



STATE OF CONNECTICUT
OFFICE OF GOVERNMENTAL ACCOUNTABILITY
STATE CONTRACTING STANDARDS BOARD

Final and Approved Minutes

Friday, March 6, 2015 Meeting of the State Contracting Standards Board Privatization Contract
Committee

First Floor Conference Room, 999 Asylum Avenue, Hartford, CT 06105

Members Present:

Claudia Baio, Chair
Charles W. Casella, Jr.
Thomas G. Ahneman
Brenda Sisco

Staff Present:

David L. Guay, Executive Director
Julia K. Lentini Marquis, Chief Procurement Officer

[Call to order](#)

Meeting called to order by Chair Baio at 12:23 P.M.

[Approve the Minutes of the June 13, 2014 Meeting](#)

Chair Baio entertained a motion to approve the draft June 13, 2014 State Contracting Standards Board Privatization Contract Committee meeting minutes.

Motion made by Thomas Ahneman and seconded by Charles Casella to approve the minutes of the June 13, 2014 State Contracting Standards Board Privatization Contract Committee meeting. Claudia Baio, Chair, Charles Casella, and Thomas G. Ahneman voted in favor, with Brenda Sisco abstaining due to her absence from the June 13, 2014 meeting.

The minutes of the June 13, 2014 State Contracting Standards Board Privatization Contract Committee meeting were approved.

[Discussion and approval of process and procedures](#)

Committee members reviewed a set of draft procedures requested by the Committee at the last meeting and proposed by Julia Marquis, Chief Procurement Officer. Committee members suggested changes and additions to the draft.

Sec. 4e-16. Privatization contracts. Cost-benefit analysis. Business case. Privatization contract committee. Certain privatization contracts to be approved by the General Assembly. Motion for order to show cause.

Exceptions. (a) Prior to entering any privatization contract for the privatization of a state service that is not currently privatized, the state contracting agency shall develop a cost-benefit analysis in accordance with the provisions of subsection (b) of this section. Such requirement shall not apply to a privatization contract for a service currently provided, in whole or in part, by a non-state entity. Any affected party may petition the State Contracting Standards Board for review of such privatization contract, in accordance with the provisions of subsections (f) to (h), inclusive, of this section.

(b) The cost-benefit analysis conducted by a state contracting agency prior to entering a privatization contract shall document the direct and indirect costs, savings, and qualitative and quantitative benefits, that will result from the implementation of such privatization contract. Such cost-benefit analysis shall specify the schedule that, at a minimum, shall be adhered to in order to achieve any estimated savings. Any cost factor shall be clearly identified in such cost-benefit analysis and supported by all applicable records and reports. The department head of such state contracting agency shall certify that, based on the data and information, all projected costs, savings and benefits are valid and achievable. As used in this subsection, “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. As used in this subsection, “savings” means the difference between the current annual direct and indirect costs of providing such service and the projected, annual direct and indirect costs of contracting to provide such services in any succeeding state fiscal year during the term of such proposed privatization contract.

Each state contracting agency shall complete a cost-benefit analysis in accordance with C.G.S. 4e-16 (b-c) that shall be submitted to the SCSB Subcommittee as part of the SCA’s business case. The cost-benefit analysis shall be completed in accordance with the template found here ([insert hyperlink on the word “here”](#)).

(c) (1) If such cost-benefit analysis identifies a cost savings to the state of ten per cent or more, and such privatization contract will not diminish the quality of such service, the state contracting agency shall develop a business case, in accordance with the provisions of subsection (d) of this section, in order to evaluate the feasibility of entering any such contract and to identify the potential results, effectiveness and efficiency of such contract.

(2) If such cost-benefit analysis identifies a cost savings of less than ten per cent to the state and such privatization contract will not diminish the quality of such service, the state contracting agency may develop a business case, in accordance with the provisions of subsection (d) of this section, in order to evaluate the feasibility of entering any such contract and to identify the potential results, effectiveness and efficiency of such contract, provided there is a significant public policy reason to enter into such privatization contract. Any such business case shall be approved in accordance with the provisions of subdivision (4) of subsection (h) of this section.

