

# Clean Contracting Standards Statement

\*Connecticut Public Act 07-1 establishes a State Contracting Standards Board (SCSB) as an independent Executive Branch agency. The new board has various responsibilities associated with the state contracting processes, including reviewing, monitoring, and auditing state contracting agencies' procurement processes. "State contracting agencies" are state Executive Branch agencies, boards, commissions, departments, offices, institutions, or council. These do not include the Judicial Branch, the Legislative Branch, or the offices of the Secretary of the State, the State Treasurer, the State Comptroller or the Attorney General with respect to their constitutional functions, or any state agency with respect to contracts specific to the responsibilities of the Office of the State Treasurer. However, the bill requires the Judicial and Legislative branches to prepare their own procurement codes by February 1, 2011 and state constitutional officers to adopt one by June 1, 2011.

The bill requires the SCSB to adopt rules to conduct its internal affairs, including appellate rules of procedure and reviews of appeals by bidders. The bill allows the SCSB to disqualify contactors and state agencies to suspend them. It requires all state contracts that take effect on or after the bill's passage to contain provisions to ensure accountability, transparency, and results-based outcomes, as the SCSB prescribes.

Under the Act, "contract" or "state contract" means an agreement or a combination or series of agreements between a state contracting agency or quasi-public agency and a business for:

- a project for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building, public work, mass transit, rail station, parking garage, rail track or airport;
- services, including, but not limited to, consultant and professional services;
- acquiring or disposing personal property;
- providing goods and services, including, using purchase of services contracts and personal service agreements;
- providing information technology, state agency information system or telecommunication system facilities, equipment or services; or
- a lease or a licensing agreement;

"Contract" or "state contract" does not include a contract between a state agency or a quasi-public agency and a political subdivision of the state.

Under the Act, the SCSB is responsible for:

- recommending the repeal of repetitive, conflicting, or obsolete state procurement laws;
- making recommendations regarding information systems for state procurement including data element and design and the state contracting portal;
- developing a guide to state statutes and regulations concerning procurement for use by all state contracting agencies;
- providing guidance, models, advice, and practical assistance to agencies related to buying the best service at the best price, properly selecting contractors, and drafting contracts that protect taxpayers' interests; and
- adopting regulations and policies to carry out state procurement laws in order to facilitate consistent application and require the implementation of best procurement practices.

The SCSB must also make recommendations about proposed legislation and regulations about procuring, managing, controlling, and disposing supplies, services, and construction, including:

- prequalification, suspension, debarment, and reinstatement of prospective bidders and contractors;
  - small purchase procedures;
  - conditions and procedures for delegating procurement authority, procuring perishables and items for resale, using source selection methods authorized by statute or regulation, emergency procurements, and selecting contractors by processes or methods that restrict full and open competition;
  - opening or rejecting bids and offers and waiving errors in bids and offers;
  - confidentiality of technical data and trade secrets submitted by actual or prospective bidders;
  - partial, progressive, and multiple awards;
  - supervising storerooms and inventories, including determining appropriate stock levels and the management, transfer, sale, or other disposal of publicly owned supplies;
  - defining classes of contractual services and procedures for acquiring them;
  - regulations for conducting cost and price analysis;
  - using payment and performance bonds;
  - guidelines for using cost principles in negotiations, adjustments, and settlements;
- and
- identifying procurement best practices.

The Act directs the SCSB to train and oversee the procurement and contracting officers in each state contracting agency.

The bill requires each state contracting agency appoint a liaison between the agency and the SCSB to help the agency implement and comply with board statutes, regulations or policies and to help coordinate the training and education of agency procurement employees. The agency must assure that contractors are properly screened before a contract is awarded, evaluate their performances during and at the end of a contract, submit written evaluations to a central data repository that the board designates, and create a project management plan that includes annual reports to the board on the agency's procurement projects.

