 to the requirements of section 1 of this act and chapter 62;

141 (10) Enter into joint ventures and invest in, and participate with, any  
142 person or entity, including, without limitation, governmental or private  
143 business entities in the formation, ownership, management and  
144 operation of business entities, including stock and nonstock  
145 corporations, limited liability companies and general and limited  
146 partnerships, formed to advance the purposes of the authority. The  
147 officers, employees and members of the board of directors of the  
148 authority may serve, without compensation, as directors or officers of  
149 any such business entities formed and such service shall be deemed to  
150 be within the discharge of the duties of such officers, employees or  
151 directors to the authority;

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

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

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

165 (14) Employ such assistants, agents and other employees as may be  
166 necessary or desirable to carry out its purposes. (A) The executive  
167 director and such employees shall be exempt from the classified service  
168 and, except as provided in subparagraph (B) of this subdivision, shall  
169 not be employees, as defined in subsection (b) of section 5-270. The

170 authority shall fix appropriate compensation for such employees and  
171 establish all necessary or appropriate personnel practices and policies,  
172 including those relating to hiring, promotion, compensation, retirement  
173 and collective bargaining, which need not be in accordance with chapter  
174 68, and the authority shall not be an employer, as defined in subsection  
175 (a) of section 5-270, and may engage consultants, attorneys and  
176 appraisers as may be necessary or desirable to carry out its purposes in  
177 accordance with sections 15-31a to 15-31i, inclusive. (B) For purposes of  
178 group welfare benefits and retirement, including, but not limited to,  
179 those provided under chapter 66 and sections 5-257 and 5-259, the  
180 officers and all other employees of the authority shall be state  
181 employees. The authority shall reimburse the appropriate state agencies  
182 for all costs incurred by such designation;

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

194 (16) Adopt any policies and procedures necessary to carry out the  
195 provisions of this section in accordance with the provisions of section 1-  
196 121.

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

203 be vested in the state of Connecticut.

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

208 Sec. 3. Subdivision (28) of section 4e-1 of the general statutes is  
209 repealed and the following is substituted in lieu thereof (*Effective October*  
210 *1, 2023*):

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

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

**Statement of Legislative Commissioners:**  
Section 1(f)(1) was redrafted for clarity.

**GAE** Joint Favorable Subst. -LCO



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*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.*

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**OFA Fiscal Note**

**State Impact:** None

**Municipal Impact:** None

**Explanation**

The bill generally requires the Connecticut Port Authority (CPA) to follow the same procedures as state agencies when entering into certain contracts. It also makes permanent the State Contracting Standards Board's expanded authority over the CPA which expires on July 1, 2026 under current law. No fiscal impact is expected given current contract levels.

**The Out Years**

**State Impact:** None

**Municipal Impact:** None

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**OLR Bill Analysis****sHB 5692****AN ACT CONCERNING OVERSIGHT OF CONTRACTS OF THE CONNECTICUT PORT AUTHORITY.****SUMMARY**

This bill generally requires the Connecticut Port Authority (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 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).

Lastly, the bill makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2023

**COMPETITIVE BIDDING REQUIREMENTS*****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.

### ***Solicitations***

Under the bill, CPA must solicit competitive bids or proposals by noticing the planned purchase as it determines will 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, (2) highest-scoring bidder in a multiple-criteria bid, or (3) proposer that CPA deems as having the most advantageous 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.

## **BACKGROUND**

### ***Related Bills***

sSB 1223, reported favorably by the Government Administration and Elections Committee, (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)