(3) If any such proposed privatization contract would result in the layoff, transfer or reassignment of one hundred or more state agency employees, after consulting with the potentially affected bargaining units, if any, the state contracting agency shall notify the state employees of such bargaining unit, after such cost benefit analysis is completed. Such state contracting agency shall provide an opportunity for said employees to reduce the costs of conducting the operations to be privatized and provide reasonable resources for the purpose of encouraging and assisting such state employees to organize and submit a bid to provide the services that are the subject of the potential privatization contract. The state contracting agency shall retain sole discretion in determining whether to proceed with the privatization contract, provided the business case for such contract is approved by the board.

Upon receiving the business case from the SCA, the CPO shall review the submission and make a recommendation to the Subcommittee as to whether it meets the elements required at 4e-16 (d), below. If the CPO finds the business case meets the requirements, the business case shall be forwarded by the CPO to the Privatization Contract Committee (PCC). Assuming concurrence by the Subcommittee that the business case meets the statutory requirements, the CPO shall calendar the due date of the Board's decision 60 days from the date of the Subcommittee's receipt*. If the business case is found insufficient at the outset by the CPO with concurrence by the Subcommittee, or deemed insufficient by the Subcommittee once the CPO has forwarded it, a letter noting the deficiencies shall be drafted by the CPO and sent to the SCA via email only. SCAs may request a hard copy of the letter which will be provided at no cost to the SCA. *Please note that receipt is defined as the date the PCC receives and accepts the business case, not the date of submission by the SCA.

(d) Any business case developed by a state contracting agency for the purpose of complying with subsection (c) of this section shall include: (1) The cost benefit analysis as described in subsection (b) of this section, (2) a detailed description of the service or activity that is the subject of such business case, (3) a description and analysis of the state contracting agency's current performance of such service or activity, (4) the goals to be achieved through the proposed privatization contract and the rationale for such goals, (5) a description of available options for achieving such goals, (6) an analysis of the advantages and disadvantages of each option, including, at a minimum, potential performance improvements and risks attendant to termination of the contract or rescission of such contract, (7) a description of the current market for the services or activities that are the subject of such business case, (8) an analysis of the quality of services as gauged by standardized measures and key performance requirements including compensation, turnover, and staffing ratios, (9) a description of the specific results-based performance standards that shall, at a minimum be met, to ensure adequate performance by any party performing such service or activity, (10) the projected time frame for key events from the beginning of the procurement process through the expiration of a contract, if applicable, (11) a specific and feasible contingency plan that addresses contractor nonperformance and a description of the tasks involved in and costs required for implementation of such plan, and (12) 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. Such transition plan shall 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, such business case shall also include information sufficient to rebut the presumption that such core governmental function should not be privatized. Such presumption shall not be construed to prohibit a state contracting agency from contracting for specialized technical expertise not available within such agency, provided such agency shall retain responsibility for such core governmental function. For the purposes of this section, "core governmental function" means a function for which the primary purpose is (A) the inspection for adherence to health and safety standards because public health or safety may be jeopardized if such inspection is not done or is not done in a timely or proper manner, (B) the establishment of statutory, regulatory or contractual standards to which a regulated person, entity or state contractor shall be held, (C) the enforcement of statutory, regulatory or contractual requirements governing public health or safety, or (D) criminal or civil law enforcement. If any part of such 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 shall also include within such business case a plan for remediation of the understaffing to allow such services to be provided directly by the state contracting agency in the future.

(e) Upon the completion of such business case, the state contracting agency shall submit the business case to the State Contracting Standards Board. For any privatization contract with a projected cost that exceeds one hundred fifty million dollars annually or six hundred million dollars over the life of such contract, the state contracting agency shall also submit such business case to the Governor, the president pro tempore of the Senate, the speaker of the House of Representatives, and any collective bargaining unit affected by the proposed privatization contract.

(f) (1) There shall be a privatization contract committee of the State Contracting Standards Board that shall review, evaluate, issue advisory reports and make recommendations on business cases submitted to the board by

any state contracting agency. Such privatization contract committee shall consist of five members of the State Contracting Standards Board. Such members shall be appointed by the chairperson of the board and consist of both gubernatorial and legislative appointments, have not more than three members from any one political party, and at least one member of such committee shall have expertise in the area that is the subject of such proposed contract. The chairperson of the board, or the chairperson's designee shall serve as the chair of the privatization contract committee.