This Act requires the board to review and certify that a state contracting agency's procurement processes comply with procurement statutes and regulations. It must accomplish this by establishing procurement and project management education and training criteria; certifying agency procurement and contracting officers; and approving, in consultation with the Office of State Ethics, an ethics training course, including a course for state employees involved in procurement and prequalified state contractors and substantial subcontractors. The Office of State Ethics or any person, firm, or corporation can develop and provide the training, but the SCSB must approve the course. Employees must maintain the certification in good standing at all times while performing procurement functions, and the board must recertify each state contracting agency's procurement processes at least every three years, notify them about any certification deficiency, and exercise its enforcement authority if it finds noncompliance.

The SCSB, with the advice and assistance of the administrative services commissioner, must develop a standardized state procurement and project management education and training program. The board must adopt implementing regulations. The program must develop education, training, and professional development opportunities for state contracting agencies' employees with procurement responsibilities. It must educate agency staff about general business acumen and on proper purchasing procedures as established in procurement statutes and regulations. The program must emphasize ethics, fairness, consistency, and project management.

The bill requires state contracting agencies' employees responsible for buying, purchasing, renting, leasing, or otherwise acquiring any supplies, service, or construction to participate in the

program. The SCSB must give agency employees who complete the program a document acknowledging their participation. It must give the governor and legislature an annual status report about the training and education program.

The bill requires the SCSB to audit state contracting agencies at least once every three years and report on their compliance with procurement statutes and regulations. During the audit, the bill gives the board access to all of the agencies' contracting and procurement records and authority to interview people responsible for awarding and negotiating contracts or procurement. The board can contract with the state auditors to conduct the audit.

This Act requires the board to "define the contract data reporting requirements to the board for state agencies." While this is unclear, Connecticut staff suggests it could mean that the board must inform state agencies of their duties to report data on:

- the number and type of state contracts of each state contracting agency currently in effect statewide;
  - the contracts' terms and dollar values;
  - their client agencies;
  - services purchased under such contracts;
  - contractor names;
  - their evaluations of contractors' performances, including records on suspensions or disqualifications and assurances that the information is available on the state contracting portal;
- and
- all contracts and contractors awarded without full and open competition, including the reasons for the decisions and the names of the authorities that approved them.

The board must identify in a compliance report any process or procedure that is inconsistent with procurement laws and regulations and corrective measures to achieve compliance. It must deliver the report, which is a public record, to the contracting agency within 30 days after the audit is completed.

The SCSB can review, terminate, or recommend to a state contracting agency terminating a contract or procurement agreement for cause after consulting with the attorney general and giving the agency and contractor 15 days notice. "For cause" means engaging in activities prohibited under the State Ethics Code as determined by a Citizen's Ethics Advisory Board; wanton or reckless disregard of any state contracting and procurement process by anyone substantially involved in the contract or with the state contracting agency; or notification from the attorney general to the state contracting agency that a whistleblower investigation indicates that the contract process was compromised by fraud, collusion, or any other criminal violation.

The decision to terminate a contract must be preceded by the board's consultation with the contracting agency to determine the impact of an immediate termination and a joint decision by the board and the agency that immediate termination will not cause imminent peril to public health, safety, or welfare. The board's decision to terminate must be approved by a two-thirds vote of its members present and voting, including at least one board member appointee by a legislative leader. The board must notify the state contracting agency and the contractor of the opportunity for a hearing under the UAPA.

The bill establishes a Contracting Standards Advisory Council consisting of representatives from the state Office of Policy and Management; the departments of transportation, administrative services, public works, and information technology; three other contracting agencies that the governor designates, including one human services-related state agency; and the chief procurement officer who serves as chairperson.

The council must meet at least four times a year to discuss state procurement issues and recommend improvements to the procurement process to the SCSB. It may conduct studies,

research, and analyses, and make reports and recommendations with respect to matters within SCSB's jurisdiction.

On or before July 1, 2010, the SCSB must submit to the governor and legislature necessary legislation to permit state contracting agencies, other than quasi-publics, institutions of higher education, and municipal procurement processes using state funds to comply with procurement laws and regulations. Within the next year, the board must submit legislation necessary to have procurement statutes apply to constituent units of higher education and privatization and procurement statutes and regulations apply to quasi-public agencies. By July 1, 2012, the board must submit legislation to the governor and legislature necessary to have procurement statutes and regulations apply to municipalities when state funds are involved.