(2) Upon receipt of any such business case from a state contracting agency, the State Contracting Standards Board shall immediately refer such business case to such privatization contract committee. The privatization contract committee shall employ a standard process for reviewing, evaluating and approving any such business cases. Such process shall include due consideration of: (A) The cost-benefit analysis developed by the state contracting agency, (B) the business case developed by the state contracting agency, including any facts, documents or other materials that are relevant to such business case, (C) any adverse effect that such privatization contract may have on minority, small and women-owned businesses that do, or are attempting to do business with the state, and (D) the value of having services performed in the state and within the United States.

Each member of the PCC shall receive and review the business case in its entirety. If any member desires more information about the matter, the member shall request that information from the CPO who shall communicate the requirement to the SCA. A meeting of the PCC shall occur thereafter and all members of the PCC in attendance shall discuss the business case, including whether the services sought meet the definition of a core governmental function. The SCA requesting the privatization may attend the PCC meeting, if the PCC so requests, to answer any questions or concerns. The CPO shall be charged with drafting, for the approval of the PCC, the evaluation and recommendation of the PCC, which shall be shared with the Board via email, along with the business case. The evaluation and recommendation shall be discussed and voted on by the Board. As a matter of procedure, if the question of whether the services are core governmental functions is at issue, the Board must first vote on that aspect, as it dictates the number of votes required to approve the privatization. Similarly, if the CBA shows that less than 10% savings will be achieved with the privatization of the services in question, a vote of 2/3 of the Board also shall be required. At the Board's request, the SCA shall attend the board meeting. During the review or consideration of any such business case, no member of the board shall engage in any ex-parte* communication with any lobbyist, contractor or union representative directly or indirectly related to the matter before the PCC. *Ex-parte communication for purposes of this section shall mean communications of any kind with any person or entity involved in the matter before the PCC. Unless otherwise provided in this section, a majority vote of the board shall be required to approve any such business case.

A report from the Board detailing its decision shall include the evaluation of the business case from the PCC, the reasons for approval or disapproval, any recommendations of the board and sufficient information to assist the SCA in determining additional steps to move forward, and must be delivered to the SCA on or before 60 days from the Board's receipt of the complete request.

(3) The privatization committee shall evaluate the business case and submit the committee's evaluation to the State Contracting Standards Board for review and approval. During the review or consideration of any such business case, no member of the board shall engage in any ex-parte communication with any lobbyist, contractor or union representative. Unless otherwise provided in this section, a majority vote of the board shall be required to approve any such business case.

(4) The business case for a privatization contract to provide a core governmental function may be approved by a two-thirds vote of the board, provided the state contracting agency has provided sufficient evidence to rebut the presumption contained in subsection (d) of this section and there is a significant policy reason to approve such business case. In no such case shall the insufficient staffing of a state contracting agency constitute a significant policy reason to approve a business case for a privatization contract to provide a core governmental function.

(g) Each state contracting agency that submits a business case to the board for review shall submit to the board all information, documents or other material required by the privatization contract committee to complete its review and evaluation of such business case.

(h) (1) Not later than sixty days after receipt of any business case, the State Contracting Standards Board shall transmit a report detailing its review, evaluation and disposition regarding such business case to the state contracting agency that submitted such business case and, in the case of a privatization contract with a projected cost of one hundred fifty million dollars or more annually, or six hundred million dollars or more over the life of the contract, concomitantly transmit such report to the Governor, the president pro tempore of the Senate, the speaker of the House of Representatives and any collective bargaining unit affected by the proposed privatization contract. Such sixty-day period may be extended for an additional thirty days upon a majority vote of the board or the privatization contract committee and for good cause shown.

(2) The board's report shall include the business case prepared by the state contracting agency, the evaluation of the business case prepared by the privatization contract committee, the reasons for approval or disapproval, any recommendations of the board and sufficient information to assist the state contracting agency in determining if additional steps are necessary to move forward with a privatization contract.

(3) If the State Contracting Standards Board does not act on a business case submitted by a state contracting agency within sixty days of receipt of such business case, such business case shall be deemed approved, except that no business case may be approved for failure of the board to meet.

(4) In the case of a business case developed pursuant to subdivision (2) of subsection (c) of this section, a two-thirds vote of the board shall be required for approval of such privatization contract.

(5) Any state contracting agency may request an expedited review of a business case submitted to the board if there is a compelling public interest for such expedited review. If the board approves the agency's request for such an expedited review, such review shall be completed not later than thirty days after receipt of such request. If the board fails to complete an expedited review within thirty days of receipt of a request that was approved by the board, such business case shall be deemed to be approved.

An SCA may request an expedited review of a privatization request by submitting the form found here ([create and hyperlink "here" form](#)) to the CPO. In the event that the PCC agrees to expedite the review, the same processes articulated above shall apply, but the report must be issued within 30 days of receipt of the request. If the expedited review is denied, the SCA's request will be reviewed by the process described above.

(i) A state contracting agency may publish notice soliciting bids for a privatization contract only after the board approves such business case, provided any privatization contract that is estimated to cost in excess of one hundred fifty million dollars annually or six hundred million dollars or more over the life of the contract shall also be approved by the General Assembly prior to the state contracting agency soliciting bids for such contract. The General Assembly may approve any such contract as a whole by a majority vote of each house or may reject such agreement as a whole by a majority vote of either house. If the General Assembly is in session, it shall vote to approve or reject such contract not later than thirty days after such state contracting agency files such contract with the General Assembly. If the General Assembly is not in session when such contract is filed, it shall be submitted to the General Assembly not later than ten days after the first day of the next regular session or special session called for such purpose. The contract shall be deemed approved if the General Assembly fails to vote to approve or reject such contract within thirty days after such filing. Such thirty-day period shall not begin or expire unless the General Assembly is in regular session. For the purpose of this subsection, any contract filed with the clerks within thirty days before the commencement of a regular session of the General Assembly shall be deemed to be filed on the first day of such session.

(j) Each state contracting agency shall submit, in writing, to the State Contracting Standards Board, any proposed amendment to a board-approved business case in order that the board may review and approve of such proposed amendment. The board may approve or disapprove of any such proposed amendment not later than thirty days after receipt of such proposed amendment by the same vote that was required for approval of the original business case. If the board fails to complete its review within thirty days of receipt of such proposed amendment, such amendment shall be deemed approved.

In the event of a proposed amendment to a board-approved business case, the board shall approve and review such amendment. The disposition of the amendment shall be rendered within 30 days of receipt, with the same vote that was required for approval of the original business case, a 2/3 vote or a simple majority.

(k) Not later than thirty days after a decision of the board to approve a business case, any collective bargaining agent of any employee adversely affected by such proposed privatization contract may file a motion for an order to show cause in the superior court for the judicial district of Hartford on the grounds that such contract fails to comply with the substantive or procedural requirements of this section. A ruling on any such motion may: (1) Deny the motion; (2) grant the motion if the court finds that the proposed contract would substantively violate the provisions of this section; or (3) stay the effective date of the contract until any substantive or procedural defect found by the court has been corrected.

(l) (1) The board may review additional existing privatization contracts and shall review not less than one contracting area each year that is currently privatized. During the review of any such privatization contract, no member of the board shall engage in any ex-parte communication with any lobbyist, contractor or union representative. For each such privatization contract selected for review by the board, the appropriate state contracting agency shall develop a cost-benefit analysis in accordance with subsection (b) of this section. In addition, any affected party may petition the board for review of any existing privatization contract, in accordance with the provisions of subsections (f) to (h), inclusive, of this section.

provided: (A) While such plan is prepared, but prior to implementation of such plan, such state contracting agency may develop a business case for such privatization contract, in accordance with the provisions of subsection (d) of this section, that achieves a cost savings to the state of ten per cent or more. Any such business case shall be reviewed by the board in accordance with the provisions of subsections (f) to (h), inclusive, of this section, and may be approved by the applicable vote of the board; (B) such privatization contract shall not be renewed with the vendor currently providing such service unless: (i) There exists a significant public interest in renewing such contract, and (ii) such renewal is approved by a two-thirds vote of the board; (C) the state contracting agency may enter into a contract with a term of one year or less for the provision of such service until such state contracting agency implements such plan; and (D) the procedure for the transfer of funds from the General Fund, as described in section 4-94, may be utilized to allocate necessary resources for the implementation of the provisions of this subdivision.