The Act requires the Judicial and Legislative branches prepare procurement codes to use when contracting for, buying, renting, leasing, or otherwise acquiring or disposing of supplies, equipment, or services, including consultant, personal, and construction services. These codes must:

- establish uniform contracting standards and practices;
- ensure the fair and equitable treatment of all businesses and people involved in the procurement system;
- include a process for maximizing the use of small contractors and minority business enterprises;
- provide increased economy in procurement activities and maximize purchasing value to the fullest extent possible;
- ensure that they procure supplies, materials, equipment, services, real property, and construction in a cost-effective and responsive manner;
- include a process to ensure accountability between contractors and the Judicial and Legislative branches;
- simplify and clarify contracting standards and procurement policies and practices, including procedures for competitive sealed bids or proposals, small purchases, and sole source, special, and emergency procurements; and
- provide a process for competitive sealed bids and proposals, small purchases, sole source, emergency, and special procurements, best-value selection, and qualification-based selection, and the conditions for their use.

Under the Act, “best-value selection” means a process to award contracts based on quality, timeliness, and costs. “Qualification-based selection” means a process to award contracts based primarily on contractor qualifications and a fair and reasonable price. “Emergency procurements” are those necessary because of a sudden, unexpected occurrence that poses a clear and imminent danger to public safety or that requires immediate action to prevent or reduce loss or impairment of life, health, property, or essential public services, or needed in response to a court order, settlement agreement, or other similar legal judgment.

This Act also establishes a procedure for privatizing state contracts. The procedure includes a requirement for cost-benefit analyses and business cases. Before privatizing any state service that is not currently privatized, a state contracting agency must develop a cost-benefit analysis and a business case. The cost-benefit analysis must document the direct and indirect costs, savings, and qualitative and quantitative benefits of the privatization contract. The analysis must specify the minimum schedule required to achieve any estimated savings and clearly identify any cost factor. Cost factors must be supported by all applicable records and reports. The state contracting agency’s head must certify that, based on the data and information, all projected costs, savings and benefits are valid and achievable. “Costs” means all reasonable, relevant and verifiable expenses, including salary, materials, supplies, services, equipment, capital depreciation,

rent, maintenance, repairs, utilities, insurance, travel, overhead, interim and final payments and the normal cost of fringe benefits, as calculated by the comptroller. "Savings" means the difference between the current annual direct and indirect costs of providing the service and the projected, annual direct and indirect costs of contracting to provide them in any succeeding state fiscal year during the term of such proposed privatization contract.

If such cost-benefit analysis identifies a cost savings of less than 10%, the contract will not diminish the quality of services, and there is a significant public policy reason to privatize, the state contracting agency may develop a business case to evaluate the feasibility of entering the contract and to identify its potential results, effectiveness, and efficiency.

If the contract would result in at least 100 layoffs, transfers, or reassignments, after consulting with unions, the contracting agency must notify the affected employees after the cost-benefit analysis is completed, give them the opportunity to reduce the costs of providing the services to be privatized, and give them resources to encourage and help them organize and bid on the contract. The state contracting agency retains sole discretion in determining whether to proceed with the privatization contract if the SCSB approves the business case.

Any business case must include:

- the cost-benefit analysis;
- a detailed description of the service or activity that is the subject of such business case;
- a description and analysis of the state contracting agency's current performance of such service or activity;
- the goals to be achieved through the proposed privatization contract and the rationale for such goals;
- a description of available options for achieving such goals;
- an analysis of the advantages and disadvantages of each option, including potential performance improvements and risks attendant to terminating or rescinding the contract;
- a description of the current market for the services or activities that are the subject of the business case;
- an analysis of the quality of services as determined by standardized measures and key performance requirements, including compensation, turnover, and staffing ratios;
- a description of the specific results-based performance standards that must be met to ensure adequate performance by any party performing the service or activity;
- the projected time frame for key events from the beginning of the procurement process through the expiration of a contract, if applicable;
- a specific and feasible contingency plan that addresses contractor nonperformance and a description of the tasks involved in and costs required for implementing the plan; and
- a transition plan, if appropriate, for addressing changes in the number of agency personnel, affected business processes, employee transition issues, and communications with affected stakeholders, such as agency clients and members of the public, if applicable.

The transition plan must contain a reemployment and retraining assistance plan for employees who are not retained by the state or employed by the contractor.

If the primary purpose of the proposed privatization contract is to provide a core governmental function, the business case must also include information sufficient to rebut the presumption that the core governmental function should not be privatized. The presumption cannot be construed to prohibit a state contracting agency from contracting for specialized technical expertise not available within the agency; however, the agency must retain responsibility for the core governmental function. "Core governmental function" means a function for which the primary purpose is:

- to inspect for adherence to health and safety standards because public health or safety may be jeopardized if the inspection is not done or is not done in a timely or proper manner;
  - to establish statutory, regulatory, or contractual standards for a regulated person, entity, or state contractor;
  - to enforce public health or safety statutory, regulatory, or contractual requirements;
- or
- criminal or civil law enforcement.

If any part of the business case is based upon evidence that the state contracting agency is not sufficiently staffed to provide the core governmental function required by the privatization contract, the state contracting agency must also include within the business case a plan to remediate the understaffing to allow the services to be provided directly by the state contracting agency in the future.

Once the business case is completed, the state contracting agency must submit it to the SCSB. If the privatization contract is projected to cost in excess of \$150 million annually or \$600 million over the life of such contract, the state contracting agency must also submit the business case to the governor, the Senate president pro tempore, the House speaker, and any collective bargaining unit affected by the proposed privatization contract. Each state contracting agency that submits a business case for review must give the board all information, documents, or other material required by the privatization contract committee to complete its review and evaluation of such business case. The SCSB cannot engage in any ex parte communications with a lobbyist, contractor, or union representative during the review.

Upon receipt of any such business case from a state contracting agency, the SCSB must immediately refer it to a five-member privatization contract committee, which must employ a standard process for reviewing, evaluating, and approving business cases. The process must include due consideration of:

- the state contracting agency's cost-benefit analysis;
- the agency's business case, including any facts, documents, or other materials that are relevant to the business case;
- any adverse effect that the privatization contract may have on minority, small, and women-owned businesses that do, or are attempting to do business with the state; and
- the value of having services performed in the state and within the United States.

The privatization committee must evaluate the business case and submit its evaluation to the SCSB for review and approval. During the review or consideration, no board member can engage in any ex parte communication with any lobbyist, contractor, or union representative.

Within 60 days after receiving a business case, the SCSB must transmit a report detailing its review, evaluation, and disposition to the state contracting agency that submitted it and, in the case of a privatization contract with a projected cost of at least \$150 million dollars annually or \$600 million dollars over the life of the contract, also send the report to the governor, the Senate president pro tempore, the House speaker, and any collective bargaining unit affected by the proposed privatization contract. The 60 days may be extended for an additional 30 days upon a majority vote of the board or the privatization contract committee and for good cause shown. A business is deemed approved if the SCSB does not act on it within the 60 days, except that no business case may be approved because the board fails to meet.

The board's report must include the business case, the privatization contract committee's evaluation of the business case, the reasons for approval or disapproval, any recommendations of the board, and sufficient information to help the state contracting agency determine if additional steps are necessary to move forward with a privatization contract.

Generally, a majority vote of the board is required to approve a business case. However, a two-thirds vote, including the vote of at least one board member appointed by a legislative leader, is required to approve a business case to privatize a core governmental function. Before approval, the state contracting agency must provide sufficient evidence to rebut the presumption that the core governmental function should not be privatized and there is a significant policy reason to approve the business case. In no case can a state contracting agency's staffing level constitute a significant policy reason to approve a business case for privatizing a core governmental function.