(2) If such cost-benefit analysis identifies a ten per cent or more cost savings to the state from the use of such privatization contract and such contract does not diminish the quality of the service provided, such state contracting agency shall develop a business case for the renewal of such privatization contract in accordance with the provisions of subsections (d) and (e) of this section. The board shall review such contract in accordance with the provisions of subsections (f) to (h), inclusive, of this section and may approve such renewal by the applicable vote of the board, provided any such renewal that is estimated to cost in excess of one hundred fifty million dollars annually or six hundred million dollars or more over the life of the contract shall also be approved by the General Assembly prior to the state contracting agency renewing such contract. If such renewal is approved by the board and the General Assembly, if applicable, the provisions of subsection (j) of this section shall apply to any proposed amendment to such contract.

(3) If such cost-benefit analysis identifies a cost savings to the state of less than ten per cent, such state contracting agency shall prepare a plan to have such service provided by state employees and shall begin to implement such plan, provided: (A) While such plan is prepared, but prior to implementation of such plan, such state contracting agency may develop a business case for such privatization contract, in accordance with the provisions of subsection (d) of this section, that achieves a cost savings to the state of ten per cent or more. Any such business case shall be reviewed by the board in accordance with the provisions of subsections (f) to (h), inclusive, of this section, and may be approved by the applicable vote of the board; (B) such privatization contract shall not be renewed with the vendor currently providing such service unless: (i) There exists a significant public interest in renewing such contract, and (ii) such renewal is approved by a two-thirds vote of the board; (C) the state

contracting agency may enter into a contract with a term of one year or less for the provision of such service until such state contracting agency implements such plan; and (D) the procedure for the transfer of funds from the General Fund, as described in section 4-94, may be utilized to allocate necessary resources for the implementation of the provisions of this subdivision.

(4) Notwithstanding the provisions of subdivision (3) of this subsection, the renewal of a privatization contract with a nonprofit organization shall not be denied if the cost of increasing compensation to employees performing the privatized service is the sole cause for such contract not achieving a cost savings to the state of ten per cent or more.

(m) The Office of Policy and Management, in consultation with the State Contracting Standards Board, shall: (1) Develop policies and procedures, including templates for use by state contracting agencies for the development of a cost-benefit analysis, as described in subsection (b) of this section, and (2) review with each state contracting agency the budgetary impact of any such privatization contract and the need to request budget adjustments in connection with any such privatization contract.

(n) The State Contracting Standards Board, in consultation with the Department of Administrative Services, shall: (1) Recommend and implement standards and procedures for state contracting agencies to develop business cases in connection with privatization contracts, including templates for use by state contracting agencies when submitting business cases to the board, and policies and procedures to guide state contracting agencies to complete such business cases, and (2) develop guidelines and procedures for assisting state employees whose jobs are affected by a privatization contract.

(o) Notwithstanding the provisions of subsections (a) and (i) of this section, a state contracting agency may enter into a privatization contract without development of a cost-benefit analysis or approval of a business case by the State Contracting Standards Board if (1) the state contracting agency finds that a privatization contract is required (A) due to an imminent peril to the public health, safety or welfare, and (B) the agency states, in writing, its reasons for such finding; and (2) the Governor approves such finding, in writing.

(p) Nothing in this section shall be construed to apply to procurements that involve the expenditure of federal assistance or federal contract funds, provided federal law provides applicable procurement procedures that are inconsistent with the requirements of this section.

Motion made by Brenda Sisco and seconded by Thomas Ahneman to approve the draft process and procedures for the State Contracting Standards Board Privatization Contract Committee. All voted in favor.

The process and procedures for the State Contracting Standards Board Privatization Contract Committee were approved.

Adjournment

Motion made by Thomas Ahneman and seconded by Brenda Sisco to adjourn. All voted in favor and the meeting was adjourned at 12:54 P.M.

Respectfully submitted: David L. Guay