Any state contracting agency may request an expedited review if there is a compelling public interest for doing so. If the board approves the agency's request, the review must be completed no later than 30 days after receipt. If the board fails to complete an expedited review within the 30 days, the business case is deemed approved.

A state contracting agency may publish notice soliciting bids for a privatization contract only after the board approves the business case. A contract that is estimated to cost in excess of \$150 million dollars annually or \$600 million or more over its life must also be pre-approved by the legislature. The legislature, by a majority vote in either chamber, must either reject or approve the contract in its entirety. If the legislature is in session, it must approve or reject the contract within 30 days after it is filed. If the legislature is not in session when the contract is filed, the contract must be submitted not later than 10 days after the first day of the next regular session or special session called for that purpose.

A contract is deemed approved if the legislature fails to vote to approve or reject it within the 30 days, which period cannot begin or expire unless the legislature is in regular session. Any contract filed with the clerks within 30 days before the start of a regular session is deemed to be filed on the first day of such session.

Not later than 30 days after the board decides to approve a business case, any collective bargaining agent of any employee adversely affected by the proposed privatization contract may file a motion for an order to show cause in the Hartford Superior Court on the grounds that the contract fails to comply with the bill's substantive or procedural requirements regarding privatization. The court may: (1) deny the motion; (2) grant the motion if it finds that the proposed contract would substantively violate the bill's privatization provisions; or (3) stay the effective date of the contract until any substantive or procedural defect has been corrected.

The SCSB may review existing privatization contracts and must review at least one contracting area each year that is currently privatized. During the review, no board member can engage in any ex parte communication with any lobbyist, contractor, or union representative. For each privatization contract that the board selects for review, the appropriate state contracting agency must develop a cost-benefit analysis. Any affected party may petition the board to review the business case of any existing privatization contract. The SCSB cannot engage in any ex parte communications with a lobbyist, contractor, or union representative during the review.

If the cost-benefit analysis identifies cost savings of at least 10% and the contract does not diminish the quality of the service provided, the state contracting agency must develop a business case to renew the contract. The board must review the contract just as it does proposed privatization contracts and may approve the renewal by the applicable vote of the board, provided any renewal that is estimated to cost in excess of \$150 million annually or \$600 million dollars or more over the life of the contract must also be pre-approved by the General Assembly. If the renewal is approved by the board and the General Assembly, if applicable, the bill's provision on proposed amendments applies.

If the cost-benefit analysis identifies a cost savings of less than 10%, the state contracting agency must prepare and begin to implement a plan to have the service provided by state employees. However, (1) after the plan is prepared but before it is implemented the state contracting agency may develop a business case for the privatization contract that achieves at least

a 10% cost savings and must submit the plan to the SCSB for review and approval; (2) the privatization contract cannot be renewed with the vendor currently providing the service unless there is a significant public interest in doing so and the renewal is approved by a two-thirds vote of the board, including the vote of at least one member appointed by a legislative leader; (3) until the state contracting agency implements the plan, it may contract for the services for up to one year; and (4) funds may be transferred from the General Fund to allocate necessary resources to carry out this provision upon the governor's recommendation and after approval of the Finance Advisory Committee.

Renewal of a privatization contract with a nonprofit organization cannot be denied if the cost of increasing compensation to employees performing the privatized service is the only reason for the contract not achieving a 10% cost savings.

This Act directs that when an affected party suspects collusion or other anticompetitive practices among any bidders or proposers for a state contract, the party must give the attorney general notice of the relevant facts. Affected parties include the state contracting agency or a bidder or proposer. A proposer is a business submitting a proposal in response to a request for proposals or other competitive sealed proposal by a state contracting agency.

The bill allows the SCSB to disqualify any contractor, bidder, or proposer from bidding on, applying for, or participating as contractor or subcontractor under state contracts. The disqualification can run for up to five years.

In order to disqualify a contractor, bidder, or proposer, the board must consult with the relevant contracting agency and the attorney general; provide reasonable notice and hold a hearing; and act through a subcommittee of three members, including at least one legislative appointee, appointed by the board's chairperson. In determining whether to disqualify a contractor, bidder or proposer, the board must consider the seriousness of the affected party's acts or omissions and any mitigating factors.

Grounds for disqualification include:

- conviction of, or entry of a plea of guilty or nolo contendere (no contest) or admission to, the commission of a criminal offense in connection with obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract; the violation of any state or federal law for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or other offenses indicating a lack of business integrity or honesty that affects responsibility as a contractor; or a violation of any state or federal antitrust, collusion or conspiracy law arising from the submission of bids or proposals on a public or private contract or subcontract;
- accumulation of two or more suspensions under the uniform procurement code within a 24-month period;
- a willful, negligent or reckless failure to meet the terms of one or more state contracts or subcontracts, agreements, or transactions;
- a history of failure to perform or of unsatisfactory performance on one or more state contracts, agreements, or transactions;
- a willful violation of a statutory or regulatory provision or requirement applicable to a state contract, agreement of transaction;
- a willful or egregious violation of State Ethics Code provisions on prohibited activities and prohibited activities by consultants and independent contractors as determined by a Citizen's Ethics Advisory Board; or
- any other cause or conduct the board determines to be so serious and compelling as to affect responsibility as a state contractor.

The last category includes disqualification by another state for cause; the existence of an informal or formal business relationship with a contractor who has been disqualified from bidding or proposing on state contracts of any state contracting agency; and the fraudulent or criminal conduct of any officer, director, shareholder, partner, employee or other individual associated with a contractor, bidder or proposer, if the conduct was connected with the individual's performance of duties for, or on behalf of, the contractor, bidder or proposer and the contractor, bidder or proposer knew or had reason to know of the conduct.

This bill establishes a process for bidders or proposers on state contracts to contest the way the contracts were solicited or awarded or to contest an unauthorized or unwarranted, noncompetitive selection process. A bidder may contest to a SCSB subcommittee consisting of three members, including at least one legislative appointee, appointed by the chairperson. The contest must be in writing and submitted within 14 days after the bidder knew or should have known about the facts forming the basis for the contest. The contest must be limited to the solicitation or awarding procedures or claims of unauthorized or unwarranted noncompetitive selection.

The Act authorizes the subcommittee to resolve or settle the contest. If the complaint is not resolved, the bill requires the subcommittee to issue a written decision within 30 days after receiving the contest and provide a copy to the complaining bidder.

The Act permits contractors, bidders, or proposers to appeal a subcommittee's suspension decision to the SCSB within 14 days after receiving it. Each bidder or proposer must state the facts supporting his claim in enough detail for the SCSB to determine whether procedural elements of the solicitation or award failed to comply with the code or whether an unauthorized or unwarranted, noncompetitive selection process was utilized. The appeal does not automatically prohibit the award or execution of the contested contract.

The legislation requires the SCSB to create a subcommittee of three of its members, including one legislative appointee, to review these appeals and vote on whether a bidder's allegation has been demonstrated. The appeals committee may not include any SCSB member who originally heard the case. A unanimous vote is dispositive. If the vote is split, the full membership must review the appeal and dispose of it by a vote of two-thirds of its members present and voting, including at least one vote by a legislative appointee. (The bill does not specify what happens if the vote of the full board is less than two-thirds. ) And any three board members may request that the full board review an agency's deliberative or awards process.

The subcommittee, or the full board in the event of a split vote, must issue a written decision, or take other appropriate action, on each appeal and provide a copy of any decision to the bidder. The subcommittee must act within 90 days after receiving the appeal. The full committee must act within 90 days after receiving the appeal from the subcommittee. If the subcommittee or full board decides in the bidder's favor, the board must direct the state contracting agency to take corrective action within 30 days after the decision date. A decision by the full board or the appeals review committee is final and not subject to appeal.

The bill also requires the Department of Administrative Services (DAS) to maintain a single electronic portal for posting most contracting opportunities in the state.

Submitted as:

Connecticut

[September Special Session, Public Act 07-1](#)

Status: Enacted into law in 2007.

\*CSG used language from Public Act 07-1 and from a state legislative staff report to compile this statement.